

IN THE WAITANGI TRIBUNAL

Wai 1040

CONCERNING

the Treaty of Waitangi Act 1975

AND

the Te Paparahi o Te Raki  
Inquiry

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MEMORANDUM-DIRECTIONS OF JUDGE C T COXHEAD

1 August 2023

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## **Request for leave to make further closing submissions for stage 2 of the Te Paparahi o Te Raki (Wai 1040) inquiry following recent court judgments concerning tikanga**

1. On 23 November 2022, claimant counsel Bryce Lyall, Linda Thornton, and Hannah Swedlund submitted a joint memorandum seeking leave to make additional submissions on ‘recent, relevant and significant decisions of the courts concerning tikanga’ (Wai 1040, #3.4.46 at [2]).
2. Counsel submitted the decisions are relevant to ‘Issue One: Tino Rangatiratanga, kāwanatanga and autonomy: political engagement between Māori and the Crown’, and ‘Issue 14: Te Reo Māori, Wāhi Tapu, Taonga and Tikanga’, in the Tribunal Statement of Issues for stage 2 of this Inquiry (Wai 1040, #1.4.2, pp 4 & 39).
3. Counsel said that these submissions would be ‘targeted and directly relevant’ to the matters before the Tribunal in this inquiry, outlined that they did not wish to delay the Tribunal’s report, and suggested the Tribunal hear from both claimant and Crown counsel on the decisions before releasing its report.
4. On 28 February 2023, I directed the Crown to advise its view on this matter, and noted that the Tribunal had (on 23 December 2022) released a pre-publication version of Tino Rangatiratanga me te Kāwanatanga: Part 1 of the Report on Stage 2 of the Te Paparahi o Te Raki Inquiry (the Tino Rangatiratanga Report) (Wai 1040, #2.7.37 at [4]–[5]).

### *Crown submission regarding claimant request to file further closing submissions*

5. Accordingly, on 28 March 2023, counsel for the Crown Andrew Irwin submitted that the Crown abides by the Tribunal’s decision on this matter (Wai 1040, #3.4.56). Counsel said the Crown understands that the request is ‘restricted to what are said to be significant decisions from the courts since closing submissions were filed’ and noted that most submissions were filed by the end of August 2018 (Wai 1040, #3.4.56 at [3.1]).
6. The Crown further submitted that the Tribunal was not required to ‘accede to the request’ and might consider that it could issue a report on all remaining issues without further submissions from parties (Wai 1040, #3.4.56 at [3.2]). Counsel stated that they presumed that the Tribunal would not – after receiving any additional submissions – amend its Tino Rangatiratanga report.
7. Counsel added, however, that the Tribunal could hear further submissions on these matters if it wished, stating that the Crown ‘does not consider the Tribunal is functus on the issues for which it is yet to issue its report’ (Wai 1040, #3.4.56 at [3.3]). Counsel said that if the Tribunal was minded to allow additional submissions, then it might wish to clarify that submissions should focus on the discrete issues identified by claimant counsel ‘to the extent those issues have not already been addressed’ – stating that parties should not seek to relitigate any existing findings (Wai 1040, #3.4.56 at [3.3]).
8. Counsel also suggest that if leave is granted, all parties should be given an opportunity to make submissions, with the claimants filing first, the Crown filing in reply, and the claimants in response. This process is suggested because the Crown’s Stage 2 submissions were filed in reply to the claimants’ submissions, and it was ‘not entirely clear quite what the claimants seeking the opportunity to file further submissions wished

to say' (Wai 1040, #3.4.56 at [3.5]). The Crown has no fixed view on the timeframes required.

*Tribunal decision*

9. The Tribunal has now considered claimant and Crown submissions regarding filing additional submissions on recent court decisions concerning tikanga in relation to specific claims issues (as outlined in paragraph 2 above).
10. The Tribunal's Stage 2, Part 2 report – currently in progress – will cite cases if and where they are pertinent to the issues concerned. The Tribunal considers receiving further submissions on these matters is not necessary, as it may refer to the judgments cited by counsel where appropriate.

The Registrar is to send this direction to all those on the notification list for Wai 1040, the Te Paparahi o Te Raki inquiry.

DATED at Rotorua, this 1<sup>st</sup> day of August 2023



Judge C T Coxhead  
Presiding Officer  
WAITANGI TRIBUNAL