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

BEFORE THE WAITANGI TRIBUNAL **WAI 3564**

IN THE MATTER OF	**the Treaty of Waitangi Act 1975**
AND	
IN THE MATTER OF	**an application for an urgent hearing by Larz Ngawaka on behalf of the Māori Fintech Consortium**

CROWN RESPONSE TO APPLICATION FOR URGENCY

7 Mei| May 2026

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MAY IT PLEASE THE TRIBUNAL:

Introduction

1. The Tribunal has directed that the Crown respond to the application for an urgent hearing of Wai 3564, a claim by Larz Ngawaka on behalf of the Māori Fintech Consortium.[1]

2. For the reasons given below, the Crown opposes the application for urgency.

Tribunal's urgency criteria

3. The three key criteria the Tribunal considers in determining whether to grant an urgency application are whether:[2]

    3.1 the claimants can demonstrate that they are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions or policies;

    3.2 there is no alternative remedy that, in the circumstances, it would be reasonable for the claimant to exercise; and

    3.3 the claimants are ready to proceed urgently to a hearing, generally without the need for further research to be filed.

4. Other factors that the Tribunal may consider include whether:

    4.1 the claim challenges important current or pending Crown actions, omissions, or policies;

    4.2 an injunction has been issued by the courts on the basis that the claimant has submitted to the Tribunal the claim or claims for which urgency has been sought; and

    4.3 any other grounds justifying urgency have been made out.

The claim and grounds for urgency asserted

5. In summary, the claimant submits that Te Pūtea Matua, the Reserve Bank of New Zealand, is in breach of obligations under te Tiriti o Waitangi in its

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1 Wai 3564, #2.5.1.

2 *Guide to the Practice and Procedure of the Waitangi Tribunal*, August 2023, at [3.28].

development of the digital currency framework.[3] He contends that the grounds for urgency are made out because:

5.1 there has been an absence of Māori governance participation in the Reserve Bank's process, which absence will have irreversible consequences.

5.2 before filing his application, he pursued – over a two-month period – every reasonable avenue of constructive engagement with the Reserve Bank; and

5.3 he is ready to proceed urgently to a hearing.

The Crown's position

6. Mr Ngawaka's claim concerns acts or omissions of the Reserve Bank. However, while the Reserve Bank is part of the wider apparatus of the New Zealand state sector, it is not part of the Crown: in terms of its operations it acts independently from the Crown and is not an agent of the Crown. Mr Ngawaka's claim does not, therefore, engage the Tribunal's jurisdiction, which is concerned with acts of omissions of the Crown.[4] The "Crown" in that sense "denotes the executive government acting through Ministers and departments".[5]

7. The Reserve Bank's independence from the Crown is confirmed by several provisions in the Bank's governing statute, the Reserve Bank of New Zealand Act 2021 (**Act**).

7.1 Section 12 states that the Bank is a body corporate and is "a legal entity separate from … the Crown".

7.2 Section 171, in Part 4 of the Act, which deals with the operation of the Reserve Bank, safeguards the Bank's independence. It provides that the Act:

> does not authorise a Minister to direct the Bank, or a member, an employee, or an office holder of the Bank, to

[3] Wai 3564, #1.1.1 section 2.

[4] Treaty of Waitangi Act s 6(1)(c)-(d). The Tribunal may also inquire into claims that Māori are prejudicially affected by legislative instruments – see s 6(1)(a)-(b) – but the claim does not raise such issues.

[5] "Decision of the Panel Concerning the Urgent Application", Wai 3561, #2.5.4 at [22].

> require the performance or non-performance of a particular act, or the bringing about of a particular result, in respect of a particular person or persons.

7.3 A similar provision is found in Part 5 of the Act dealing with financial and accountability matters.[6]

8. It is acknowledged that the Reserve Bank does not work in isolation and that the Minister responsible for the administration of the Act oversees and manages the Crown's interests in, and relationship with, the Bank.[7] This means the Minister has a number of powers in relation to the Bank.[8] However, these powers do not affect the Bank's fundamental independence from the Crown as an institution and in terms of its operations.

9. The Reserve Bank's legal status, however, is not something the Tribunal needs to resolve for the purpose of determining the application for urgency. It is clear from the submissions and evidence the Reserve Bank has filed in response to the application for urgency that the grounds for urgency are not satisfied in this case. In particular:

9.1 the project to investigate digital cash is currently dormant and no further work on it for the time being is planned;

9.2 the Reserve Bank has undertaken the project on its own initiative and without the involvement of the executive government, including The Treasury;

9.3 the Reserve Bank has in fact engaged Māori interests in the course of its digital cash project (although not specifically with Mr Ngawaka or the consortium he represents); and

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6 Reserve Bank of New Zealand Act 2021, s 207, which provides:

> This subpart does not authorise the Minister to require the performance or non-performance of a particular act by the Bank, the Governor, or any employee or office holder of the Bank, or the bringing about of a particular result, in respect of a particular person.

7 Reserve Bank of New Zealand Act 2021, s 22.

8 These powers are summarised in s 22 of the Reserve Bank of New Zealand Act 2021.

9.4 since receiving notice of Mr Ngawaka's claim, Reserve Bank officials have been in contact with him to discuss how he can be involved in the digital cash project, if it continues.

10. These circumstances count strongly against an urgent inquiry in this case.

Conclusion

11. It is well-established that the Tribunal will grant an urgent hearing only in exceptional cases that warrant the diversion of the Tribunal's resources from the Tribunal's other inquiries and priorities.[9] It is clear that this is not such a case. The Reserve Bank's digital cash project has in fact had input from Māori interests. But the project is now on hold. There will be an opportunity for Mr Ngawaka to have input into the development of a digital cash policy, if the project continues at some point in the future. In these circumstances, no imminent and irreversible prejudice arises, either to Mr Ngawaka or to Māori more generally. More fundamentally, the acts or omissions at the centre of Mr Ngawaka's claim are not ones of the Crown and are outside the Tribunal's jurisdiction.

7 Mei| May 2026

Geoffrey Melvin
Counsel for the Crown

TO: The Registrar, Waitangi Tribunal

AND TO: Claimant Counsel

[9] *Guide to the Practice and Procedure of the Waitangi Tribunal*, August 2023, at [3.27].