

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

MEMORANDUM OF COUNSEL FOR THE CROWN

15 Whiringa-ā-nuku | October 2024

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Waitangi Tribunal

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Ministry of Justice
WELLINGTON



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MAY IT PLEASE THE TRIBUNAL:

1. In this memorandum, the Crown responds to the submissions made in the memorandum filed by Tāmaki Legal on 3 October 2024. This memorandum was prepared before receiving the Court’s memorandum-directions of 10 October 2024, but essentially sets out the Crown’s position on the issues raised in it.
2. In its memorandum Tāmaki Legal sought:
 - 2.1 Leave to make submissions in reply to the Crown’s memorandum (dated 13 September 2024). That memorandum related to the name change of Taumata Arowai as part of the Local Water Done Well programme.¹
 - 2.2 A further round of discovery by the Crown and submissions by the parties on both (1) the Government Workforce Policy Statement (**GWPS**) and (2) an announcement made by the Minister of Education about the funding of resources to lift maths achievements, which it says requires reducing funding allocated to teaching te reo Māori.
3. The Crown does not oppose the leave sought by counsel to make further submissions on the documents in respect of the Local Water Done Well programme. The leave sought appears to relate to the submissions made in Tāmaki Legal’s memorandum, in which case no further directions beyond the grant of leave appear to be required.
4. The Crown does oppose a further round of discovery and submissions:
 - 4.1 The Tāmaki Legal discovery request, covering the GWPS in its entirety, is very broad and appears to be premised, mistakenly, on the unredacted GWPS having not been provided earlier. In fact, it was provided on 8 July 2024. Most of the content in the GWPS is not within scope of this inquiry. Comprehensive discovery has

¹ Wai 3327, #3.4.1.

been provided on the relevant parts of the GWPS, and there is no benefit to a further, extensive, discovery exercise at this very late (post-hearing) stage.

4.2 The announcement in respect of Te Ahu o te Reo Māori and the associated discovery request are out of scope for this urgent inquiry. They do not directly relate to the use of te reo Māori in the public sector, would require further hearing time, and are better considered in the context of the the Education Services and Outcomes Kaupapa Inquiry (Wai 3310).

5. The Crown’s submissions on these points are set out in more detail below.

Submissions on the Local Water Done Well programme

6. On 23 July 2024, Crown counsel filed three documents in respect of the Local Water Done Well programme and the amendments to the Water Services Act and associated legislation. The relevant issue for this inquiry was a proposal to change the name of Taumata Arowai | Water Services Authority to Water Services Authority | Taumata Arowai.²

7. On 6 August 2024, Tāmaki Legal filed a memorandum of counsel setting out its submissions in respect of those documents.³ On 21 August 2024 the Presiding Officer directed claimant and interested party counsel who wished to file on this matter to do so by 30 August 2024.⁴ No further memoranda were filed. The Crown was directed to respond by 13 September 2024, which it did.⁵

8. In the 3 October memorandum Tāmaki Legal sought leave to make further submissions in reply to the Crown’s memorandum dated 13 September 2024. Their memorandum sets out an “overview” of their reply submissions, and it is not clear whether they seek to file anything further.

² Wai 3327, #3.2.17 at [5].

³ Wai 3327, #3.2.18.

⁴ Wai 3327, #2.6.3 at [10].

⁵ Wai 3327, #2.6.3 at [10].

If they do, the Crown does not object but respectfully requests that any submissions be strictly in reply.

Government Workforce Policy Statement

9. The development of the 2024 GWPS was a key focus of this inquiry. As Ms Chadwick explained in her evidence, the GWPS sets out the Government's expectations for employment relations. These are broad: they include, but are not limited to, workforce strategy, management of employment relations, pay equity, diversity and inclusiveness.⁶ The GWPS is a lengthy document and is widely consulted upon with a range of stakeholders.

10. The Crown has provided fulsome discovery in relation to the preparation of the relevant parts of the GWPS. Specifically:
 - 10.1 The Crown provided discovery of documents from Te Kawa Mataaho | Public Service Commission on 4 June 2024. That included documents relating to the GWPS. Some of those documents were redacted to reflect the Crown's claim to confidentiality.

 - 10.2 On 7 June 2024, the Presiding Officer issued directions on the confidentiality orders sought by the Crown over documents including the draft GWPS.⁷ On 9 June 2024, in compliance with those orders, counsel for the Crown lifted the redactions and re-filed the documents, including the draft GWPS.⁸

 - 10.3 On 8 July 2024, the parties filed their closing submissions. All of the parties addressed the GWPS, which had been the subject of cross-examination and argument during the hearing of the inquiry. The Crown's submissions appended the latest draft of the GWPS,

⁶ Chadwick brief of evidence, at [14].

⁷ Wai 3327, #2.5.16.

⁸ Wai 3327, #3.1.61.

with redactions consistent with the directions issued by the Presiding Officer on 7 June 2024.⁹

- 10.4 On 21 August 2024, the Crown filed the final GWPS with no redactions. Counsel note that the final GWPS was the same as the draft filed with closing submissions on 8 July 2024.¹⁰ The Crown proposed that any submissions on the final GWPS be provided in line with the memorandum-directions issued by the Tribunal on 21 August 2024.¹¹ With the exception of the Tāmaki Legal memorandum, no further submissions have been filed.
11. In their memorandum, Tāmaki Legal submit that the Tribunal and parties have only had the opportunity to consider the GWPS in final and unredacted form as a result of their provision of a copy on 3 October. They seek leave for the parties to file submissions on the GWPS.¹²
12. The Crown opposes this request. In the Crown’s submission, as the chronology at [10] above shows, the parties have had ample opportunity to make submissions on the GWPS (including the unredacted final version, which – contrary to the suggestion by Tāmaki Legal - has been available to the parties and interested parties from 8 July 2024).
13. Tāmaki Legal also submits that the Crown should “*produce relevant decision-making documentation on the GWPS*”.
- 13.1 As explained above, discovery in respect of the GWPS was provided throughout its development and finalisation during this inquiry.
- 13.2 The Tāmaki Legal discovery request is very broad, covering the GWPS in its entirety. It does not align with the tailored discovery

⁹ Wai 3327, #3.3.17.

¹⁰ Wai 3327, #3.4.2.

¹¹ Wai 3327, #3.4.2.

¹² Wai 3327, Memorandum of Counsel dated 3 October 2024 at [14].

sought by Kaupare Law and provided by the Crown in the course of this inquiry.

- 13.3 Most of the content in the GWPS is not within scope of this inquiry.
14. Counsel also submit that discovery is not a 'given' in an urgent inquiry; discovery should be seen as the exception for urgencies, not the rule. Despite that, the Crown undertook a broad discovery exercise in this inquiry which encompassed the relevant parts of the GWPS. In the Crown's submission, further post-hearing discovery is not necessary or appropriate.
15. Given the scope of this inquiry, attempting to provide rolling discovery of all documents relating to te reo Māori in the public sector will inevitably result in further delays and a significant widening of scope. In the Crown's submission, it is now appropriate to draw a line under discovery – unless highly relevant – to allow the Tribunal to finalise its report.

Te Ahu o Te Reo Māori

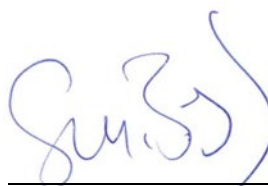
16. In the 3 October memorandum, Tāmaki Legal makes submissions on the announcement made by Minister of Education on 26 September 2024 in respect of Te Ahu o te Reo Māori¹³ and seeks:
- 16.1 Wide-ranging discovery in relation to that announcement.
- 16.2 Leave for all parties to make submissions on the announcement.
17. In the Crown's submission, funding allocations for school education programmes are outside the scope of this inquiry, which is focused on te reo Māori in the public sector. Claims in respect of education are more appropriately heard in the Education Services and Outcomes Kaupapa Inquiry (Wai 3310).
18. This issue has also been raised very late, in the context of an urgent inquiry where the Tribunal is presumably well-advanced in preparing its report. They could only properly and fairly be addressed in the report with the

¹³ Wai 3327, Memorandum of Counsel dated 3 October 2024 at [15].

benefit of hearing evidence from witnesses from the Ministry of Education, none of whom have been called, and submissions from all parties. That would effectively re-open the hearing stage of this inquiry, cause significant cost, delay the Tribunal's report, and undercut the urgent basis on which this inquiry has been conducted.

19. In the circumstances, the Crown opposes the request to provide discovery of documents relating to, and make submissions on, Te Ahu o te Reo Māori.

15 Whiringa-ā-nuku | October 2024



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

TO: The Registrar, Waitangi Tribunal

AND TO: Claimant Counsel