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Waitangi Tribunal
30 April 2024
Ministry of Justice
WELLINGTON

Te Tari Ture o te Karauna
Crown Law

24 April 2024

Kaupare Law
7/45 Mount Wellington Highway
Mount Wellington
Auckland

Attention: Aroha Herewini

By email: Aroha.Herewini@kaupare.co.nz

Tēnā koutou

Disclosure of Crown information for the purposes of the Wai 3327 urgent inquiry
Our Ref: MAO018/527

1. We refer to the discovery request provided by counsel for claimants on 25 March 2024. The request sought 10 categories of documents from the Crown.

2. On 4 April 2024, the Crown indicated that it anticipated being in a position to provide discovery of the documents sought by 15 April 2024. In a memorandum filed on 15 April, counsel for the Crown provided partial discovery. It advised that the number of documents for discovery was greater than either it or claimant counsel had anticipated, and said it would complete discovery as soon as it was able.

3. This letter attaches two schedules listing further documents, by way of discovery. A formal memorandum will be filed shortly. Schedule 1 is documents that are being disclosed without any associated confidentiality. Schedule 2 contains documents that the Crown considers are confidential.

4. The Crown proposes that the documents in Schedule 2 are disclosed to the Tribunal and claimant counsel immediately, on the basis of the undertaking set out below. If claimant counsel, on review, do not agree with the Crown's claim that the documents are confidential, please let us know. The Crown will then either (1) revise the list (if it agrees with claimant counsel); or (2) seek confidentiality orders.

5. The Crown claims confidentiality on the basis that documents relate to decisions that are still under active consideration, or provides confidential employment information, in terms of s70 of the Evidence Act.

6. It appears that the proposed discovery categories may embrace a draft Cabinet paper. The production of draft Cabinet papers or material that has not yet been

considered by Cabinet raise significant issues of Cabinet confidentiality and other related points, as well as issues of utility and relevance, given the iterative nature of the development of this material. The Crown will continue to take a constructive approach to this inquiry but has a broader responsibility to take steps to uphold long-standing principles such as Cabinet confidentiality and collective Cabinet responsibility. We are further considering, and taking instructions in relation to, this matter and will revert as soon as possible.

7. We note that the Crown has not provided drafts of working papers where there is a final version. The Crown has provided correspondence where commentary on the draft of a working paper has been discussed.

8. The Crown proposes to disclose the documents in Schedule 2 in full (save for redactions for privilege and irrelevance) to claimant counsel (and copied to the Tribunal) only, on the following conditions of confidentiality:

   8.1 documents should remain confidential between the Crown, the Tribunal Panel and claimant counsel. Pending further order of the Tribunal, the parties will not copy or distribute the documents or any information contained within them to any person without the permission of Crown counsel, including claimants;

   8.2 documents should not form part of or be filed to the public record of inquiry. The Crown can seek confidentiality orders under Appendix F of the Tribunal's Guide to Practice and Procedure if required, but as the documents are provided by way of disclosure only at this stage it does not yet consider this to be necessary; and

   8.3 disclosure does not constitute waiver of any form of confidentiality over the information against any other person.

9. We would be grateful if counsel could countersign a copy of this letter and return it to us to record your acceptance of the above conditions of disclosure. A SharePoint link will be provided to the following claimant counsel:

   Aroha Herewini; Amber-Leigh Evans; Darrell Naden; Ihipera Peters; Matanuku Mahuika; Tara Hauraki; Chelsea Terei; Season-Mary Downs; Annette Sykes; Kalei Delamere-Ririnui; Jessica Hita; Kodi Minnell.

Nāku noa, nā
Crown Law

Jason Gough
Counsel for the Crown

Encl

Schedule 1
Schedule 2