WAITANGI TRIBUNAL

Wai 3232

CONCERNING the Treaty of Waitangi Act 1975

AND a claim by Desiree Te Moananui on behalf of her whānau, hapū, and iwi

MEMORANDUM-DIRECTIONS OF THE DEPUTY CHAIRPERSON

The Registrar will please enter this matter on the register of claims and give it the next available Wai number. The register should note that the claim was received on 22 November 2022.

The claimant should please take note of the 'Wai' number reference at the top of the page. Please use this claim number in any communication with the Tribunal.

This claim is lodged by Desiree Te Moananui on behalf of her whānau, hapū and iwi, and concerns the justice system. The claimant alleges that the Crown has breached the principles of the Treaty of Waitangi by failing to:

- protect Māori from a systemically racist justice system;
- provide equality to Māori;
- act in good faith and practice active protection in relation to justice outcomes for Māori;
- ensure the police diversion policy is applied fairly and consistently;
- ensure family harm call outs are appropriately dealt with and consistent;
- allow Māori the right to choose their own lawyer;
- denying Māori the right to act in tino rangatiratanga, by forcing representation by someone who they have not decided themselves to be the best fit to represent them;
- ensure Māori are aware of their legal aid entitlements;
- ensure the full implications of pleading guilty are made clear to the client, resulting in them pleading guilty without being fully aware of the consequences;
- protect Māori through the Bail Amendment Act resulting in more Māori being imprisoned and charged;
- stop the implementation of a racist prison system through the Corrections Act;
- stop cruel and inhuman treatment upon Māori prisoners, breaching their human rights;
- provide adequate legal aid for Māori;
- provide an equitable system for remand prisoners;
- provide sufficient means to prisoners on EM Bail;
- hold the New Zealand Police accountable for their actions and allowing the Police to pick and choose who they charge;
- implement an independent organisation to investigate breaches in the Corrections system and Police custody;
- hold the Independent Policy Conduct Authority accountable for their actions and allowing them to pick and choose what complaints they look into and take action on;
- investigate abuse in state care and provide sufficient redress and means for those who have been abused by the system;
- remove limitations placed on those who are seeking to hold the state accountable for their actions by the Limitation Act;

- address youth offending adequately in the Youth Court resulting in youth to offend as adults;
- provide adequate support to victims of MSD abuse in state care;
- provide an adequate compensation process relating to the MSD abuse;
- stop inequalities in the current royal commission of inquiry into abuse in state care that does not compensate victims for the harm they received;
- support those who have suffered a mental injury because of sexual violence through the ACC scheme;
- provide an equitable legal aid system;
- stop the Family Court from implementing laws against Māori more harshly that Crown agencies such as Oranga Tamariki resulting in severe trauma and injustice for Māori whānau, hapū and iwi;
- set up an independent organisation to deal with breaches by Oranga Tamariki;
- hold social workers accountable for their failures or wrong doings;
- act in good faith for Māori resulting in creating a divide in society due to the Oranga Tamariki Act;
- take proactive steps to protect Māori members and their whānau from inequitably high levels of harm and discrimination suffered as the culminating result of being Māori with respect to housing deprivation and homelessness, members of gang whānau and their children being placed in state care, addictions and substance abuse, criminlisation and imprisonment, lack of education, unemployment, excessive use of power by officers of the state, health, mental illness, depression, and suicide, and systemic institutional bias and discrimination;
- allow for partnership to occur in the drafting of policies pertaining to the criminal justice system in its entirety;
- do the necessary obligations that would cause for equitable outcomes of New Zealands population;
- allow Māori to act in the principles of te tino rangatiratanga, instead punishing them further hindering the cucles of poor health, low academic achievement, and high incarceration rates of Māori.

The claimant seeks a variety of relief, including recommendations that the Crown:

- support Māori to be partners with the Crown, which can include the development of an authority which acts as a representative for Māori to act on behalf of them in good will;
- allow for specific carers or support staff for Māori who are in the Oranga Tamariki system;
- give Māori exclusive and undisturbed possession, and the authority and tino rangatiratanga over their taonga, including their communities and tikanga Māori;
- allow for Māori methods of justice to be valid and legal options for people who have committed crimes;
- cooperate and partner with iwi organisations to build local initiatives that have better outcomes for Māori;
- develop policies which are designed to benefit Māori, work for them and are designed by Māori; and
- ensure adequate resourcing for programmes that benefit Māori to run such as kaupapa Māori programmes that support Māori to reduce reoffending.

The claimant may amend this claim at a later stage. In any case the Tribunal may require the claimant to prepare a fully particularised statement of claim before the claim can be heard.

The Tribunal currently runs district and kaupapa inquiry programmes in which claims are grouped either by district or by kaupapa (thematic) issue. Historical claims are those that raise grievances which arose before 21 September 1992. Contemporary claims have grievances that arose on or after that date. Some claims have both historical and contemporary grievances.

The allegations made in this claim are contemporary in nature. They pertain to the justice system and as such may be best suited for consideration in the Wai 3060, the Justice System Kaupapa Inquiry.

The claimant should also note that this claim is registered only insofar as it concerns contemporary allegations of Treaty breaches by the Crown.

When the time comes for the claim to be prepared for hearing, the Tribunal will decide whether there are any matters in the present claim that the Tribunal may not inquire into. The claimant needs to be aware that there are some matters that the Tribunal is not allowed to inquire into, such as any Bill that has been introduced into Parliament (unless the Bill has been referred to the Tribunal under section 8 of the Treaty of Waitangi Act 1975). Also, when historical claims are settled, the settlement legislation usually forbids the Tribunal from inquiring further into the matters that have been settled.

The claimant also needs to be aware that the Tribunal does not make settlements. After the Tribunal has completed an inquiry into claims, it writes a report making recommendations to the Crown. It cannot tell the Crown what to do; it may only recommend that the Crown acts to address the negative consequences of its breaches of the principles of the Treaty.

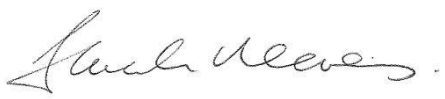
Legal Aid Services provides help for Waitangi Tribunal claimants. For advice on getting a lawyer or receiving funding, please contact Legal Aid Services at their Wellington central office or one of the local offices; the claimant should check their telephone directory for contact details.

Any questions about the contents of this document should be directed to The Registrar, Waitangi Tribunal, DX SX 11237, Wellington; phone (04) 914 3000, fax (04) 914 3001; email wt.registrar@justice.govt.nz.

The Registrar is to send a copy of this direction to the claimant and to:

- Crown Law Office;
- Te Kahui Whakatau (Treaty Settlements), Office for Māori Crown Relations – Te Arawhiti;
- Crown Forestry Rental Trust;
- Legal Aid Services;
- Te Puni Kōkiri;
- Accident Compensation Corporation;
- Oranga Tamariki;
- Ministry for Social Development; and
- All those on the notification list for Wai 3060, the Justice System Kaupapa Inquiry

DATED at Wellington this 8th day of December 2022



Judge Sarah Reeves
Deputy Chairperson
WAITANGI TRIBUNAL