

I TE RŌPU WHAKAMANA  
I TE TIRITI O WAITANGI

WAI 3300  
WAI 682  
WAI 1464  
WAI 1546

KEI RARO I TE MANA o te ture o te Tiriti o Waitangi 1975

I TE TAKE O te pakirehua, Constitutional Kaupapa Inquiry  
(Wai 3300)

Ā

I TE TAKE O he kereme na Rewiti Paraone, Kevin Prime and  
Erima Henare, Pita Tipene and Waihoroi  
Shortland mo Te Rūnanga o Ngāti Hine mo ngā  
uri o Torongare me Hauhau (Wai 682)

Ā

I TE TAKE O he kerēme nā Te Riwhi Whao Reti rātou ko Hau  
Hereora, ko Romana Tarau, ko Karen Herbert, ko  
Edward Cook, ko Pearl Reti mō Te Kapotai (Wai  
1464/1546)

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## HE MANATŪ RŌIA

I tēnei rā, i te rā 8 o Māehe 2024

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Ngā rōia

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RECEIVED

Waitangi Tribunal

14 Mar 24

Ministry of Justice  
WELLINGTON

## **TĒNĀ, I TE TARAIPUUNARA:**

### **Introduction**

1. This memorandum of counsel is filed in response to her Honour Chief Judge Fox's Memorandum-Directions asking counsel, who have instructions, to make submissions in respect of the inquiry design for the Wai 3300 Tomokia ngā tatau o Matangireia – Constitutional Kaupapa Inquiry.<sup>1</sup>

### **Claimant position on inquiry design**

2. The claimants attended the first Constitutional Kaupapa Inquiry wānanga at Waitangi on 30 January 2024. Mr Tipene presented at the wānanga on behalf of the Wai 682 claim.
3. At the wānanga, Mr Tipene reiterated that he Whakaputanga and te Tiriti o Waitangi are not the starting point for Ngāti Hine, rather these documents affirmed existing rights of Ngāti Hine to live in accordance with tikanga and rangatiratanga.
4. Mr Tipene mentioned that in determining how we navigate the conversation about the constitutional arrangements of Aotearoa, we must first understand what the key values that underpin any such process are. What is the purpose and vision for the process? Who will be involved in the process? What is the role of the Waitangi Tribunal inquiry in the process of constitutional transformation? Mr Tipene said that those questions can be answered by 'looking backwards to look forward' to concepts like 'he whenua rangatira' in he Whakaputanga.

### **Pou Tikanga Report**

5. The claimants support the Pou Tikanga report and the tikanga framework within that report, which seeks to promote that the inquiry

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<sup>1</sup> Wai 3300, #2.5.011, *Memorandum-directions of Chief Judge Dr C L Fox prior to second inquiry planning wānanga* [1 Mar 24], at [12]

be based on a tikanga framework, to enhance claimant involvement throughout the inquiry, and also considers a claimant lead inquiry.<sup>2</sup>

### **Claimant resourcing for greater claimant participation**

6. Counsel are instructed to file additional written submissions on how claimants can be better supported to have greater participation in the Wai 3300 Constitutional Kaupapa Inquiry.
7. If claimants are to have greater participation in this inquiry, it is essential that claimants are properly resourced.
8. Counsel are concerned that the funding regime for claimants to participate in a kaupapa inquiry, as it stands, is insufficient to properly support claimant involvement. For example, claimant funding regimes have not substantively changed since the Tribunal's *Report on Whakatika ki Runga, a Mini-Inquiry Commencing Te Rau o te Tika: The Justice System Inquiry*.<sup>3</sup> Therefore, if there is a proposal before this Tribunal that the claimants be substantively involved (something the claimants support), then the funding regime needs to be further revised to ensure that there is proper funding and resourcing for participation.
9. For example, funding is required for claimants to hold their own hui, to wānanga matters in regard to the inquiry, to commission research, and to be supported to attend Tribunal fixtures. Within the current funding model, claimants do not readily receive funding beyond meeting actual costs of travel and accommodation to present evidence at hearing. It is counsels' experience in recent kaupapa inquiries that claimants are left out of pocket when they are required to take leave from work or contribute their time which would have otherwise been used elsewhere. The claimant funding model for this inquiry needs to be

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<sup>2</sup> Waitangi Tribunal Pou Tikanga, *Tomokia ngā tatu o Matangireia* [Wai 3300 #6.2.2, 15 December 2023]

<sup>3</sup> Waitangi Tribunal, *Report on Whakatika ki Runga, a Mini-Inquiry Commencing Te Rau o te Tika: The Justice System Inquiry – Pre-publication Version* [Wai 3060, 17 February 2023]

revised to ensure that resourcing is up front, proactive, and supportive of increased claimant involvement in the inquiry.

10. Given the nature and scope of the inquiry, it is submitted that claimant technical briefs of evidence will be central to the claimant case. Technical briefs will need to be provided by Pou Tikanga and experts within the claimant community. However, as the funding policies currently stand, there is no funding for claimant technical evidence. Counsel seek that there is sufficient funding and time for those claimant technical witnesses to prepare their evidence alongside their counsel, so that claimants are not left out of pocket or unable to prepare technical evidence due to a lack of resourcing.
11. In addition to claimant funding, it is the claimants' view that the ongoing full representation of legal counsel is necessary to ensure claimants are properly prepared, informed and represented in this inquiry. The claimants regularly seek updates in relation to the progression of the inquiry, summaries of all research from counsel, preparation briefings for each Tribunal fixture, preparation of notes to assist their presentations, as well as reporting to assist with the wider coordination and representation of the claims within their hapū and iwi.
12. Counsel also foresee that aspects of this inquiry will remain legal, requiring legal representation to protect the claimants' interests; the scope of the inquiry, the preparation of the statement of issues, the addressing of interlocutory matters, the production of discovery, the commissioning of research, and regular procedural requirements like cross examination and submissions, must all be represented by counsel.
13. The claimants also support an ongoing role for Pou Tikanga in this inquiry to support an ongoing alignment of the inquiry with tikanga.

### **Conclusion**

14. Counsel submit that if it is the Tribunal's intention to redesign an inquiry process to prioritise tikanga and claimant lead processes, the claimants in turn need to be better supported to do this work, both by

way of resourcing and also through the ongoing support of legal counsel.

15. Counsel refer the Tribunal to the *Report on Whakatika ki Runga* and the findings in that inquiry that the Crown did not develop a robust funding model for claimant funding in kaupapa inquiries, and its attempts to develop such policy did not appropriately engage with Māori.<sup>4</sup> The Tribunal also found that inconsistencies between agencies regarding their rules for funding claimants in kaupapa inquiries affects claimant participation.<sup>5</sup> With these findings, the Tribunal found the Crown was breaching multiple Treaty principles.<sup>6</sup> Counsel submit that matters regarding claimant support be addressed at the outset of the inquiry so that a fair and transparent funding regime is in place prior to the inquiry commencing proper.



**Dr Season-Mary Downs / Chelsea Terei-Tipene / Majka Cherrington  
Counsel for the claimants**

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<sup>4</sup> *Report on Whakatika ki Runga*, above n3, at 134

<sup>5</sup> *Report on Whakatika ki Runga*, above n3, at 134

<sup>6</sup> *Report on Whakatika ki Runga*, above n3, at 135