
KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA
I TE TIRITI O WAITANGI

BEFORE THE WAITANGI TRIBUNAL

WAI 2800

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF the Inquiry into Remaining Historical
Claims: Southern North Island and
South Island claims

MEMORANDUM OF COUNSEL FOR THE CROWN

10 July 2019



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MAY IT PLEASE THE TRIBUNAL:

1. This memorandum is filed in response to Tribunal memorandum-directions of 12 June 2019 directing the Crown to respond to the Wai 710 claimant's submission on the eligibility of her claim for inclusion in the Wai 2800 inquiry.¹
2. The Wai 710 claim was assessed by Tribunal staff as fully settled and as not eligible to participate in the Wai 2800 inquiry in the October 2018 claims list.²

Wai 710: Waitaha (Ngāi Tahu Settlement) Claim

3. The Crown agrees with the Tribunal's preliminary assessment that the Wai 710 claim is fully settled by the Ngāi Tahu Claims Settlement Act 1998 and is not eligible for participation in the Wai 2800 inquiry.
4. The Ngāi Tahu Claims Settlement Act 1998 provides:³

9 Meaning of Ngāi Tahu and Ngāi Tahu Whānui

- (1) For the purposes of this Act and any other enactment, unless the context otherwise requires, Ngāi Tahu and Ngāi Tahu Whānui each means the collective of individuals who descend from the primary hapū of Waitaha, Ngāti Mamoe, and Ngāi Tahu, namely Kāti Kuri, Kāti Irakehu, Kāti Huirapa, Ngāi Tuahuriri, and Kai Te Ruahikihiki.
5. The Ngāi Tahu claims are settled.⁴ "Ngāi Tahu claims" relevantly means all claims made at any time by any Ngāti Tahu claimant founded on the principles of the Treaty of Waitangi.⁵ "Ngāi Tahu claimant" means any of the following:⁶
 - (a) Te Rūnanga o Ngāi Tahu;
 - (b) any claimant in respect of any ancillary claims;
 - (c) Ngāi Tahu;
 - (d) 1 or more individuals, whānau, marae, hapū, or Papatipu Rūnanga of Ngāi Tahu;
 - (e) any person acting on behalf of any of the above
 6. The Ngāi Tahu Claims Settlement Act recognises Waitaha as a "primary hapū" of Ngāi Tahu and Ngāi Tahu Whānui (along with Ngāti Mamoe and Ngāi Tahu).⁷ As such the historical elements of Wai 710, as a Waitaha claim,

¹ Wai 2800, #2.5.4 at [5]–[6].

² Wai 2800, #2.5.2 (Appendix B at 9).

³ Ngāi Tahu Claims Settlement Act 1998, s 9.

⁴ Section 461(1) (Settlement of Ngāi Tahu claims to be final).

⁵ Section 10(1) (Meaning of Ngāi Tahu claims).

⁶ Section 8 (Interpretation of terms).

⁷ Section 9(1).

are fully settled. The Act provides for the settlement of claims of Ngāi Tahu claimants (as defined) regardless of whether a Wai claim such as Wai 710 is specifically listed.

7. The Crown notes that the inclusion of Waitaha claims in the Ngāi Tahu Deed of Settlement is itself a grievance alleged in the statement of claim.⁸ For example, the claimant alleges the Deed will “remove the jurisdiction of the Waitangi Tribunal to inquire or make any finding or recommendation in respect of the Waitaha claims”.⁹ The Crown submits that is what has occurred.
8. The historical elements of Wai 710 are fully settled. This includes claims about the repeal of the Runanga Iwi Act 1990 in 1991 (pre-21 September 1992) and other matters. They are not eligible for inclusion in the Wai 2800 inquiry.
9. To the extent the claim contains non-historical allegations of Treaty breach about the Ngāi Tahu Deed of Settlement and the Ngāi Tahu Claims Settlement Act 1998, inquiry into such matters is barred by the Act.¹⁰ However, the Tribunal need not decide that point for current purposes.

10 July 2019



J R Gough / C J C Pouwels
Counsel for the Crown

TO: The Registrar, Waitangi Tribunal
AND TO: Claimant Counsel

⁸ See Wai 710, #1.1 at [20].

⁹ Wai 710, #1.1 at [20](c).

¹⁰ Ngāi Tahu Claims Settlement Act 1998, s 461(3).