WAITANGI TRIBUNAL

Wai 3400

CONCERNING	the Treaty of Waitangi Act 1975
AND	Marine and Coastal Area (Takutai Moana) Act Coalition Changes Urgent Inquiry

---

MEMORANDUM-DIRECTIONS OF THE PRESIDING OFFICER FOLLOWING THE HEARING OF CLOSING SUBMISSIONS IN STAGE TWO OF THIS URGENT INQUIRY

15 May 2025

Purpose

1. This memorandum-directions addresses the following matters raised during the closing submissions hearing for stage two of the Marine and Coastal Area (Takutai Moana) Act Coalition Changes Urgent (Wai 3400) Inquiry, held on 12 May 2025:

    (a) submissions regarding the briefs of evidence of Frances Dagg (#B55) and John Tamihere (#B56);

    (b) further information requested regarding any funding cap for civil legal aid; and

    (c) the filing of reply submissions.

Submissions on evidence of Frances Dagg (#B55) and John Tamihere (#B56)

Procedural background

2. On 30 April 2025, the Crown filed an affidavit of Crown witness, Frances Dagg, along with some supporting documents in response to the chronology presented by John Tamihere during the stage two hearing (Wai 3400, #B55 & #B55(a)).

3. On 2 May 2025, counsel for Mr Tamihere, Bryce Lyall, filed a memorandum along with an unsigned brief of evidence of Mr Tamihere replying to this (Wai 3400, #3.4.48). On 7 May 2025, Mr Lyall filed a signed version of Mr Tamihere's brief, which was placed on the record as Wai 3400, #B56.

4. In his memorandum, Mr Lyall submitted that (Wai 3400, #3.4.48 at [4] – [6]):

    (a) The claimants understood the Crown's filing would be limited to written questions and documents. However, the affidavit of Ms Dagg 'goes beyond the scope of leave as counsel understood it'.

    (b) Ms Dagg's affidavit addressed a hui she mostly did not attend and offered views on Crown actions she did not witness, which is evidence the claimants could not test.

    (c) This urgent inquiry is not about what Ngāti Porou ki Hauraki has done, but rather about Crown actions or omissions.

    (d) Ms Dagg's affidavit should be given minimal weight.

    (e) While the Crown did not ask Mr Tamihere any questions, he prepared a brief of evidence responding to Ms Dagg's affidavit.

Crown memorandum dated 8 May 2025

5. On 8 May 2025, counsel for the Crown filed a memorandum seeking a direction that Mr Tamihere's brief (#B56) be removed from the record (Wai 3400, #3.4.54). Counsel for the Crown objected to Mr Lyall's submission that Ms Dagg's affidavit goes beyond the scope of leave granted (Wai 3400, #3.4.54 at [2] – [3]).

6. Counsel for the Crown added that Ms Dagg also provided documents 'supporting the factual matters' she addressed in her affidavit. Counsel submitted that, in contrast, Mr Tamihere's brief of evidence provides no documents to support the views he expressed with respect to Ms Dagg's evidence. Counsel stated that Mr Tamihere's brief of evidence was 'more in the nature of submission on the weight that should be given to Ms Dagg's

affidavit or regarding matters relating to the Crown engagement pathway, which are outside the defined scope of inquiry for stage two' (Wai 3400, #3.4.54 at [6]).

Memorandum-directions dated 9 May 2025

7. In my memorandum-directions of 9 May 2025, I noted the Crown's submissions and indicated that I would hear from parties on this matter during the hearing of closing submissions (Wai 3400, #2.7.3 at [27]).

Submissions received during closing submissions hearing

8. During the hearing, I invited submissions from Mr Lyall, and Mr Stephens KC. Mr Lyall stated that he could not see a problem with Mr Tamihere's brief of evidence of 7 May 2025 remaining on the record.

9. Mr Stephens adopted the submissions in the Crown memorandum of 8 May 2025. Mr Stephens also confirmed that the Crown's concern was the comment in Mr Lyall's memorandum that the Crown's response to Mr Tamihere's chronology exceeded the scope of the leave granted.

Decision

10. At the hearing, I determined that:

    (a) The Crown did not exceed the scope of the leave granted and was entitled to file the affidavit from Ms Dagg; and

    (b) As this addressed the Crown's concern Mr Tamihere's brief of evidence would remain on the record.

Further information regarding funding cap for civil legal aid

11. At the hearing, I asked Mr Stephens if there is a funding cap for civil legal aid. Mr Stephens advised that he could file a memorandum on this by 16 May 2025.

12. I direct the Crown to provide this information by **5pm, Friday 16 May 2025**.

13. I also direct claimants who wish to respond to the Crown to do so by **5pm, Tuesday 20 May 2025**.

Submissions in reply

14. Per the inquiry timetable, submissions in reply were due on 9 May 2025 (Wai 3400, #2.6.6(b)).

15. Following several requests for extension from claimants and the Crown which I granted, the Crown filed its closing submissions on 9 May 2025. Given the late filing of the Crown's closing submissions, I granted leave for claimant and interested party counsel to, if necessary, present submissions in reply orally at the hearing (Wai 3400, #2.7.3 at [20]). Unfortunately, due to time constraints at the hearing, this was not possible.

16. The following counsel have already filed submissions in reply:

    (a) Te Mata Law on behalf of Wai 1501/Wai 2612 and Wai 1857 claims (Wai 3400, #3.3.74 & #3.3.74(a));

(b) Bryce Lyall on behalf of Wai 1092, Wai 1758, Wai 1787, Wai 2603, Wai 2658, Wai 3375, Wai 3398 and two interested parties (Wai 3400, #3.3.75);

(c) Dixon & Co on behalf of Wai 745 and Wai 2764 (Wai 3400, #3.3.76);

(d) Ara Moana Law on behalf of Wai 2581 and Wai 3779 (Wai 3400, #3.3.77); and

(e) Corban Revell on behalf of Wai 3380 (Wai 3400, #3.3.78).

17. I direct any further claimant or interested parties who wish to file submissions in reply to do so by **5pm, Tuesday 20 May 2025**.

The Registrar is to send a copy of this memorandum-directions to counsel for the applicant, Crown counsel and those on the notification list for the Wai 3400, Marine and Coastal Area (Takutai Moana) Act Coalition Changes Urgent Inquiry.

DATED at Whangārei this 15th day of May 2025

Judge M P Armstrong
Presiding Officer
WAITANGI TRIBUNAL