

BEFORE THE WAITANGI TRIBUNAL

**WAI 3300
WAI 1212
WAI 1194**

IN THE MATTER OF

the Treaty of Waitangi Act
1975

AND

IN THE MATTER OF

Tomokia ngā tatau o
Matangireia (**Wai 3300**).

AND

IN THE MATTER OF

a claim by **Colleen Skerrett
White; Te Ariki Morehu,
Timitapo Hohepa** for and on
behalf of the descendants of
the tupuna Te Rangiunuora I &
II under the mantle of Ngāti Te
Rangiunuora.

AMENDED APPLICATION FOR AN URGENT HEARING

Dated this 10th of April 2024

RECEIVED

Waitangi Tribunal

10 Apr 24

Ministry of Justice
WELLINGTON



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MAY IT PLEASE THE TRIBUNAL

INTRODUCTION

The claimants

1. This application for an urgent hearing is filed on behalf of Colleen Skerrett White, Te Ariki Morehu and Timitapo Hohepa in for and on behalf of the descendants of the tupuna Te Rangiuuora I & II under the mantle of Ngāti Te Rangiuuora. The claimants were all involved in advancing issues of the **Wai 1194**, **Wai 1212** and **Wai 1310** claims as part of the Central North Island Inquiry (**Wai 1200**) .
2. **Wai 1194** and **Wai 1212** were eventually included as part of the settlements negotiated following the findings and recommendations of the **Wai 1200** Inquiry of the Waitangi Tribunal.
3. There were two principal settlements for which the claims formed a part, the Pumautanga o Te Arawa Settlement and the CNI Forests Collective Settlement. The background to these settlements are referred to in the Accompanying Affidavit of Ms Colleen Skerrett White dated the 24th day of January 2024

Background

4. On 24 January 2024, an Application for Urgency (the Application)¹ with accompanying amended Statement of Claim (the Statement of Claim)² was filed with the Waitangi Tribunal and covers a range of matters. We anticipated those matters would be transferred to the Wai 3300 Inquiry for their consideration once Deputy Chairperson Her Honour Judge Reeves had made a decision on matters.

¹ Wai 2575, #3.2.902.

² Wai 1194, #1.1(c).

5. The Application and allegations made by the Claimants are supported by the wider iwi confederation of Ngāti Pikiao and relate to a range of issues of concern arising from the process and policy platform being advanced by the National-Act-NZ First Coalition Government (the Coalition Government), which will prejudice the efforts of the Claimants, their whānau, hapū and iwi to actively protect and advance their ways of life including the mātauranga, mita, reo, tikanga and kawa of Ngāti Te Rangiunuora and Ngāti Pikiao.
6. In short, Ngāti Te Rangiunuora and Ngāti Pikiao:
 - a. supports the application for urgency; and
 - b. seeks to participate as a principal applicant.

Procedural history

7. In the Memorandum-Directions dated 30 January 2024,³ her Honour, Judge Reeves preliminarily observed in relation to the joint application by the Wai 1194 and Wai 1212 claims for an urgent hearing, that because it was an omnibus application raising claims concerning multiple new and developing policy initiatives of the Coalition Government, it would be more appropriate and efficient if any urgent inquiries granted are heard by a standing Inquiry panel, and are targeted inquiries relating to specific policy areas.
8. Given this indication, counsel were granted leave to file any submissions by 1 February 2024, in relation to the proposed approach, and specifically whether their application is best determined by the Wai 3300 Constitutional Kaupapa Inquiry panel.⁴
9. On 1 February 2024, Counsel filed a Memorandum of Counsel in Response to the Memorandum-Directions of Judge Reeves,⁵ which among other matters, raised the concern that the Wai 3300 Constitutional Kaupapa Inquiry was still in its initial phases, and if the Treaty Principles Bill related matters are

³ Wai 3308, #2.5.6, *He Pānui Whakahau a te Tiamana Tuarua Memorandum-Directions of the Deputy Chairperson*, dated 30 January 2024.

⁴ At [16].

⁵ Wai 3308, #

referred off to the Wai 3300 Constitutional Kaupapa Inquiry, the issues will languish while this Inquiry sets its own process and procedure in accordance with the Commissions of Inquiry legislation.

10. On 5 February 2024, Counsel for the Crown filed a Memorandum,⁶ seeking the Tribunal’s decision to decline the application, citing that an omnibus urgent inquiry into the current government’s reform programme would be unwieldy and unworkable.⁷
11. On 5 February 2024, Chief Judge Fox directed interested parties to respond to the application for an urgent hearing in respect of the Government’s intention to abolish te Tiriti redress measures through policy found in the Coalition Agreements between National-NZ First and National-ACT (“the Coalition Agreements”), and the 100-day plan by no later than midday, 9 February 2024.⁸
12. Counsel filed a Memorandum of Counsel dated 13 February 2024 which responded to this direction. The issues set out in that Memorandum of counsel are set out below.

Key Issues

13. The key issues for Ngāti Te Rangiuuora which are supported by their Ngāti Pūkiao kin are:
 - a. Whether or not the Coalition governments coalition agreement, 100-plan and subsequent conduct, undertakings and representations, to review the Treaty principles, by way of the Treaty Principles Bill constitutes a breach of Te Tiriti;
 - b. Whether or not the Coalition governments coalition agreement, 100-day plan and subsequent conduct, undertakings and representations to review

⁶ Wai 1194, #2.12 and Wai 1212, #2.2.11.

⁷ At [13].

⁸ Wai 3300, #2.5.7, Wai 3316, #2.5.1, Wai 3317, #2.5.1, Wai 3318, #2.5.1,

the Treaty principles, by way of the Treaty Principles Bill constitutes a breach of Ngāti Te Rangiuuora and Ngāti Pīkiao tikanga.

14. Key process issues have also emerged in the way the Crown has conducted itself in the development; implementation and application of 100- day plan including:
 - a. The failure by the Crown to act in good faith towards Māori, and Ngāti Te Rangiuuora and Ngati Pīkiao;
 - b. The lack of engagement by the Crown with Ngāti Ngāti Te Rangiuuora and Ngati Pīkiao with respect to the proposed Treaty of Waitangi Principles Bill in relation to the adaptation and denial of principles of Te Tiriti which are in breach of their tikanga, their tino rangatiratanga and in breach of the principle of Partnership.
 - c. The exercise of kāwanatanga in a manner which was not contemplated under Te Tiriti and which flies in the face of the Te Tiriti guarantees; and
 - d. The planned interference by the Crown with pre-established Te Tiriti principles, which Ngāti Ngāti Te Rangiuuora and their Ngati Pīkiao kin would seek to rely upon as they seek to pursue remedies through the Waitangi Tribunal.

GROUNDS FOR URGENCY

15. Clause 2.5 of the Waitangi Tribunal’s Guide to Practice and Procedure states that the elements to be satisfied when applying for an urgent inquiry are:
 - a) That the claimants are suffering or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions or policies;
 - b) That there is no alternative remedy, that in the circumstances, would be reasonable for the claimants to exercise; and
 - c) That the applicants are ready to proceed urgently to a hearing.

16. Other relevant factors the Tribunal may consider include:
 - a) Whether the claim for urgency challenges an important current or pending Crown action or policy; and/or
 - b) Any other grounds justifying urgency.

Significant and Irreversible Prejudice

17. As set out in the statement of claim, the claimants are suffering and will continue to suffer significant and irreversible prejudice as a result of the process and policies being implemented at break neck speed by the recently formed Coalition Government.
18. Ngāti Te Rangiunuora's claim is made in relation to the two separate agreements entered into by the Coalition parties. Namely, the agreements between National and Act (the Nat-Act Agreement), and the National and NZ First (Nat-NZ First Agreement, together called the Agreements).
19. The Claimants argue that the Crown has undermined their ability to exercise their tikanga and maintain their hapū rangatiratanga and mana Māori Motuhake in so far as it has failed to implement he Whakaputanga me Te Tiriti in the design and implementation of institutions where the division of constitutional powers is fundamental to the promises of peace and good government which are central promises in the founding constitutional stones of modern New Zealand/Aotearoa.
20. The Claimants say that hapū, iwi and Maori generally have not been able to exercise tikanga and rangatiratanga, including the right to possess, manage, and develop lands and resources; manage their internal affairs; enter trade and economic alliances; and defend their rights and territories, independent of Crown interference.
21. The Crown has failed to honour Te Tiriti o Waitangi through use of the "principles of the Treaty". It is a deliberate and systematic deployment by the Crown as a device to rewrite its obligations under Te Tiriti o Waitangi which is a systemic failure by the Crown to meet those obligations. The proposed

introduction of the Treaty Principles Bill by the Coalition Government perpetuates that breach, both in its process and its content.

22. If the bill was to be passed, it would constitute a deliberate denial of te Tiriti o Waitangi itself and deepen those existing harms.
23. The Claimants say that hapū, iwi and Māori generally, will also suffer significant and irreversible prejudice as a result of the Coalition Government's policies. Such prejudice includes:
 - (a) An undermining of mana and rangatiratanga;
 - (b) Removal and/or diminishment of the rights of Māori under te Tiriti in legislation;
 - (c) Denigration of the rights and position of Māori in the institutional arrangements and constitutional division of power;
 - (d) The backtracking of the incremental progress which Māori have fought decades to achieve; and
 - (e) The denial of justice to Māori on an issue which so clearly undermines their rangatiratanga, mana, and partnership under te Tiriti.
24. The Claimants are aware that the doctrine of parliamentary supremacy empowers the Coalition as the democratically elected government of the day, to govern as they see fit. The policy platform and priorities advanced by the Coalition are therefore set as the implementable course of action for our country.
25. The Claimants say that such exercise of power can never be unbridled or unconstrained or be implemented in a way that is in breach of the Te Tiriti o Waitangi/the Treaty of Waitangi guarantees to ensure the tino rangatiratanga of their ways of life; the preservation of their relationships with their taonga

and their kainga; and the upholding of their Tikanga and Pikiaotanga. The claim presents itself before the Tribunal as one to protect the efforts of Ngāti Te Rangiunuora to defend their rights to govern and to determine their destinies and those of the descendants that will follow.

26. Furthermore, the claimants remind that the constitutional importance of Te Tiriti o Waitangi / the Treaty of Waitangi as the founding document of Aotearoa-New Zealand, and the administrative and legal duties to respect it as so, in the development and implementation of policy options and outcomes that impact on the Article II and Article III rights of hapū and iwi that are intrinsic to their identity.
27. Central to the claimants' Tiriti understanding is that they do not support any treaty interpretation which seeks to limit, balance, or qualify their rangatiratanga based on an incorrect view that kāwanatanga/sovereignty was ceded under te Tiriti. Ngāti Rangiunuora remind at this time that they were not a signatory to the He Whakaputanga and Te Tiriti o Waitangi however confirm the obligations and duties enshrined in those founding documents are consistent with their Tikanga which pre-exists the introduction of the common law and kawatanga processes. Further, the passage of time, and the assumptions the Crown now holds in relation to the scope of its kāwanatanga/sovereignty today, do not change their position.
28. Counsel submit that without an urgent inquiry into processes and policies, the claimants will be left with no Tiriti compliant or tikanga appropriate option to address their grievances and will suffer significant and irreversible prejudice as a result.

No Alternative Remedy

29. There is no alternative remedy available to the claimants.
30. If urgency is granted, given the Tribunal's expertise, its findings would be of great assistance to the Crown in the development of Tiriti compliant processes and policies.

Ready to Proceed

31. The claimants are ready to proceed to an urgent hearing.

OTHER GROUNDS

Current Crown Actions

32. Given the commitments already made in the Coalition Agreements and the number and speed of actions already taken by the Coalition Government to implement these Agreements, an urgent hearing is needed into whether their actions concerning te reo Māori and the policy or proposed policy to be implemented in a 'Treaty Principles' Bill, breach and/or will breach the principles of Te Tiriti.

RECOMMENDATIONS

33. The Claimants seek definitive findings that:
 - a. the constitutional authority and responsibilities of Mana Motuhake and Tino Rangatiratanga, including in relation to laws, values, governance arrangements, political institutions and processes, economic systems, and treaty making are enduring to the present day, and need to be exercised on equal terms with the authority of Kāwanatanga; and
 - b. the proposed actions, policies and legislation that form part of the Coalition Government agreements between the National Party and the ACT Party and the National Party and New Zealand First and the subsequent processes including the 100 day plan to give effect to those agreements constitute a further egregious breach of the Crown's obligations under Te Tiriti o Waitangi, and the principles derived therefrom.

Conclusion

15. This application is made in reliance on the Tribunal’s “Practice Note – Applications Seeking Urgent Tribunal Consideration”, s 8(2)(a) of Schedule 2 of the Treaty of Waitangi Act 1975, the affidavit of Mrs Colleen Skerrett White, and the claimants’ accompanying statement of claim further supporting these applications.

DATED at Rotorua on this 10th of April 2024



Annette Sykes



Kalei Delamere-Ririnui

Counsel for the Claimants