

In the Waitangi Tribunal

Wai 3300

Wai 3314

Wai 3330

Wai 3328

Wai 3331

In the Matter

of the Treaty of Waitangi Act 1975

And in the Matter

**of the Tomokia ngā tatau o
Matangireia – the Constitutional
Kaupapa Inquiry**

And in the Matter

of a claim by Merepeka Raukawa-Tait on
behalf of her whānau, hapū, iwi, whānau
whānui and whāngai

And in the Matter

of a claim by Dr Rapata Wiri on behalf
of his whānau, hapū, iwi, whānau
whānui and whāngai

And in the Matter

of a claim by Mike Tana on behalf of his
whānau, hapū, iwi, whānau whānui and
whāngai

And in the Matter

of a claim by Denise Messiter on behalf
of her whānau, hapū, iwi, whānau
whānui and whāngai

**MEMORANDUM OF COUNSEL IN RESPECT TO SUBMISSIONS REGARDING
WĀNANGA ENGAGEMENT AND PROCESS**

DATED AT TOKOROA THIS 13th DAY OF MARCH 2024



Counsel Acting: Ārama Ngāpō

58 Bonaly Street

PO Box 518,

Tokoroa, 3444

P 07 8867540

E arama@nll.co.nz

E waitangi@nll.co.nz

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Waitangi Tribunal

14 Mar 24

Ministry of Justice
WELLINGTON

MEMORANDUM OF COUNSEL IN RESPECT TO SUBMISSIONS REGARDING WĀNANGA ENGAGEMENT AND PROCESS

May it please the Tribunal

1. We act for Ms Merepeka Raukawa-Tait, Dr Rapata Wiri, Mr Mike Tana and Ms Denise Messiter (“the Claimants”) on behalf of their whānau, hapū, iwi, whānau whānui and whāngai.
2. On 1 March 2024 Chief Judge Fox by way of a Memorandum-Directions invited Counsel to make submissions in respect of the Wananga process. Accordingly, Counsel submits the following on the proposed inquiry design. We submit the following in response to our observations and our Claimant's feedback.

Scheduling Wānanga

3. Counsel submits the scheduled times for the planning wānanga has hampered our claimants from attending. Many of our Claimants have work and whanau commitments and could not attend the wānanga kanohi ki te kanohi. The alternative option was via the YouTube link which doesn't encourage active involvement. We submit further consideration is necessary of the time and days wānanga are held. Counsel submits the Waitangi Tribunal can consider holding wānanga on weekends.

Claimant Funding for Wānanga

4. Claimant funding continues to disadvantage Claimants. The Crown advised that they endeavour to ensure reimbursement would be done in a reasonable timeframe, on average is around eight working days after a completed application is provided to the Ministry.¹ Counsel submits the Crown funding for Claimants is inadequate and does not consider the financial difficulties Claimants face. This funding model does not meet the needs of a Claimant-centric approach. We note the reimbursement model assumes that Claimants can fund expenses in advance and then be reimbursed. We submit the Crown funding model needs to provide alternative avenues for immediate funding such as pre-paid Petrol vouchers to allow Claimants to get to the venue and the Crown directly book accommodation.² This example is not an isolated incident and directly reflects the power imbalance and resource deficit created by the Crown. The funding issues claimants and claimant Counsel have provided show an inequitable power imbalance in favour of the Crown.

Proposed Inquiry Design

5. We do support the proposed wānanga approach that is proposed by the Pou and Panel for this inquiry. The kōrero that was shared at the wānanga by claimants including our own was powerful. However, it is clear there is a power deficit by

¹ Wai 3300, #3.1.10 *MEMORANDUM OF COUNSEL FOR THE CROWN*, [21 February 2024]. At [3.1].

² The most recent example of delayed reimbursement is where a reimbursement form for the health Kaupapa inquiry was submitted with evidence on 22 February 2024. To date, reimbursement has not been received despite counsel's numerous emails seeking reimbursement on 22 February 2024, 23 February 2024, 8 March 2024, 11 March 2024, and 12 March 2024.


having Crown Counsel present if Claimant Counsel are not present. We submit part of the role of a lawyer is to navigate the legal paradigms in the Waitangi Tribunal for Claimants. Where there is an obvious power imbalance deficiency between the Claimants and the Crown in favour of the Crown claimants must be resourced to have their Lawyers and whanau present.

6. Counsel submits the Pou and Panel consider the mamae and pouritanga of Claimants during this process and how it impacts the Claimants. We would need a robust process with mechanisms that support Claimants beyond their attendance.
7. When the time comes for evidence to be submitted one such approach would be for the Crown to acquiesce or make its concessions once statements of claim have been filed which would limit the need for Claimants to be re-traumatised in giving their lived experiences and challenged on those.
8. Another option would be to restrict the Crown to only filing any questions or potential cross examination in writing so that Claimants are not subject to invasive questioning. In sexual criminal cases a self-represented alleged perpetrator is prohibited from cross examining a victim and Counsel to assist and vulnerable witness protocols are used, a similar process could be undertaken in this forum.

Conclusion

9. If the Pou and Panel truly commit to a transformative approach to a Kaupapa Inquiry, it must be done independent of Crown criticisms and rhetoric from the government of the day³. The Claimants support a transformative claimant-centric approach to the constitutional kaupapa inquiry.

Dated 13 March 2024



Ārama Ngāpō
Counsel for Claimant

³ New Zealand First “Sovereignty Rests With The Voters Of New Zealand Not With Iwi” (23 January 2024) Breakfast Show Interview between Jenny-May Clarkson and MP Shane Jones <https://www.youtube.com/watch?v=UL3Zh-wErrs> MP Shane Jones says “I’m horrified the Waitangi Tribunal apparently is currently conducting an inquiry into the constitution. That’s why I want the mandate of the Waitangi Tribunal review”.