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

BEFORE THE WAITANGI TRIBUNAL **WAI 3325**

IN THE MATTER OF	**the Treaty of Waitangi Act 1975**
AND	
IN THE MATTER OF	**the Climate Change Priority Inquiry**

MEMORANDUM OF COUNSEL FOR THE CROWN

17 Poutūterangi | March 2025

Te Tari Ture o te Karauna
Crown Law

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MAY IT PLEASE THE TRIBUNAL:

1. In this memorandum, the Crown:

    1.1 requests to cross-examine hearing two witnesses with time and topic indications;[1]

    1.2 responds to applications for leave filed by claimant counsel for non-tangata whenua witnesses to appear in hearing two; and

    1.3 updates two dates provided in the memorandum filed by the Crown on 6 March 2025.

Cross-examination indications

2. Counsel have been directed to file requests to cross-examine hearing two witnesses with time and topic indications by 17 March 2025.

3. Due to the late filing of evidence, in compliance with the extension granted by email on 12 March 2025, counsel for the Crown have not yet had the opportunity to review all the claimant evidence to be heard in hearing two.

4. As a result, the Crown is not yet in a position to indicate time and topic indications particular to each witness. In lieu of that detail, the Crown seeks leave to cross-examine all witnesses appearing in hearing two and seeks 30 minutes of cross-examination time for each.

5. The Crown will endeavour to provide topic indications upon review of all the claimant evidence.

Hearing two witnesses

6. In memorandum directions issued on 26 February 2025, the Presiding Officer confirmed that the Tribunal's preference is for hearings two and three to hear only tangata whenua evidence.[2]

7. The Presiding Officer noted that a pragmatic approach would need to be taken where non-tangata whenua witnesses can only appear at hearings

[1] Wai 3325, #2.6.4(a).

[2] Wai 3325, #2.6.4 at [19].

two or three due to limited availability, and consented to such witnesses appearing at hearings two and three in that case.[3]

8. In a memorandum filed on 7 March 2025, counsel for Wai 3395 sought leave for Professor Jane Kelsey to give evidence in hearing two, despite falling within the category of non-tangata whenua evidence.[4] Counsel submitted that Professor Kelsey has limited availability in the second part of the year due to other commitments that will require her to be out of the country for long periods of time.

9. In a memorandum filed on 11 March 2025, Mr Lyall, acting as counsel for multiple claimants,[5] sought leave for Doctor James Every-Palmer to give evidence during hearing two, despite falling into the category of non-tangata whenua evidence.[6] Counsel asserts that Dr Every-Palmer's evidence "needs to be presented" during hearing two but provides no explanation as to why.[7]

10. The Crown opposes these requests. The Presiding Officer has indicated that she will seek resourcing for a total of eight hearings for this priority inquiry.[8] The Tribunal is resourced to hold three hearing weeks in the financial year ending 30 June 2025.[9] At this point in time there is no certainty on the scheduling of the five further hearing weeks for this inquiry. Claimant witnesses cannot confirm their unavailability as a result.

11. Further, the Presiding Officer has indicated her intention to hold judicial conferences and hearings remotely, subject to considerations such as natural justice and the nature of evidence to be heard, to keep carbon emissions to a minimum.[10] Counsel for the Crown submit that claimant

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3 Above n 2.

4 Memorandum of counsel for Wai 3395, 7 March 2025, at [7].

5 The combined claims of Te Waimate Taiamai ki Kaikohe Alliance (Wai 421, 593, 869, 1383, 1890); Vernon Winitana on behalf of Ngāti Ruapani ki Waikaremoana (Wai 3278); Trevor Ransfield, Wayne Aramoana, Gaylene Kohunui, Maude Edwards, Kahukore Baker, Jimi Hills, Wallace Aramoana and Aroha Wikotu on behalf of Te Upokorehe (Wai 3279); John Henry Tamihere on behalf of Ngāti Porou ki Hauraki (Wai 3288).

6 Memorandum of counsel for Wai 421, 593, 869, 1383, 1890, 3278, 3288, 3279, dated 11 March 2025, at [4].

7 Above n 6, at [4].

8 Wai 3325, #2.5.13, at [36].

9 Above n 8, at [34].

10 Wai 3325, #2.5.2, at [16].

witnesses could appear via AVL if required, due to their location, in a later hearing week.

12. Our initial view of both Professor Kelsey and Dr Every-Palmer's evidence is that their evidence is of a highly technical nature. They concern international trade and investment agreements and international climate science and policy, and New Zealand's response, respectively. It is unreasonable to expect that the Crown can cross-examine these witnesses, on specialised topics, without first having filed its evidence on these topics. In the Crown's submission, it may also not assist the Tribunal to hear opposing evidence on these specialised topics, and/or cross-examination on a recalled basis, several months later. Unless these two witnesses have specific unavailability, and which cannot be overcome by remote hearing, the efficient running of the inquiry appears to favour deferring hearing these witnesses until after the Crown evidence is filed.

13. In the event that the Tribunal grants leave for Professor Kelsey and Dr Every-Palmer to give evidence in hearing two, the Crown may seek leave to have one or both recalled for cross-examination.

Updating 6 March 2025 Crown memorandum

14. In the memorandum filed by the Crown on 6 March 2025, the Crown provided a timeline of the upcoming relevant dates for the Climate Change Response Act 2002 (**CCRA**). Counsel for the Crown have become aware of two errors in that memorandum and correct them as follows.

15. In the 6 March 2025 memorandum, the Crown said:[11]

    15.1 **By 31 December 2026**: the Climate Change Commission to prepare the second National Climate Change Risk Assessment (s 5ZQ of the CCRA). Refer to National Climate Change Risk Assessments » Climate Change Commission.

[11] Crown memorandum dated 6 March 2025, at [6.7].

16. The correct wording is:

16.1 **No later than 3 August 2026:** the Climate Change Commission to prepare the second National Climate Change Risk Assessment (s 5ZQ of the CCRA). Refer to National Climate Change Risk Assessments » Climate Change Commission.

17. Further, the Crown said:

17.1 **By no later than 31 December 2028**: the Minister must present the second NAP to Parliament (s 5ZT of the CCRA).[12]

18. The correct wording is:

18.1 Within 2 years of the publication of the second National Climate Change Risk Assessment (i.e. **by August 2028**): the Minister must publish and present the second NAP to Parliament (s 5ZT of the CCRA).

19. Counsel for the Crown apologise for the errors in the memorandum filed on 6 March 2025.

17 Poutūterangi | March 2025

J Prebble / N Fong / G Seeley
Counsel for the Crown

TO: The Registrar, Waitangi Tribunal

AND TO: Claimant Counsel

[12] Above n 11, at [6.8].