

IN THE WAITANGI TRIBUNAL**WAI 1464/1546
WAI 3006****IN THE MATTER** of the Treaty of Waitangi Act 1975**A N D****IN THE MATTER** of an application for an urgent inquiry into the Crown's failure to provide a sustainable and fair claimant funding regime for kaupapa and urgent Waitangi Tribunal inquiries (Wai 3006)**A N D****IN THE MATTER** of claims by Te Riwhi Whao Reti, Hau Hereora, Romana Tarau, Karen Herbert and Edward Cook on behalf of Te Kapotai (Wai 1464/1546)

MEMORANDUM OF COUNSEL**Dated this 18th day of August 2021****RECEIVED**

Waitangi Tribunal

18 Aug 2021Ministry of Justice
WELLINGTON

p 09 404 0953
a 91 Hupara Road, RD2 Kaikohe, Northland 0472
e admin@tukaulaw.co.nz
w www.tukaulaw.co.nz

Counsel acting**Season-Mary Downs
Chelsea Terei
Josey Lang
Heather Jamieson**

MAY IT PLEASE THE TRIBUNAL:

1. This Memorandum of Counsel is filed on behalf of Te Kapotai (“Te Kapotai/the claimants”).
2. On 17 September 2020 Te Kapotai filed an application for an urgent Waitangi Tribunal hearing into the failure of the Crown to provide a fair and sustainable funding regime for claimant participation in both urgency and kaupapa Waitangi Tribunal inquiries.
3. On 9 August 2021 the Deputy Chairperson issued a decision declining the application for an urgent hearing (“the decision”).
4. The claimants continue to be concerned that the lack of an adequate funding regime for kaupapa and urgency Waitangi Tribunal inquiries is a significant impediment to access to justice for the claimant groups participating in these inquiries. No immediate and appropriate solution to this problem has been offered by the Crown.
5. The claimants maintain that for the integrity of Waitangi Tribunal processes to be upheld it is imperative to maintain an “equality of arms” as against the Crown, and therefore the claimants must be adequately and appropriately funded to participate in hearings.
6. The longer the present imbalance of resources and funding is allowed to continue, the greater the prejudice to the claimants. The matter therefore needs an urgent resolution. The urgency process expedites the hearing of these concerns whereas the kaupapa inquiry process can be lengthy.
7. In the decision the following points are noted;
 - (a) Since the filing of the Wai 3006 application, the Chairperson has commenced the Justice System kaupapa inquiry (“Wai 3060”), which will be inquiring into matters of claimant funding;
 - (b) That the matter should be determined by the Presiding Officer of the Wai 3060 inquiry; and

(c) The Wai 3006 urgency file, in its entirety, is to be referred to the Presiding Officer of the Wai 3060 panel to consider.

8. Counsel considers that an alternative remedy only presents itself if the Wai 3060 panel agrees to hear the claimant funding issue as a matter of priority. Counsel therefore respectfully requests that the Tribunal adjourns the Wai 3006 application with leave to return to the Tribunal for consideration of urgency should priority not be granted in Wai 3060.

DATED at Pakaraka this 18th day of August 2021

Four handwritten signatures in blue ink are displayed horizontally. From left to right, they appear to be: 'S Down', 'Ch Terei', 'Josey Lang', and 'Heather Jamieson'.

Season-Mary Downs/Chelsea Terei/Josey Lang/Heather Jamieson
Counsel for the claimants