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

BEFORE THE WAITANGI TRIBUNAL WAI 3060

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF the Justice System kaupapa inquiry

AMENDED BRIEF OF EVIDENCE OF LUCY BOLTON

30 August 2022

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WELLINGTON

Te Tari Ture o te Karauna
Crown Law

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Barrister Acting: Wendy Aldred
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I, Lucy Bolton of Wellington, Manager, state:

Introduction

1. My full name is Lucy Bolton.

2. I am the Manager of the Freshwater Rights and Interests Team at the Ministry for the Environment (MfE).

3. I started working at MfE in 2014.

4. In April 2016, I became the Manager of the Water Rights and Interests Policy Team, which has evolved into the Freshwater Rights and Interests Team over time. This team develops freshwater policy, including Te Mana o te Wai and the National Policy Statement on Freshwater Management. The team is currently involved in the resource management reforms and the development of Māori participation policy for the resource management system.

5. My role included management of the MfE team that supported MfE's legal team, where policy intersections arose in relation to stage 2 of the National Freshwater and Geothermal Resources Inquiry (**the Wai 2358 inquiry**).

6. I have not previously given evidence before the Waitangi Tribunal.

Scope of evidence

7. In this brief of evidence, I explain what funding has been made available by MfE to claimants to participate in the Wai 2358 inquiry since the formal establishment of the Tribunal's kaupapa inquiry programme (on 1 April 2015). My evidence is relevant to the first and third overarching questions in the Waitangi Tribunal's list of questions to be addressed in this inquiry (Wai 3060, #2.5.9(a)).

Background to the Wai 2358 inquiry

8. The Wai 2358 inquiry was commenced prior to the formal kaupapa inquiry programme being established (on 1 April 2015).

9. The Wai 2358 inquiry commenced as an urgent inquiry in March 2012 with stage 1, focussing on Māori rights and interests in freshwater and the impacts of the Crown's proposed sale of shares in state-owned power companies. The stage 1 hearing was held at Waiwhetu marae from 9-13 July, 16 July and 19-20 July 2012. The final report

for stage 1 was released in December 2012.[1]

10. In June 2015, the Tribunal determined there was no imminent Crown action to justify the continued urgent status of the inquiry. The Tribunal determined the inquiry would instead proceed on a priority basis.[2] At that point in time, the Tribunal was not describing the inquiry as a kaupapa inquiry (although it noted in its memorandum-directions that the Crown had suggested Wai 2358 could be added to the Tribunal's kaupapa inquiry programme).[3] Subsequent memorandum-directions of the Chairperson of the Tribunal in respect of the kaupapa inquiry programme from 1 April 2015 and 27 March 2019 have not specifically described Wai 2358 as a kaupapa inquiry, but have instead noted that the Wai 2358 inquiry commenced prior to the formal kaupapa inquiry programme being established.[4]

11. Hearings for stage 2 of the Wai 2358 inquiry were held from 2016 to 2018. Stage two focussed on the Crown's freshwater management regime and reforms. The first hearing week was held at Waiwhetu marae from 7-11 November 2016; the second hearing week was held at Ohope marae from 26-30 June 2017; and the final hearing week for evidence was held at the Tribunal's offices in Wellington from 13-17 August 2018. A fourth hearing week for closing submissions was held at the Tribunal's offices from 26-30 November 2018. The Tribunal's report on stage 2 was released in August 2019.[5]

12. Stage 3 of this inquiry is predominantly in the planning stage, although the Tribunal issued memorandum-directions on 27 June 2022 granting a discrete priority hearing for stage three. The hearing was held from 1-3 August 2022. Three parties were granted claimant status in that inquiry, and a number of additional parties participated as interested parties. MfE did not receive any requests for the provision of claimant funding from claimants involved in that hearing.

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1 Waitangi Tribunal *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim* (Wai 2358, 2012).

2 Wai 2358, #2.5.56.

3 Wai 2358, #2.5.56 at [26].

4 Memorandum of the Chairperson concerning the Kaupapa Inquiry Programme, 1 April 2015; Memorandum of the Chairperson concerning the Kaupapa Inquiry Programme, 27 March 2019.

5 Waitangi Tribunal *The Stage 2 Report on the National Freshwater and Geothermal Resources Claims* (Wai 2358, 2019).

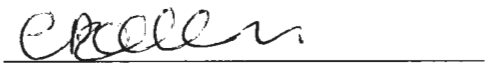
Funding for participation in the Wai 2358 inquiry to date

13. MfE did not provide direct funding for claimant participation in stage 2 of the Wai 2358 inquiry. The Ministry does not have a record of any claimant having sought direct funding from MfE during stage 2.

Future funding for participation in the Wai 2358 inquiry

14. As stage 3 of the inquiry is still predominantly in its planning phase, at the time of providing my written brief of evidence on 7 July, MfE had not yet considered whether to implement a process for claimant funding. However, since that date, MfE has decided to provide claimant funding for the balance of Wai 2358, in line with the interim guidance produced by Te Arawhiti.[6] Further, MfE has decided to provide retrospective funding for claimants who participated in previous stages of Wai 2358. A process for this will be published in due course.

15. MfE is also willing to provide funding for claimants should it be the lead agency in future inquiries.

Signed: 

Lucy Bolton

Date: 30 August '22

[6] Te Arawhiti "Guidance for lead agencies on the interim provision of claimant funding in kaupapa and contemporary inquiries" (TA.001.0578) (Exhibit WDF-19 to the brief of evidence of Warren David Fraser: Wai 3060, #A72(a)).