

**BEFORE THE WAITANGI TRIBUNAL
TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI**

**WAI 3308
WAI 3327**

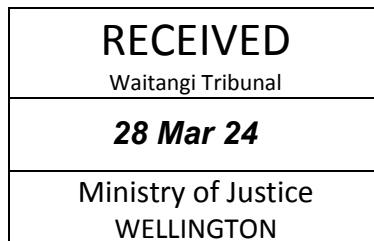
IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF a claim filed by Charlie Tawhiao on behalf of Ngāi Te Rangi Settlement Trust regarding the Coalition Government (Wai 3308)

MEMORANDUM OF COUNSEL REGARDING HEARING MATTERS

27 MARCH 2024



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LEGAL

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MAY IT PLEASE THE TRIBUNAL

Introduction

1. This memorandum of counsel is filed on behalf of the Wai 3308 claimants, being Charlie Tawhiao on behalf of Ngāi Te Rangi Settlement Trust (the **Claimants**), in response to the memorandum-directions of his Honour Judge Williams dated 15 March 2024 concerning inquiry planning matters and convening a judicial conference in relation to this matter on 5 April 2024 (Wai 3327, #2.5.003).
2. In the memorandum-directions, His Honour also invited parties to file submissions on the following by 5pm, Wednesday 27 March 2024, encouraging the parties to seek agreement where possible:
 - (a) Hearing planning matters, including proposed hearing dates, the amount of hearing time required, hearing location preferences, and any specific hearing protocols or procedures.
 - (b) Whether a statement of issues is needed to refine the scope of the issues for inquiry.
 - (c) A proposed inquiry timetable outlining key inquiry dates and milestones (including deadlines for amending pleadings if required, and the filing of evidence and legal submissions).
 - (d) The extent to which any interested parties seek to participate in this inquiry.
 - (e) Updates on disclosure and discovery processes.
 - (f) Any further issues identified by or arising between the parties at this stage.
3. The Claimants support the submissions outlined in the joint memorandum of counsel dated 27 March 2024 in respect of matter (e) above. On matters (a) - (d), the Claimants support the joint memorandum of counsel subject to the further submissions set out below.

Hearing planning matters

Hearing dates and time required

4. Counsel note the proposal in the joint memorandum of counsel for a one week hearing to take place in June, with an additional day for closing submissions to follow.
5. The Claimants agree with timetabling a hearing in mid-June (with a later day for closing submissions) and support either the June dates proposed in the joint memorandum or later dates in June.
6. The Claimants consider that a hearing of 3-4 days (including closing submissions) should be sufficient to hear the claims, given the targeted and specific nature of the urgent inquiry as refined by the Tribunal in its decision to grant urgency. The Claimants are also keenly aware that the Crown is continuing to take action which is prejudicial to the role and status of te reo Māori. The Claimants therefore seek to avoid the potential for timeframes and the production of a report to be unduly extended by setting down a lengthy fixture. Their objective is a focused inquiry allowing for a direct and expeditious Tribunal report.
7. A 3-4 day hearing is consistent with urgent inquiries of similar scope and there are number of ways the Tribunal has managed the timetable effectively in those cases. In that regard, it is proposed that the presentation of evidence and submissions could be managed as follows:
 - (a) All briefs of evidence are taken as read.
 - (b) The Tribunal indicates which of the claimant and interested party witnesses it wishes to question and the Crown indicates which of those witnesses it wishes to cross-examine. Only those witnesses present in person at the hearing.
 - (c) The Tribunal indicates which of the Crown witnesses it wishes to question and the Claimants and interested parties indicate which of the Crown witnesses they wish to cross-examine. Only those witnesses present in person at the hearing.

- (d) The Claimants and interested parties take a coordinated approach to cross-examination of Crown witnesses and this is led (in the first instance) by claimant counsel, unless the claimant groups wish to nominate interested party counsel to lead any of the cross-examination.
- (e) The Tribunal asks its questions first to reduce the amount of time required for cross-examination.
- (f) Claimant parties present brief opening submissions.
- (g) Interested party opening submissions are taken as read.
- (h) Claimant parties present closing submissions (noting a coordinated approach by all parties could be taken to the preparation of closing submissions as has been proposed in other urgent inquiries).
- (i) Interested party closing submissions are taken as read unless time allows. If time allows, and the Tribunal considers it will be assisted by hearing oral submissions from interested parties and grants permission to do so, oral submissions of interested parties should be limited to grounds that have not already been fully covered in the claimants' submissions.

Hearing venue

8. In terms of a hearing location, the Claimants support a hearing in Tauranga Moana and are currently exploring possible venues, including marae and kura kaupapa.
9. The Claimants note that Tauranga Moana is close to a number of the groups participating in the inquiry and relatively central for those who are coming from afar, which is relevant given this inquiry is proceeding at pace and the funding restrictions and restraints of both the Claimants and the Tribunal.
10. Alternatively, the Claimants suggest holding a hearing at the Tribunal offices in Wellington.

Statement of Issues

11. The Claimants support the general thrust of the draft Statement of Issues appended to the joint memorandum of counsel, however, propose some refinements as attached at **Appendix A**.

Proposed Inquiry timetable

12. The Claimants support the filing timetable in the joint memorandum of counsel subject to the Claimants' views on the amount of hearing time required as set out in this memorandum.

Interested Party participation

13. The Claimants value the contribution of interested parties and have no objection to interested parties filing evidence and submissions in writing.
14. Having said that, the Claimants consider it is appropriate to manage the participation of interested parties at the hearing as set out at paragraph 7, in order to make the most efficient use of hearing time.
15. The Tribunal's primary obligation is to inquire into the claims for which it has granted urgency. The claimants have the burden of establishing the claims are well-founded and therefore should be afforded priority in the hearing timetable.
16. Further, managing participation in the manner suggested is consistent with the Tribunal's grant of urgency, which directed that a specific and targeted approach be taken. In the Claimants' view this direction should apply to both substance (in terms of the inquiry issues) and procedure.

DATED at WELLINGTON this 27th day of March 2024



T N Hauraki

Counsel for the Claimants

Appendix A: Draft Statement of Issues

Tauākī Whakataunga Take

Whānuitanga o te Ruku Tātari

Ka arotahi te Wai 3327 Te Reo i te Kāwanatanga Ruku-Tātari Ohotata – Te Reo in the Public Sector Urgent Inquiry ki:

mēnā e takahi ana ngā kaupapa here a te Kāwanatanga Whakatōpu ki te here i te mana me te whakamahinga o te reo Māori o roto i te hunga kāwanatanga i ngā mātāpono o te Tiriti o Waitangi/Treaty of Waitangi

Ngā take hei tātari

1. He aha ngā kaupapa here, ngā mahi me ngā hapa a te Kāwanatanga Whakatōpu e here ana i te mana me te whakamahinga o te reo Māori o roto i te hunga kāwanatanga?
2. He aha ngā herenga Tiriti/Treaty a te Karauna e pā ana ki te mana me te whakamahinga o te reo Māori o roto i te hunga kāwanatanga?
3. E tika ana ngā kaupapa here, ngā mahi me ngā hapa a te Kāwanatanga Whakatōpu e ai ki ngā herenga ture mō te reo Māori a te Karauna?
4. Kua takahia e te Karauna ngā mātāpono o Te Tiriti / Treaty e pā ana ki te mana me te whakamahinga o te reo o roto i te hunga kāwanatanga?
5. Mēnā ka pēnei:
 - (a) He aha ngā whakahāweatanga ka pā ki ngā kaikerēme?
 - (b) Me pēwhea te whakawātea, te whakatika rānei i te whakahāweatanga?

Statement of Issues

Scope of Inquiry

The Wai 3327 Te Reo i te Kāwanatanga Ruku-Tātari Ohotata – Te Reo in the Public Sector Urgent Inquiry will be focused on:

whether the policies of the Coalition Government to limit the status and use of te reo Māori in the public sector are in breach of the principles of the Treaty of Waitangi.

Issues for inquiry

1. What are the current policies, practices, acts and omissions of the Crown to limit the status and use of te reo Māori in the public sector?
2. What are the Crown's Te Tiriti/Treaty obligations in relation to the status and use of te reo Māori in the public sector?
3. Are the current policies, practices, acts and omissions of the Crown consistent with the Crown's existing legislative obligations in respect of te reo Māori?
4. Has the Crown breached the principles of te Tiriti/Treaty in relation to the status and use of te reo in the public sector?
5. If so:
 - (a) What is the prejudice suffered by the claimants; and
 - (b) How can the prejudice be removed or remedied?