

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Wai 3300

CONCERNING

the Treaty of Waitangi Act 1975

AND

Tomokia ngā tatau o Matangireia
– the Constitutional Kaupapa
Inquiry

**MEMORANDUM-DIRECTIONS OF CHIEF JUDGE DR C L FOX REGARDING
THE TREATY PRINCIPLES BILL URGENT INQUIRY**

24 Hōngongoi 2024

Purpose

1. This memorandum-directions addresses the following matters regarding the urgent inquiry into the proposed Treaty Principles Bill and statutory review of enactments with references to the 'principles of the Treaty of Waitangi':
 - (a) a Tribunal request for a list of constitutional experts consulted by the Crown during the development of the exposure draft of the proposed Bill;
 - (b) reply submission extension requests; and
 - (c) proposals for further hearings and an interim report for the urgent inquiry.

Constitutional experts consulted by the Crown

2. On 9 May 2024, in response to questioning during day one of the urgent hearing, Secretary for Justice Andrew Kibblewhite confirmed Associate Minister for Justice David Seymour authorised officials to engage with constitutional experts while developing the exposure draft of the proposed Treaty Principles Bill. I directed Crown counsel to provide the Tribunal with a list of names of those experts (Wai 3300, #2.6.1 at [30]).
3. On 17 May 2024, Crown counsel filed a memorandum advising that while the Crown had considered options for consulting constitutional experts, it had not approached the experts themselves, as this is subject to Cabinet decisions on the process of the proposed Bill (Wai 3300, #3.2.8 at [2.6]). Crown counsel submitted the Crown does not consider it appropriate for the prospective experts to become associated with this inquiry and sought to confirm whether the Tribunal required the Crown to provide the list.
4. On 15 July 2024, I again directed the Crown to provide a list of constitutional experts it has considered approaching or engaging with during the development of the exposure draft of the proposed Bill by no later than 19 July 2024. This was communicated by email from the Tribunal Registrar on 15 July 2024.
5. On 19 July 2024, Crown counsel filed a memorandum of counsel in response to my directions at [4] above (Wai 3300, #3.2.33). In the memorandum, Crown counsel provided an 'initial non-exhaustive list' of individuals identified by Ministry of Justice officials as having expertise in New Zealand's constitutional arrangements. Counsel advised that the list of experts had been provided to Associate Minister David Seymour's office, but that no feedback had been received and nor had the list been endorsed or approved at the Ministerial level.

Reply submissions extension requests

6. On 3 July 2024, I directed claimant counsel to file reply submissions to the Crown's closing submissions by 15 July 2024 (Wai 3300, #2.6.9 at [8]).
7. On 15 July 2024, counsel for Wai 1341, the Ngāti Rehia Hapū and Wai 3077 the Te Reo Māori and Justice System (Rameka) claim filed a memorandum of counsel requesting an extension to file reply submissions (Wai 3300, #3.2.30). Counsel submitted that they were unable to finalise and file reply submissions due to claimant and counsel illness and accordingly sought an extension to file reply submissions by 17 July 2024.
8. I granted the extension, and my decision was communicated by email from the Tribunal Registrar on 16 July 2024.

9. On 15 July 2024, Janet Mason, counsel for Wai 3316, the Constitutional (Ruka) claim, Wai 3318, the Constitutional (Potiki) claim, Wai 3320, the Constitutional (Collier & Others) claim, Wai 3317, the Constitutional (Morgan & Others) claim, Wai 3319, the Constitutional (Dally-Paki) claim and Wai 3321, the Constitutional (Mack) claim filed a memorandum of counsel. Counsel submitted that claimants for the Wai 3316 claim had been unable to contribute to finalising reply submissions due to bereavement and accordingly sought an extension to file by 29 July 2024. Counsel further submitted it was unlikely that legislation would be rushed through the House following the introduction of a Cabinet paper and there would therefore only be a negligible risk of any prejudice to parties if an extension was granted.
10. I declined the extension, and the decision was communicated by email from the Tribunal Registrar on 17 July 2024. I note that counsel are yet to file submissions on behalf of the parties listed at [9] above. I direct that this be filed by **5pm Friday 26 July 2024**.

Proposals for a further hearing and an interim report for the urgent inquiry

Claimant submissions ahead of 9 – 10 May 2024 hearing

11. In a memorandum dated 7 May 2024, Ms Mason made submissions on behalf of several claimant counsel proposing the Tribunal should consider the urgent hearing as an interim hearing (Wai 3300, #3.1.80). Counsel submitted that, in response to Crown counsel for an updated timeframe or forthcoming Cabinet paper on the proposed Treaty Principles Bill, only a vague timeline subject to change had been provided. Counsel further submitted that, as Crown witnesses have stated the material in the Cabinet paper is confidential, many of the questions which the Tribunal and claimant counsel had of Crown witnesses would not be answered during the urgent hearing (Wai 3300, #3.1.80 at [12] – [13]).

Post-hearing submissions

12. On 17 May 2024, claimant counsel filed a memorandum on behalf of Wai 682, the Ngāti Hine Lands, Forests and Resources claim (Wai 3300, #3.2.11). Counsel sought Tribunal directions regarding a potential second hearing and supplementary submissions once the Crown filed its Cabinet paper and regulatory Impact Statement on the proposed Bill. Counsel submitted they were 'reluctant' to lose momentum and risk Cabinet decisions being made to introduce the proposed Treaty Principles Bill without the Tribunal reporting on these issues (Wai 3300, #3.2.11 at [5]).
13. On 17 May 2024, counsel from Kaupare Law filed a memorandum on behalf of their clients, with the support of Dixon and Co Lawyers, Mahoney Horner Lawyers, Wackrow Panoho and Associates, and Annette Sykes & Co, and the claims they respectively represent (Wai 3300, #3.2.012). Counsel 'share the concerns raised' by counsel from Tukai Law at [5] of their memorandum (and as outlined at [12] above), and accordingly support the timeframes proposed by Tukai Law for filing closing submissions (Wai 3300, #3.2.12 at [4] – [5]).
14. In my directions of 20 May 2024, I confirmed that parties will be provided an opportunity to file supplementary submissions directly following the receipt of the Cabinet paper and Regulatory Impact Statement (Wai 3300, #2.6.5).

Claimant reply submissions

15. On 15 July 2024, counsel from Tamaki Legal filed a joint memorandum and reply submissions on behalf of the interested parties listed at [1](a) – [1](r) of the memorandum (Wai 3300, #3.2.28 & Wai 3300, #3.3.24). Counsel submitted that given the importance of the kaupapa, the evidence presented in the urgent inquiry, and the government's 'pursuit

to implement the coalition agreements', the interested parties request the Tribunal release an interim report. The interested parties request that the report includes a recommendation requiring the Crown to cease all actions that culminate in the Treaty Principles Bill progressing to the next stage of the process as soon as possible (Wai 3300, #3.3.24 at [20]).

16. On 15 July 2024, counsel from Mahoney Horner filed a memorandum and reply submissions on behalf of Wai 58, the Whangaroa Lands and Fisheries claim, Wai 1312, the Whakaki claim and Wai 1684, the Puru, Torckler and Katene Whānau claim (Wai 3300, #3.2.29 & #3.3.25). Counsel submitted the Tribunal may consider releasing an interim report on the evidence it has before it currently, with a final report being released once the Treaty Principles Bill Cabinet paper is filed (Wai 3300, #3.3.25 at [41]).

Decision

17. The Tribunal may release an interim report depending on a further update from the Crown. Counsel for the Crown are to file an update by **5pm Friday 26 July** advising when the Tribunal can expect to receive a copy of the Cabinet Paper and Regulatory Impact Statement. A decision will be made next week following that update.

Me tuku atu te Kairēhita i tētehi kape o tēnei whakahau ki ērā ki te rārangi whakamōhio mō Wai 3300, Tomokia ngā tatau o Matangireia – the Constitutional Kaupapa Inquiry.

The Registrar is to send a copy of this direction to all those on the distribution list for Wai 3300, Tomokia ngā tatau o Matangireia – the Constitutional Kaupapa Inquiry.

WHAKAPŪMAUTIA ki Te Whanganui-ā-tara i te 24 o te Hōngongoi 2024



Kaiwhakawā Mātua C L Fox
Tumuaki

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