OFFICIAL

TE TUKANGA TAIHORO

(AN EXPEDITED URGENT INQUIRY PROCESS)

A Practice Note Issued under Clause 5(9) and (10) of Schedule 2 to the Treaty of Waitangi Act 1975

August 2025

Introduction

1. This practice note solely concerns applications for urgency. It is issued pursuant to clause 5(9) and (10) of Schedule 2 of the Treaty of Waitangi Act 1975. The purpose of this practice note is to outline a new and standardised procedure for the management of urgencies. The intention is to trial this revised process for 12 months from the date of this practice note, following which the urgency process will be evaluated as to its effectiveness in expediting the determination of applications for urgency and the hearing of urgent inquiries.

Background

2. In preparing this practice note, the Tribunal has had regard to the report in March 2025 of the Independent Strategic Direction Review Group who, after significant consultation with stakeholders, recommended a fast-track urgency process. It has also been the subject of consultation with presiding officers, members, the Tribunal's Governance Group and staff.

3. This practice note replaces those paragraphs in the Waitangi Tribunal's *Guide to Practice and Procedure* (2023, pp 12-15) concerning urgent inquiries. It does not affect the content of that *Guide* relating to urgent remedy inquiries. There are no changes to the procedure regarding urgent remedy inquiries.

Who May Bring Applications for an Urgent Inquiry

4. Claimants may apply to the Tribunal for an urgent inquiry into a claim or a group of claims, or into an aspect of a claim or a group of claims.

Impact on Work Programme

5. In deciding whether to grant urgent consideration to a claim or claims, the Tribunal must have regard to its work programme as set out in its *Strategic Direction 2025-2035* and the effective and efficient deployment of its resources to research, hear, and report on all the claims before it. As any urgent inquiry will inevitably delay active inquiries already in train, the claims of those seeking urgency must be balanced against the numerous claims involved in active inquiries and those in preparation. Deferral of an existing inquiry may be the practical effect of a decision to grant an urgent hearing. The Tribunal will, therefore, only grant an urgent inquiry in exceptional cases, and only once it is satisfied that adequate grounds for urgency have been made out.

Criteria for Urgency

6. In deciding an urgency application, the Tribunal has regard to several factors. Of particular importance is whether the claimants can demonstrate:

   (a) that they are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions, omissions or policies; and

   (b) that there is no alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise; and

   (c) that they are ready to proceed urgently to a hearing or (if appropriate) decision on the papers, without the need of further research/evidence to be filed.

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

   (a) the claim or claims challenge an important current or pending Crown actions, omissions, or policies;

(b) an injunction has been issued by the courts on the basis that the claimants have submitted to the Tribunal the claim or claims for which urgency has been sought; and

(c) any other grounds justifying urgency have been made out.

Investigation

8. Prior to making its determination on an urgency application, the Tribunal may consider whether the parties or the issues should be subject to an investigation and report under clause 5A of Schedule 2 to the Treaty of Waitangi Act 1975.

Mediation

9. Before making its determination on an urgency application, the Tribunal may consider whether the parties or the issues or both are amenable to alternative resolution methods, such as informal facilitated hui or formal mediation under clause 9A of Schedule 2 to the Treaty of Waitangi Act 1975.

Content of Applications

10. An application seeking urgent Tribunal consideration is to be filed with the Registrar and a copy served on the Crown (where the Crown is not the applicant).[1] A suggested template is available on the Tribunal website. An application should be no longer than 5 pages (A4, double spaced, numbered paragraphs, Times font, size 12) and must set out the following information:

    (a) the specific reasons why an urgent inquiry or urgent remedies hearing is sought, taking into account the criteria listed above.

    (b) whether the application relates to a claim or a group of claims in their entirety or whether it relates to an aspect/s of a claim or of a group of claims, or aspects of claims that are wider in nature but include the matter for which urgency is sought.

    (c) whether the claimants are ready to be heard.

    (d) whether any parties may be affected other than the Crown, and whether the application has been notified to them.

    (e) any other information that is relevant to the application.

11. The application should follow the process set out at paragraph [5.7] of the *Guide to the Practice and Procedure of the Waitangi Tribunal* (2023).

Evidence and Submissions

12. Where appropriate, applications should be filed with supporting affidavit(s),[2] in relation to the relevant criteria for urgent applications outlined above.[3] There is a 20-page limit (A4, numbered paragraphs, 1.5 spaced lines, Times New Roman font, size 12). Attachments may be longer as required, noting that these must be relevant.

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[1] The address for service on the Crown is: Treaty Team, Crown Law Office, PO Box 2858, Wellington 6140; email: treaty.teams@crownlaw.govt.nz.

[2] Supporting affidavits are a means to put factual evidence before the Tribunal, not opinions or submissions.

[3] As this is an interlocutory application usually heard on the papers, briefs of evidence will generally be inappropriate and counsel representing claimants should file sworn affidavits.

Managing the Application

13. Upon receipt of an application, the Chairperson or Deputy Chairperson will manage the resulting process:[4]

    - the Chairperson or Deputy Chairperson may determine the application, or the Chairperson may delegate consideration of the application to a Tribunal member or to a Tribunal panel.[5]

    - if a member is delegated an urgency application for consideration, they must meet the requirements to be a Presiding Officer under the Act.[6]

    - in some cases, the Chairperson, Deputy Chairperson, Tribunal member or Tribunal panel may seek further information from applicants before proceeding.

Crown Response

- the Chairperson, Deputy Chairperson, Tribunal member or Tribunal panel determining the application will seek a response from the Crown, relevant claimants, and any other party that may be affected by the application.

- the Crown or any other claimants' or parties' evidence should be filed in affidavit form with accompanying legal submissions. There is a 20-page limit (A4, numbered paragraphs, 1.5 spaced lines, Times New Roman font, size 12) for each affidavit and for legal submissions. Attachments may be longer as required.

Applicant Replies

- The applicant will then have an opportunity to file a reply to submissions and affidavits filed by the Crown. There is a 20-page limit (A4, numbered paragraphs, 1.5 spaced lines, Times New Roman font, size 12) for each affidavit and for legal submissions.

No Delays

14. The expectation is that timetables will be adhered to, otherwise the application may be declined if the delay is caused by the applicant or granted if the delay is due to a tardy response from the Crown or other parties.

Decision on Urgency

15. The Tribunal will determine the application after receiving all submissions and evidence, (except where undue delay occurs as indicated above in paragraph 14). In order to be able to conduct an urgent inquiry within available or reasonable timeframes, the Tribunal may narrow or more closely define what matters, issues, and claims will be the subject of an urgent inquiry. No hearings will be held to determine applications for urgency, unless directed by the Chairperson, Deputy Chairperson, delegated Tribunal member or Tribunal panel constituted to determine the application.

Urgent Inquiry

16. Granting urgency means that the Tribunal intends to report on the claim(s) as quickly as possible. Accordingly, the Tribunal will expect the parties, to constructively engage in a

[4] Generally, the determination of urgency applications is delegated to the Deputy Chairperson.

[5] Noting *Baker v Waitangi Tribunal* [2014] NZHC 1177 at [37] and the Treaty of Waitangi Act 1975, sch 2 cl 8(2).

[6] Treaty of Waitangi Act 1975, sch 2 cl 5(2).

timely manner. The parties who have sought urgency are expected to be ready and able to do all that is reasonably possible to promote the rapid inquiry into, and reporting of, an urgent claim. The Crown, as a Treaty partner, is expected to engage in a constructive way to facilitate the conduct of the inquiry, including by way of prompt and proactive release of information that will assist the inquiry.

17. The Tribunal conducting the urgent inquiry may issue a range of procedural directions.[7] These may include:

- timetables for the filing of all evidence and synopses (subject to the same format limitations as for the application);
- the form of notice to interested or affected parties other than the Crown; and
- directions for targeted disclosure of documents.

Urgent Hearings

18. Where a hearing is directed, whether online or in person, it will last no longer than 1-2 days unless directed otherwise by the Tribunal. Its main purpose would be for claimants and the Crown to speak to the critical issues and answer questions from the Tribunal, and for the Tribunal to put key questions to witnesses. During the hearing, all affidavits and briefs of evidence and legal submissions filed before the hearing are to be taken as read. The Tribunal will indicate in advance of the hearing those witnesses it wishes to put questions to. Cross- examination will only be permitted with advance notice and by leave of the Tribunal.

Synopsis of Argument

19. Prior to an urgent hearing, all parties must file a synopsis of argument.

Applicant, claimants & interested parties

- The applicant, any other claimants and interested parties must file to the Tribunal and serve on all parties a synopsis of argument (a synopsis) by a date directed by the Tribunal.
- The applicant's synopsis must—

(a) identify the precise issues involved in the urgency application and the outcomes sought;

(b) include a chronology of the material facts;

(c) outline the applicant's principal submissions;

(d) be accompanied by or have annexed to it—

(i) an indexed and paginated set of relevant documents; and

(ii) a list of authorities.

- The applicant's synopsis must not exceed 10 pages.

[7] In line with clauses 5(9) and 8(2) of Schedule 2 of the Treaty of Waitangi Act 1975.

Crown

- The Crown must file and serve a synopsis of their response on all parties by a date directed by the Tribunal.

- The Crown's synopsis must—

  (a) identify any material facts that are not referred to in the applicant's synopsis;

  (b) respond to the claimant/s statement of issues and state any facts that are disputed;

  (c) outline the Crown's principal submissions;

  (d) be accompanied by or have annexed to it—

    (i) an indexed and paginated set of any relevant documents not included in the applicant's synopsis; and

    (ii) a list of any authorities not included in the applicant's synopsis.

- the Crown's synopsis must not exceed 10 pages.

20. Whether there will be an opportunity to file reply evidence and submissions (whether opening or closing) will be determined by the Tribunal.

Tribunal Report

21. Just as the hearing of an urgent claim is influenced by the need for speed, so too is the style of a Tribunal report on such a claim. Generally, a report on an urgent claim will be more summary in its content than a report on a non-urgent claim. Therefore, a report should:

    - focus on the outcome of the Tribunal's inquiry, its findings, recommendations, and the key reasons for both;

    - identify whether the Tribunal has recently opined on the issues, policy, legislation or omission in question, although in another context; and

    - be produced within 1-2 calendar months of receiving all evidence and legal submissions or from the date of any hearing.

22. To further ensure timely reporting on claims granted urgency, the Tribunal will release reports in English as soon as it is practicable to do so. Te Reo Māori translations of reports, where these are needed, will be released subsequently.

Withdrawal of an Application for Urgency

23. The applicant may withdraw their application, at any time until the release of the Tribunal's decision on whether to grant the application urgency. The applicant should inform the Tribunal in writing, via the Registrar, of their wish to withdraw the application and clarify whether they also wish to withdraw the relevant claim or only that part relating to their urgency application, or simply not proceed urgently.

Presiding Officers and Members

24. The Chairperson will nominate and maintain a pool of judges and Tribunal members who will be available to assist in hearing claims under urgency. This pool may be adjusted from time to time dependent on availability.

DATED at Wellington this 22nd day of August 2025

Chief Judge Dr C L Fox
Chairperson
WAITANGI TRIBUNAL