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MĀORI RIGHTS LAWYERS

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Waitangi Tribunal
4 Jun 24
Ministry of Justice WELLINGTON

23 April 2024

Crown Law
PO Box 2858
Wellington 6140
Attn: Jason Gough and Grace Seeley

By email: Jason.Gough@crownlaw.govt.nz; Grace.Seeley@crownlaw.govt.nz

Tēnā koutou,

Re: **Discovery regarding Wai 3327 Te Reo i te Kāwanatanga Ruku-Tātari Ohotata – Te Reo in the Public Sector Urgent Inquiry**

1. We write as coordinating counsel in the above Waitangi Tribunal inquiry. We refer to your letters of 17 and 19 April 2024 to our firm and other matters arising regarding Crown discovery in respect of the above matter.

Crown Disclosure Proposal Letter – 19 April 2024

2. In this letter, the Crown proposes to disclose 20 documents ("**the documents**") considered confidential pursuant to s 70 of the Evidence Act upon certain conditions ("**Crown disclosure proposal**").

3. Claimant Counsel respond as follows:

   (a) We do not and cannot agree to the proposal and conditions of disclosure without having reviewed and knowing the contents of the documents in question. In the first instance, we propose the documents be disclosed to counsel for Claimants and Interested Parties on a broad confidential and without prejudice basis for the purpose only of reviewing and responding to the Crown's disclosure proposal. With the limited time available, we propose that the documents be disclosed to us on this basis by **midday Wednesday 24 April 2024** following which we will revert with a collective response to the Crown disclosure proposal soon after.

   (b) If the Crown does not agree to the above approach, and/or Claimant Counsel do not agree to the Crown's disclosure proposal upon inspection of the documents according to [3](a) above, then Claimant Counsel consider the below to be the appropriate course of action.

   (c) For the Crown to make an application for confidentiality to the Waitangi

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Tribunal pursuant to Appendix F of its Guide to Practice and Procedure. The process may include the Crown producing on a confidential basis these documents to the Waitangi Tribunal for the Presiding Officer to inspect and assess the issue of confidentiality, production in the meantime on a confidential basis to the claimants and interested parties, submissions on the issue, and determination of the matter.

Crown Agencies Letter

4. We refer to your letter of 17 April 2024 regarding the Crown's discovery obligations in response to our questions of clarification. We note your [7.5] statement that "to the extent a Minister has provided a direction to a Crown agency, that direction will be provided on discovery […]".

5. We seek that all directions, directive, reports, communications, filenotes and/or advice between Ministers/Departments and any Crown agency falling within the categories of our request from [5](a)-(b), [5](d) to [5](i) to the extent they are in the possession and control of the Crown also be discovered as part of the Crown's discovery.

6. In response to your [8], we acknowledge the time constraints in the context of 62 Crown agencies, and therefore, propose to identify targeted and relevant Crown agencies for which disclosure as per the original disclosure request (and clarified at [5] above) continues to be sought.

Matters Arising Concerning Discovered Documents

7. The following documents disclosed to us have been identified as "client privilege" or "litigation privilege";

   (a) LIN.001.003 claimed "Part Litigation Privilege" in Tranche 1

   (b) MFAT.001.0058 claimed "Part Solicitor Client Privilege" in Tranche 1;

   (c) NZDF.001.0021 claimed "Part Litigation Privilege" in Tranche 1.

8. In respect of these particular documents, the index content for NZDF.001.0021 does not provide sender/recipient details. Can this be made available to us? Can the Crown also specify the grounds upon which privilege is claimed. For eg: for documents LIN.001.003 and NZDF.001.0021, were these emails created in the process of preparing for current litigation? As the Crown can appreciate, the Claimants wish to confirm the basis for which privilege is claimed in respect of discoverable documents and request further information from the Crown of same.

9. In the absence of agreement on the issue of privilege, we consider the approach set out at [3](c) above is similarly appropriate.

10. We also acknowledge your recent correspondence with Tamaki Legal and requests for attachments to Tranche 3 documents. On this occasion and this matter, we are happy for correspondence to occur directly with Tamaki Legal.

Conclusion

11. Given the limited time and imminent filing deadlines, we look forward to your prompt response.

Nā māua, nā

Ihipera Peters / Aroha Herewini
Tumu Whakarae / Rōia Pouwhakarae

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