KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

BEFORE THE WAITANGI TRIBUNAL **WAI 3327**

IN THE MATTER OF	**the Treaty of Waitangi Act 1975**
AND	
IN THE MATTER OF	**the Te Reo in the Public Sector urgent inquiry**

OPENING SUBMISSIONS

5 Pipiri | June 2024

Te Tari Ture o te Karauna
Crown Law

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MAY IT PLEASE THE TRIBUNAL:

1. The Crown opens its submission by acknowledging the opening submissions and evidence filed on behalf of the claimants and interested parties in the inquiry, which have been prepared in very short timeframes and in the context of multiple urgent inquires. The Crown also wishes to recognise the work of the Tribunal members and staff in accommodating and preparing for this urgent inquiry at a time of intense activity.

2. This urgent inquiry concerns a taonga of "quite transcendent importance to Māori". As this Tribunal has previously observed, few other taonga could rival its status.[1] That importance is recognised in legislation: in particular, in Te Ture mō te Reo Māori 2016 and in the Public Service Act 2020.

3. The Crown fully appreciates the significance of this taonga. The Crown's intention is to support the Tribunal in this Kaupapa. To that end, it has sought to provide the Tribunal with evidence from senior officials involved in the Māori / Crown relationship. It has also provided a letter from the Minister for the Public Service setting out her position, and discovery of relevant documents across the core Crown.

Scope of inquiry

4. The inquiry is focused on "*whether the policies of the Coalition Government to limit the status and use of te reo Māori in the public sector are in breach of the principles of te Tiriti o Waitangi | the Treaty of Waitangi*".

5. A preliminary point arises from that statement of the inquiry's purpose. The Crown's respectful submission will be that the Tribunal's jurisdiction is to consider any prejudicial effect of any:

    5.1 policy or practice adopted or proposed to be adopted by or on behalf of the Crown; and

    5.2 any act done or omitted, or proposed to be done or omitted, by

[1] Wai 262, page 442.

or on behalf of the Crown.[2]

6. The Crown will respectfully say that the terms of coalition agreements are not Crown policies or Crown actions unless, and until, the Crown takes action to bring them into effect. The Crown is not able to comment on the purpose or intent of political agreements, both because that is outside its knowledge and because for its witnesses to do so would be a breach of the Public Service obligation of political neutrality.

7. That said, the Crown agrees with the claimants that statements in coalition agreements may be relevant to assessing the Crown's future policies or actions. It says, however, that they must be considered in their full context, which will include both the wider policy framework in which they exist and the steps taken to consider and (if appropriate) implement them.

Matters under inquiry

8. The inquiry concerns Crown policy in relation to te reo Māori following the formation of the Coalition Government on 27 November 2023.

9. The Coalition Agreement between the New Zealand National Party and New Zealand First Party was agreed on 24 November 2023. It includes commitments to:

   9.1 "Legislate to make English an official language of New Zealand".

   9.2 "Ensure all public service departments have their primary name in English, except for those specifically related to Māori".

   9.3 "Require the public service departments and Crown Entities to communicate primarily in English - except those entities specifically related to Māori".

10. On 6 December 2023, the Minister for the Public Service, Hon Nicola Willis, said during an interview on Radio New Zealand that she intended to seek advice on how to stop "bonuses" being negotiated into future collective agreements for the Public Service.

[2] Treaty of Waitangi Act 1975, s 6(1)(c) and (d).

11. Those commitments are the primary focus of this inquiry. However, it is not limited to them. The statement of issues records that the Inquiry will consider whether "the Crown's current policies, practices, acts and omissions are consistent with its legislative and Te Tiriti / Treaty obligations in relation to the status and use of te reo and its customs in the public sector".[3]

12. In the Crown's submission, an urgent inquiry cannot review the entirety of the Crown's compliance with its Te Tiriti | Treaty obligations in relation to te reo Māori. However, the Crown's performance of its Te Tiriti | Treaty obligations cannot be assessed only through the lens of political parties' commitments in coalition agreements. The wider policy framework relating to te reo Māori, and the Crown's work done in relation to those commitments (or the absence of work) is also relevant.

The Crown's evidence

13. The Crown has called evidence from the key agencies engaged in the revitalisation of te reo Māori: that is, Te Puni Kōkiri, Te Taura Whiri o te Reo Māori (**Te Taura Whiri**), Te Kawa Mataaho Public Service Commission (**Commission**) and Te Arawhiti. The evidence addresses both:

    13.1 The specific policies described in [9] and [10] above (in particular, the evidence from the Commission).

    13.2 The Crown's te reo Māori commitments post-Coalition Government generally (in particular, the evidence from Te Puni Kōkiri and Te Taura Whiri).

14. Paula Rawiri, Hautū, Te Puni Kaupapa Here | Deputy Secretary, Policy Partnerships at Te Puni Kōkiri, will give evidence of the steps taken by the Government to strengthen the status and use of te reo Māori. She will describe the development of Government policy in relation to te reo Māori from the 1980s to 2016, and the enactment of Te Ture mō Te Reo Māori 2016. Ms Rawiri will identify the key policy frameworks, institutions and

[3] Statement of issues (#1.4.3) at (4).

fora that govern te reo Māori in the public sector (in particular, the Maihi Karauna, the Crown's Māori language strategy) and the changes to that policy framework following the formation of the Coalition Government.

15. Ngahiwi Apanui-Barr, Tumu Whakahaere of Te Taura Whiri i te Reo Māori, will explain the creation and role of Te Taura Whiri I te Reo Māori, and the support it provides the Public Service in delivering on its Te Tiriti | Treaty responsibilities with respect to te reo Māori and the Maihi Karauna. Specifically, he will address:

    15.1 The capability building program for the Public Service, of which te reo Māori proficiency allowances form part.

    15.2 How Te Taura Whiri has developed a best practice guide for bilingual English-Māori signage, and how that has been implemented.

    15.3 The changes noted by Te Taura Whiri following the formation of the Coalition Government, and its perspective as to whether those changes comply with the Crown's obligations under Te Tiriti | the Treaty.

16. Heather Baggott, the Tumu Whakarae mō Te Kawa Mataaho | Acting Public Service Commissioner, will give evidence of her role, and the Commission's role, in leadership of the public service; how that relates to the Crown's Treaty obligations; and how the Crown's approach to those Treaty obligations has developed in the last decade.

17. In particular, Ms Baggott provides an overview of the development of Māori/Crown leadership and cultural capability in the Public Service and the institutions, structures and groups that support and implement that mahi. She also explains how the Coalition Government has affected Māori/Crown relationships.

18. Notably, Ms Baggott's brief annexes a letter from the Honourable Nicola Willis, Minister for the Public Service. Minister Willis' letter, prepared to assist the Tribunal, sets out an overview of the Minister's position and the

steps she has taken in relation to relevant issues that have arisen in her portfolio. Minister Willis explains that she is committed to ensuring that the Commission continues to offer leadership in a way that is consistent with the Crown's obligations under Te Tiriti o Waitangi | The Treaty of Waitangi, the Public Service Act 2020 and Te Ture mō te Reo Māori 2016 | Māori Language Act 2016. Her letter explains the approach that she has taken to allowances for te reo Māori competency and to government agency names.

19. Those two key issues are then addressed in the evidence of:

19.1 Alexandra Chadwick, Deputy Commissioner Workforce at the Commission, who will describe the policy work relating to allowances for te reo Māori.

Ms Chadwick will explain that this issue arises in the context of the Government Workforce Policy Statement (**GWPS**). Her evidence will explain the history and nature of the GWPS, how the issue of paying allowances for te reo Māori competency arose in that context, and the current status of the Crown's consideration of the practices of paying allowances for te reo Māori.

19.2 Hannah Cameron, Deputy Commissioner Strategy and Policy at the Commission.

Ms Cameron will give evidence of the current state of policy and guidance in relation to the use of te reo Māori for government agency names and other communications. She will explain the work undertaken by officials within the Commission and the steps taken by the Minister and Coalition Government in that regard.

20. Kelly Dunn, Deputy Chief Executive, partnerships at the Office for Māori Crown Relations | Te Arawhiti, will explain the role of Te Arawhiti with respect to te reo Māori. She will describe the development of the Māori-Crown Relations Capability Framework in 2019 and of Whāinga Amorangi (a programme designed to establish performance expectations for Public Service Chief Executives) in 2020.

The Crown's approach in this inquiry

21. The Crown's primary aim in this inquiry is to assist the Tribunal in this important Kaupapa. The Crown recognises and welcomes the important role that the Tribunal has in making recommendations that support the Tiriti | Treaty partnership.

22. The Crown's essential submission will be that the work of the Crown in relation to te reo Māori continues substantially as it was before the Coalition Government was formed. That is not to ignore the fact that the coalition agreement commitments may affect that mahi. However, the Crown will submit that the context of the nuanced policy development following from those commitments will also be relevant to the Tribunal's consideration and any recommendations it may make.

5 Pipiri | June 2024

S Bisley / A Turvey / G Seeley
Counsel for the Crown

TO: The Registrar, Waitangi Tribunal
AND TO: Claimant Counsel