

THE WAITANGI TRIBUNAL  
INQUIRY INTO CERTAIN REMAINING HISTORICAL CLAIMS

WAI 2800  
WAI 1482

**IN THE MATTER** of the Treaty of Waitangi Act 1975

**AND**

**IN THE MATTER** of an inquiry into certain remaining historical claims  
(Wai 2800)

**AND**

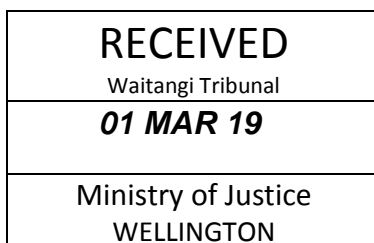
**IN THE MATTER** of a claim by Ropata William Miratana, Patricia Ngatakutai Jacobs, the late Archdeacon Te Hopehuia Hakaraia and the late Richard Edward Orzecki on behalf of themselves and of Te Kotahitanga o te Iwi o Ngāti Wehi Wehi (Wai 1482)

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**MEMORANDUM OF COUNSEL FOR THE WAI 1482 NGĀTI WEHI WEHI  
CLAIM REGARDING REMAINING HISTORICAL GRIEVANCES**

**Dated: this 1<sup>st</sup> day of March 2019**

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## MAY IT PLEASE THE TRIBUNAL

1. This memorandum of counsel is filed on behalf of the claim by Ropata William Miratana, Patricia Ngatakutai Jacobs, the late Archdeacon Te Hopehuia Hakaraia and the late Richard Edward Orzecki on behalf of themselves and of Te Kotahitanga o te Iwi o Ngāti Wehi Wehi (“**Wai 1482 Ngāti Wehi Wehi claim**”).
2. By Memorandum-directions of 6 September 2018, Chief Judge W W Isaac appointed a Waitangi Tribunal standing panel to inquire into certain remaining historical claims in six inquiry districts in which the Tribunal has already completed inquiries (“**directions**”). The directions set out the eligibility of claims to participate and the panel’s scope of work, which focusses on districts offering the best prospect for a fast-track process.<sup>1</sup> His Honour also indicated that claims relating to further districts or groups of districts may be referred for the standing panel’s consideration as its work progresses.<sup>2</sup>
3. This memorandum seeks referral of remaining historical grievances for the Wai 1482 Ngāti Wehi Wehi claim, which fall outside the current ambit of inquiry, to the standing panel for consideration.

## Background

4. The customary interests of Ngāti Wehi Wehi fall within the following inquiry districts:
  - (a) South-East Waikato;<sup>3</sup>
  - (b) Waikato-Tainui;
  - (c) Te Rohe Pōtae;
  - (d) Taihape – Rangitīkei ki Rangipō; and
  - (e) Porirua ki Manawatū.

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<sup>1</sup> Memorandum of the Chairperson appointing a standing panel to inquire into remaining historical claims in the South-western North Island, the South Island and Chatham Islands, dated 6<sup>th</sup> September 2018 (Wai 2800, #2.5.1).

<sup>2</sup> #2.5.1 at [22].

<sup>3</sup> Counsel understand this is also referred to as the Waikato-Raukawa inquiry district.

5. The Wai 1482 Ngāti Wehi Wehi claimants have therefore participated in the Te Rohe Pōtae inquiry district, and are currently participating in the Taihape – Rangitīkei ki Rangipō and Porirua ki Manawatū inquiry districts.
6. However, to date, the Wai 1482 Ngāti Wehi Wehi claim’s historical grievances falling within the South-East Waikato and Waikato-Tainui inquiry districts (“**Waikato districts**”) have not been dealt with, with the exception of its Raupatu claims in respect of Rangiaowhia (“**remaining historical grievances**”).<sup>4</sup>

### Reasons referral sought

7. Ngāti Wehi Wehi’s customary interests have been split between five district inquiries, and the Wai 1482 Ngāti Wehi Wehi claimants have been actively involved in the Tribunal process for a substantial period of time as a result.
8. The claimants are conscious of the impact that the passage of time has had on the ability to put their case forward to the Tribunal in relation to their remaining historical grievances. Indeed, since the original claim was filed, they have lost two named claimants, along with much of the knowledge that those claimants held.<sup>5</sup>
9. Accordingly, while mindful of his Honour’s rationale for turning first to those areas where Tribunal reporting has already been completed,<sup>6</sup> the claimants are desirous of having the remaining historical grievances heard as soon as reasonably practicable.
10. In the circumstances, counsel submit that the remaining historical grievances for the Wai 1482 Ngāti Wehi Wehi claim are suited for referral to the standing panel for consideration at this stage, notwithstanding that Tribunal inquiries have not been completed for the Waikato districts. The reasons for this are expanded upon in the paragraphs that follow.

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<sup>4</sup> Raupatu claims of Ngāti Wehi Wehi in respect of Rangiaowhia were considered and reported on by the Tribunal in the Te Rohe Pōtae inquiry district. See Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims* (Wai 898, 2018) Parts I & II at 4, 14, 26. The Tribunal concluded in the report that “*there is no legislative impediment to either Ngāti Kauwhata or Ngāti Wehi Wehi bringing raupatu claims concerning the Waikato wars*”.

<sup>5</sup> The late Archdeacon Te Hopehuia Hakaraia and the late Richard Edward Orzecki.

<sup>6</sup> See for example #2.5.1 at [7], [9].

*Discrete nature of remaining historical grievances*

11. The remaining historical grievances are relatively discrete. These include in particular the land loss suffered by Ngāti Wehi Wehi within the Waikato districts through purchasing and the Native Land Court system (including the associated Ngāti Kauwhata Claims Commission 1881). These remaining historical grievances are therefore centred on acts or omissions of the Crown arising prior to 21 September 1992,<sup>7</sup> and lie outside the ambit of the kaupapa inquiry programme.

*Various sources are available to assist an inquiry into remaining historical grievances*

12. Some additional research would be necessary for an inquiry into the remaining historical grievances for the Wai 1482 Ngāti Wehi Wehi claim.
13. However, there are various sources of information already available that would likely be of assistance for inquiring into the remaining historical grievances, at both a claim-specific (both technical and tangata whenua) and more generic level. These include:
- (a) Peter McBurney's report *Ngāti Kauwhata and Ngāti Wehi Wehi interests in and about Te Rohe Pōtae District*, which was commissioned for the neighbouring Te Rohe Pōtae inquiry, and covers, among other things, aspects of Ngāti Wehi Wehi's customary interests and some of Ngāti Wehi Wehi's claims against the Crown in the Waikato districts.<sup>8</sup>
  - (b) Tangata whenua evidence presented for the Wai 1482 Ngāti Wehi Wehi claim in the Te Rohe Pōtae Inquiry, parts of which also discussed aspects of Ngāti Wehi Wehi's interests and grievances in the Waikato as part of the context to claim issues in Te Rohe Pōtae districts.<sup>9</sup>

<sup>7</sup> See Treaty of Waitangi Act 1975, s2.

<sup>8</sup> Wai 898, #A120.

<sup>9</sup> Brief of evidence of Richard Orzecki (Wai 898, #K4), Brief of evidence of Reverend Te Hopehuia Hakaraia (Wai 898, #K5), Brief of evidence of Ropata Miratana (Wai 898, #K6), Brief of evidence of Patricia Ngatakutai Jacobs (Wai 898, #K9). For the avoidance of doubt, this does not negate the need for further tangata whenua evidence.

- (c) Numerous Tribunal reports that consider and make findings in respect of the operation and effect of the Native Land Court system.<sup>10</sup>
- (d) Parts of the Rangahaua Whānui series and / or reports commissioned for neighbouring inquiry districts in relation to the Native Land Court system.

*Remaining historical grievances are yet to be dealt with*

14. With respect to eligibility:

- (a) The claimants are not aware of any settlement affecting the Tribunal's jurisdiction such that it would be unable to inquire into the Wai 1482 Ngāti Wehi Wehi claim's remaining historical grievances, or of the inclusion of the claim in the mandate of any group that has agreed terms of negotiation with the Crown for the settlement of their historical Treaty claims.
- (b) The remaining historical grievances have not been heard and reported on by the Tribunal in any other inquiry.<sup>11</sup> Evidence in relation to aspects of Ngāti Wehi Wehi's interests in the Waikato districts and remaining historical grievances were provided in the Te Rohe Pōtae inquiry, but only as part of the context to grievances heard within that inquiry.<sup>12</sup>
- (c) The Wai 1482 Ngāti Wehi Wehi claim is participating in the Tribunal inquiries set out at above at [5], but these cover distinct areas and do not relate to the remaining historical grievances.

## **Conclusion**

15. In summary, the Wai 1482 Ngāti Wehi Wehi claim has remaining historical grievances yet to be heard and reported on by the Tribunal. These cover a

<sup>10</sup> For example, Waitangi Tribunal *He Maunga Rongo: Report on Central North Island Claims* (Wai 1200, 2008) Part III, Waitangi Tribunal *Te Kahui Maunga: The National Park Inquiry District Inquiry report* (Wai 1130, 2013) Vol I.

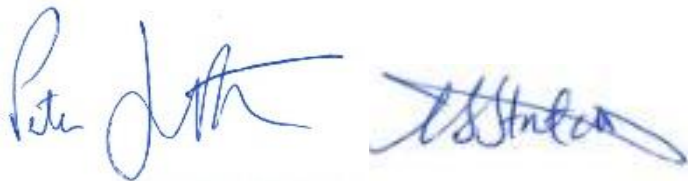
<sup>11</sup> A number of other groups in the South-East Waikato and Waikato-Tainui inquiry districts opted to enter into settlement negotiations in respect of interests within those areas, without a Tribunal inquiry. See for example the Raukawa Claims Settlement Act 2014.

<sup>12</sup> Due to the inquiry boundary and scope of the Te Rohe Pōtae inquiry, counsel understand these will not be reported on, except to the extent that their history relates to lands within that inquiry district; Judge D J Ambler had declined to extend the boundary of that inquiry district to include lands within the "Waikato-Raukawa District", as it was "*more natural for those blocks to be heard as part of the Waikato-Raukawa Inquiry*" (see Memorandum-directions of Judge D J Ambler dated 4 September 2007 (Wai 898, #2.5.21) at [6.4]).

relatively discrete set of issues that are already traversed to an extent in available technical and tangata whenua evidence and, in respect of the general operation and effect of the Native Land Court system, have been covered extensively in previous Tribunal reports and reports commissioned for other inquiries.

16. Counsel therefore seek referral of the remaining historical grievances of the Wai 1482 Ngāti Wehi Wehi claim relating to the Waikato districts to the standing panel for consideration.
17. In the alternative, should participation as part of the standing panel process currently envisaged not be possible, the claimants signal their interest in being heard in respect of their remaining historical grievances as soon as reasonably practicable thereafter.
18. Counsel are available to be heard in respect of the matters raised in this memorandum.

**Dated** this 1<sup>st</sup> day of March 2019



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**P Johnston / E Stretch / D  
Hunt**