

IN THE WAITANGI TRIBUNAL
I TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Wai 3300
Wai 58
Wai 1312
Wai 1684

In the Matter of the Treaty of Waitangi Act 1975

And

In the Matter of the Tomokia ngā tatau o Matangireia –
Constitutional Kaupapa Inquiry (Wai
3300)

And

In the Matter of a claim by Patricia Tauroa and Robyn
Tauroa on behalf of ngā hapū o
Whangaroa (Wai 58)

And

In the Matter of a claim by the late Karanga Pourewa,
Hinemoa Pourewa, the late Tarzan Hori,
and William Hori on behalf of themselves
and the descendants of Whakaki and Te
Hapū o Ngāti Kawau (Wai 1312)

Continued ...

**JOINT MEMORANDUM OF COUNSEL IN RESPONSE TO MEMORANDUM-
DIRECTIONS DATED 26 FEBURARURY 2024**

Dated 26 March 2024

Mahony Horner Lawyers

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Waitangi Tribunal

26 Mar 24

Ministry of Justice
WELLINGTON

And

In the Matter

of a claim by Doreen Puru, Anna Kahukura Hotere, the late Louie Katene, Emma Torckler, and William Puru on behalf of themselves, Te Hoia, Ngāti Rangimatamoemoe and Ngāti Rangimatakaka (Wai 1684)

MAY IT PLEASE THE TRIBUNAL

1. This Joint Memorandum of Counsel (**Joint Memorandum**) is filed in respect of the applications for an urgent inquiry into the proposed Treaty Principles Bill (**Bill**) (**Applications**), and on behalf of:
 - a. **Wai 58**, a claim by Patricia Tauroa and Robyn Tauroa on behalf of ngā hapū o Whangaroa;
 - b. **Wai 1312**, a claim by the late Karanga Pourewa, Hinemoa Pourewa, the late Tarzan Hori, and William Hori on behalf of themselves and the descendants of Whakaki and Te Hapū o Ngāti Kawau; and
 - c. **Wai 1684**, a claim by Doreen Puru, Anna Kahukura Hotere, the late Louie Katene, Emma Torckler, and William Puru on behalf of themselves, Te Hoia, Ngāti Rangimatamoemoe and Ngāti Rangimatakaka.

(Claimants)

2. On 29 February 2024, Counsel filed a memorandum of counsel on behalf of Wai 1684, seeking leave for the Wai 1684 claimants to participate as an interested party in these proceedings in respect of the Applications. On the advice of the Assistant-Registrar, this memorandum was refiled on 25 March 2024.
3. On 1 March 2024, Counsel filed a memorandum of counsel on behalf of Wai 58 and Wai 1312, similarly seeking leave for claimants to participate as an interested party to these proceedings, in respect of the Applications. By email to the Registrar dated 22 March 2024, Counsel sought an update from the Tribunal regarding the applications for interested party status made on behalf of the Wai 58 and Wai 1312 claimants.
4. At the time of filing this Joint Memorandum, Counsel are not aware of whether either of the above memoranda have been placed on the Record of Inquiry, or whether the leave sought has been granted. Counsel therefore file this Joint Memorandum in the interest of maintaining the Claimants'

position in this part of the inquiry, subject to whether Her Honour is minded to grant the interested party status sought by the Claimants.

PROCEDURAL BACKGROUND

5. By Memorandum-Directions dated 25 January 2024, Her Honour Judge Reeves, referred Applications to the Wai 3300, Tomokia ngā tatau o Matangireia – Constitutional Kaupapa Inquiry.¹
6. On 5 February 2024, Her Honour Chief Judge Fox requested submissions from the Crown and interested parties as to the grounds for an urgent inquiry.²
7. After receiving submissions from Crown and other parties, on 26 February 2024, Her Honour directed that a hearing take place on Monday, 8 April 2024 to determine whether there are sufficient grounds for the Applications to be heard under urgency. Her Honour also invited the Crown to file the following information to assist the Tribunal, while also noting the Tribunal’s power to summon documents, by 18 March 2024:³
 - a. All written policy proposals drafted by Ministry of Justice officials relating to the review of enactments that reference “the principles of the Treaty/Tiriti of Waitangi and/or the principles of the Treaty of Waitangi Bill” and/or “the text of the Treaty drafted by direction of the Associate Minister D Seymour”;
 - b. Any minutes of discussions held by Associate Minister D Seymour with officials to progress the matters listed in (a) above;
 - c. Any documents the Associate Minister D Seymour has given officials setting out advice given to him from other sources relating to the review of enactments referring to the principles of the Treaty of Waitangi and to any proposed Bill and directing the officials to

¹ Memorandum-Directions of the Deputy Chairperson (Wai 3300, #2.5.6, 25 January 2024) at [12].

² Memorandum-Directions of Chief Judge Dr C L Fox (Wai 3300, #2.5.7, 5 February 2024).

³ Decision of the Chairperson Chief Judge Dr C L Fox addressing applications for urgency regarding a proposed Treaty of Waitangi Principles Bill (Wai 3300, #2.5.10, 26 February 2024).

follow that advice; and

- d. Any Cabinet Committee, or Cabinet papers pertaining to those matters listed at (a) and (b) above.
8. On 18 March 2024, the Crown, in its response to Her Honour’s invitation to file the information listed above, identified five documents that fall within the scope of the Tribunal’s request. They are:
 - a. Two sets of notes from a meeting with Associate Minister Seymour on 21 February 2024;
 - b. A paper provided by Minister Goldsmith to Cabinet regarding the
 - c. Bill and the 2024 legislative programme; and
 - d. Two briefings which contain policy proposals on this topic.
 9. The Crown has provided one of the two briefings on a confidential basis to the Tribunal, but has withheld the remaining documents, citing the Official Information Act and s 70 of the Evidence Act 2006.⁴
 10. Chief Judge Fox invited parties to make submissions on the Crown’s response by 25 March 2024.⁵

COUNSEL’S SUBMISSIONS

11. Counsel tautoko and support the general submissions of other claimant counsel already filed in relation to the need for urgency, but particularly in relation to the application and interpretation of s 70 of the Evidence Act.⁶ It is our submission that the Crown has wrongly cited and interpreted s 70 of the Evidence Act.

⁴ Memorandum of counsel for the Crown in response to memorandum-directions dated 26 February 2024 (Wai 3300, #3.1.13, 18 March 2024)

⁵ Memorandum-Directions of the Deputy Chairperson (Wai 3300, #2.5.6, 25 January 2024); Appendix B: Wai 3300 – hearing to decide applications for urgency timeline (Wai 3300, #2.5.10(b), 26 February 2024).

⁶ For example, *Tukau Law and Consultancy He Manatū Rōia* (25 March 2024), *Tamaki Legal Memorandum of Counsel on behalf of interested parties in relation to memorandum-directions dated 26 February 2024* (25 March 2024); Evidence Act 2006, s 70.

12. The Evidence Act is clear that the jurisdiction of deciding whether or not a document or communication that relates to matters of State should be disclosed sits with the relevant Judge. Section 70(1) reads:⁷

A Judge may direct that a communication or information that relates to matters of State must not be disclosed in a proceeding if the Judge considers that the public interest in the communication or information being disclosed in the proceeding is outweighed by the public interest in withholding the communication or information.

13. Notably, s 70 does not give any right or power to a litigant in any proceeding to determine itself as to whether any document should remain confidential. The power of determination sits squarely with the relevant judge.
14. On the point of public interest, Counsel also assert that the Crown has not made out an adequate case of why there is a significant public interest in the documents not being released. Arguably, it is more in the public interest for documents and communications relating to potential amendment of Aotearoa New Zealand's constitutional arrangements to be released.
15. Therefore, it is Counsel's submission that the four remaining documents that the Crown has identified as relevant to the Tribunal's scope, but has not supplied, should be supplied to the Tribunal so it may have the full suite of information required to determine whether or not to grant urgency to the Applications.

CONCLUSION

16. Counsel acknowledge that these submissions are filed out of time. Counsel's capacity has been affected by widespread illness within our team over the past month, while also being actively involved in the hearings for the Wai 2200 Porirua ki Manawatū District Inquiry and the Wai 2575 Health Services and Outcomes Kaupapa Inquiry, which were held concurrently last week.
17. These factors have significantly contributed to the delay in filing, and we therefore respectfully seek leave to file these submissions out of time.

⁷ Evidence Act, s 70.

Counsel submit that minimal, if any, prejudice will accrue as a result of the day-late delay in filing.

18. Should the Claimants be granted the interested party status sought to participate in these proceedings, and with Her Honour's leave to attend, Counsel will be available to speak to these matters further at the hearing set down for 8 April 2024.

Dated at Wellington this 26th day of March 2024



Dr B D Gilling, H T G Foubister, R M A Soriano, T E Knipping
Counsel for Claimants