OFFICIAL

I TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI **WAI 3327**
WAI 3308

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

Ā

I TE TAKE O Te Reo I te kāwanatanga Ruku Tātari Ohotata / Te Reo in the Public Sector Urgent Inquiry

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MEMORANDUM OF COUNSEL FILING BRIEFS OF EVIDENCE AND LEAVE REQUESTS REGARDING WITNESS AND COUNSEL PARTICIPATION

Dated: 15 May 2024

RECEIVED
Waitangi Tribunal
15 May 24
Ministry of Justice
WELLINGTON

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MAY IT PLEASE THE TRIBUNAL

Introduction

1. This Memorandum of Counsel is filed by counsel on behalf of the following interested parties:

    a. David Hawea, for and on behalf of the Hawea whānau and Te Whānau a Kai iwi (Wai 892);

    b. Jasmine Cotter-Williams, for and on behalf of her whānau and Ngāti Taimanawaiti iwi (Wai 2063);

    c. Stephanie August, for and on behalf of the late Robert Charles William James Farrar and her whānau (Wai 3096);

    d. Robert Gabel, for and on behalf of Ngāti Tara of Ngāti Kahu (Wai 1886);

    e. April Grace, for and on behalf of her whānau, Ngā Wahapū o Te Rarawa, Ngāti Whātua and Ngāpuhi Nui Tonu (Wai 2206);

    f. Annette Hale, for and on behalf of the Wikotu whānau of Te Upokorehe (Wai 2743);

    g. Te Enga Harris and Lee Harris, for and on behalf of the Wiremu Hemi Harris and Meri Ōtene whānau, and on behalf of members of Ngāti Rangi, Ngāti Here, Ngāi Tūpoto, Ngāti Hōhaitoko, Ngāti Kōpuru, Te Rarawa and Ngāti Uenuku (Wai 1531);

    h. Tasilofa Huirama, for and on behalf of the Huirama whānau and members of Ngāti Ueoneone and Ngāti Tautahi of Ngapuhi (Wai 2890);

    i. Te Urunga Evelyn Aroha Kereopa, for and on behalf of the Kereopa whānau and members of Te Ihingārangi, hapū of Ngāti Maniapoto (Wai 762);

j. Richard Nathan, for and on behalf of the Mangakahia Hapū Claims Collective (Wai 861);

k. Diane Marie Paekau for and on behalf of her whanau and members of Ngāti Hounuku, Ngāti Houa, Ngāti Poua, Ngāti Mahuta, Ngāti Te Ata and Ngāti Whātua (Wai 3104);

l. John Pikari, for and on behalf of the descendants of Hone Karahina and members of the hapū of Te Uri o Hua and Ngāti Torehina (Wai 2394);

m. Rueben Taipari Porter, for and on behalf of the hapū of Ahipara (Wai 1968);

n. Audrey Okeroa Rogers, for and on behalf of her whānau and members of Ngāti Koheriki (Wai 2869);

o. Jane Stevens, for and on behalf of her whānau and Ngāi Tahu iwi (Wai 2671);

p. Violet Eva Walker, for and on behalf of her whānau and members of Ngāti Rangi o Waiapu ki Tawhiti and Ngāti Kahu ki Whangaroa (Wai 2382);

q. Kahura James Watene and Elizabeth Watene, for and on behalf of Ngāi Tukōkō and Ngāti Moe of Rangitāne me Ngāti Kahungunu (Wai 2778); and

r. Michael Williams and Jessica Williams, for and on behalf of their whānau, and members of Ngaitūpango, hapū of Ngāpuhi (Wai 2838).

(the "**interested parties**")

2. In the Memorandum-Directions dated 7 Haratua 2024 ("**Memorandum-Directions**"), His Honour Judge Williams directed the filing of claimant and

interested party evidence by 5pm, Monday 13 May 2024[1]. On 13 May 2024, Kaupare Law filed a Memorandum of Counsel requesting an extension to 5pm, Wednesday 15 May 2024, to file claimant and interested party evidence. Along with other claimants and interested parties, the interested parties supported Kaupare Law's filing extension request. On Tuesday, 14 May 2024, Judge Williams granted Kaupare Law's evidence filing request.

3. To ensure the effective use of limited hearing time, His Honour confirmed that if parties wish to present particular evidence at the hearing, they should file submissions to this effect in a covering memorandum alongside their evidence.[2] While claimant and interested party counsel, the Crown and witnesses who are called should present in person, it was indicated in the Memorandum-Directions that leave may be granted by His Honour for parties to appear via AVL although there must be strong grounds for leave of this nature to be granted.[3]

Briefs of Evidence for filing

4. In accordance with the Memorandum-Directions, please find **attached** the following:

   a. Signed Joint Brief of Evidence of Professors Michael Plank and Rachael Ka'ai-Mahuta; and

   b. Signed Brief of Evidence of Professor Emeritus Robert Phillipson.

   (the "**evidence**")

5. The interested parties are mindful of the scope of inquiry and how it may appear that the evidence goes beyond that scope. We hasten to submit that the evidence is filed to establish that, in the words of the Privy Council, it is appropriate for "the Crown to take especially vigorous action" to protect te

[1] Memorandum-Directions (Wai 3327, #2.5.8, # 2.5.8(a)
[2] Memorandum-Directions (Wai 3327, #2.5.6 at [22(a)])
[3] Memorandum-Directions (Wai 3327, #2.5.6 at [25])

reo Māori. In other words, the evidence is filed to establish the high onus that is on the Crown to preserve te reo Māori. It is not filed to merely record how the language came to be in its parlous state of use.

6. When interested party status was sought for the purposes of this proceeding earlier in the year, the Wai 262 Tribunal's finding that te reo Māori is in need of life support was underlined.[4][5] The Joint Brief of Evidence of Professors Plank and Ka'ai-Mahuta establishes that the language remains on "life support" to this very day. Accordingly, the Crown's constraints on the use of te reo in the public sector is a step in the wrong direction for the purposes of language preservation.

7. Professor Phillipson postulates that the purposeful application of a form of linguistic imperialism by the Crown since the 1840s was how the Māori language was all but eradicated. However, this evidence is not filed to fortify the Crown's blameworthiness for language decline. Rather, evidence of the Crown's purposeful hand in language annihilation goes to the duty on the Crown to take "vigorous action" to arrest language decline. Constraining the use of te reo Māori in the public sector clearly breaches that duty.

Request for leave regarding witness participation

8. Professor Phillipson is 82 years old and lives in Denmark. He requires urgent back surgery. An appointment with surgeons is scheduled for later this month, with the expectation that surgery will follow shortly after. Given these circumstances, leave is sought for Professor Phillipson to be excused from presenting his evidence at hearing, and for his response to any questions from the Tribunal or other counsel to be provided in writing.

9. Professor Plank is on leave travelling the United Kingdom from 29 May 2024 through to the end of June. As he will be travelling abroad, he is not available to attend the hearing in person or via AVL. However, as with Professor Phillipson, Professor Plank can respond in writing to any questions from the Tribunal or other counsel. Accordingly, leave is sought in this respect.

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[4] Joint Memorandum of Counsel Regarding Ngāi Te Rangi Coalition Government Urgent Claim dated 19 January 2024, Wai 3308, #3.1.21, at [15].
[5] Joint Memorandum of Counsel Regarding Ngāi Te Rangi Coalition Government Urgent Claim dated 19 January 2024, Wai 3308, #3.1.21.

10. Professor Ka'ai-Mahuta is currently on leave while home schooling her children. As such, she is unable to travel. Therefore, leave is sought for Professor Ka'ai-Mahuta to attend the hearing, if required, via AVL.

11. Given the leave requests for witnesses to be excused from hearing and to either respond to any questions in writing or to appear, if required, via AVL, counsel also seeks leave to appear at the hearing via AVL.

2023 Census results

12. The results of the 2023 Census will be publicly available at the end of May 2024. The modelling data in Professor Plank's evidence relies on previous years' Census results. Professor Plank would welcome the opportunity to consider the 2023 Census results to determine their effect, if any, on the language use evidence he has provided. Accordingly, leave is sought for Professor Plank to file supplementary evidence on the 2023 Census. In the event that the leave sought is granted, the witness will comply with any filing directions provided by the Waitangi Tribunal.

Directions sought

13. In summary, directions from the Tribunal are sought as follows:

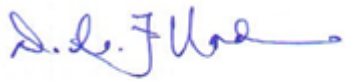
    a. For Professors Phillipson and Plank to be excused from attending the hearing and, if required, to provide written responses to questions from any party to the proceeding;

    b. For Professor Ka'ai-Mahuta to attend the hearing, if required, via AVL;

    c. For counsel to attend the hearing via AVL; and

    d. For Professor Plank to file supplementary evidence on the 2023 Census.

DATED at **Auckland** this 15th day of May 2024.



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