TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Wai 682

E PĀ ANA KI
CONCERNING

te Treaty of Waitangi Act 1975

Ā,
AND

an application for an urgent inquiry by the Ngāti Hine Lands Forests and Resources claim

---

HE WHAKATAUNGA MŌ TE TONO KIA TAIHOROTIA TĒTAHI RUKU TĀTARI

DECISION ON APPLICATION FOR URGENT INQUIRY

14 Hepetema 2026

Hei tīmatanga kōrero / Introduction

1. This decision determines the application filed on behalf of the Ngāti Hine Lands, Forests and Resources (Wai 682) claim seeking an urgent inquiry (Wai 682, #2.141).

2. The application concerns the Crown's decision not to transfer existing Mana Whakahono ā Rohe agreements into the replacement resource management legislation. The applicants submit that this is a nationally significant issue that will cause prejudice to Māori throughout the country. They argue that the Crown's decision will terminate their Mana Whakahono ā Rohe agreements with local authorities and will narrow the scope of any future agreements or discussions.

3. For the reasons that follow, we have no jurisdiction to conduct an urgent inquiry into this issue and the application is **declined.**

Whakataunga horopaki / Background

4. Sections 58L to 58U of the Resource Management Act 1991 (RMA) provide for Mana Whakahono ā Rohe agreements, also known as Iwi Participation Arrangements (MWAR). The purpose of a MWAR is to provide a mechanism for iwi authorities and local authorities to discuss, agree and record ways in which tangata whenua, through their iwi authorities, may participate in resource management and decision-making processes under the RMA.[1]

5. On 8 December 2025, the Natural Environment Bill and Planning Bill (the Bills) were introduced before the House of Representatives. The Bills seek to replace the resource management system under the RMA. At the time of introduction, the Bills provided that the MWAR that existed, or had been initiated, prior to the Bills being enacted, would transfer into the new resource management system. However, there would be no provision for new ones.

6. On 16 December 2025, the Bills entered the Select Committee stage. On 20 July 2026, the Environment Committee reported back to the House retaining the transitional protection for MWAR.

7. On 20 July 2026, the Government released a Beehive Pānui announcing that Cabinet had reconsidered this and will no longer transfer initiated or existing MWAR into the new resource management system.[2]

Ko te hātepe ture o te tono nei / Procedural history

8. On 24 July 2026, the Tribunal received the application seeking an urgent inquiry, and a number of supporting documents, filed by Dr Season-Mary Downs and Majka Cherrington on behalf of the Wai 682 claim (Wai 682, #2.141, #1.1(ao), #1.1(ao)(i), #A17, #A18, #A19, #A19(a), #2.158).

9. On 24 July 2026, the Deputy Chairperson Judge Sarah Reeves directed the Crown and any interested parties to respond to the application by no later than midday on 7 August 2026, and the applicants to file submissions in reply to those of the Crown and interested parties by no later than midday on 21 August 2026 (Wai 682, #2.142).

10. In addition, the Deputy Chairperson directed the Crown to file its legislative programme so the Tribunal can be informed as to when the legislation giving effect to the new resource

---

1 Resource Management Act 1991, s 58M.

2 Chris Bishop "Better planning for growth and environment" (press release, 20 July 2026).

management system leading to the termination of MWAR is likely to be introduced. This was to be filed alongside the Crown's submissions due by midday on 7 August 2026.

11. On 27 July 2026, the Tribunal received a memorandum from counsel for the applicants. The applicants raised timetabling concerns for filing the Crown's legislative programme and sought an urgent judicial conference to confirm the anticipated legislative timetable and consider whether timetabling or other case management directions are required to preserve the Tribunal's ability to hear and determine the claim in a timely and effective manner. Counsel also sought for the Crown to be directed to immediately provide the Cabinet Paper and Minute relating to the decision not to transfer existing or initiated MWAR into the new resource management system (Wai 682, #2.156).

12. On 27 July 2026, via email from the Registrar, the Deputy Chairperson directed Crown counsel to file, at their earliest convenience, any further information that may arise regarding the legislative programme and when the legislation giving effect to the new resource management system leading to the termination of the MWAR is likely to be introduced.

13. On 6 August 2026, the Chairperson appointed Judge Armstrong, as Presiding Officer, and Professor Tafaoimalo Tologata Leilani Tuala-Warren and Juliet Tainui-Hernandez, as members of the Tribunal panel, to determine the urgent application (Wai 682, #2.144).

14. Between 31 July and 17 August 2026, the Tribunal received 14 interested party requests. By emails from the Registrar on 7 August, 18 August 2026, and 24 August 2026, parties were informed that these requests were granted, with reasons to follow.

15. On 7 August 2026, the Tribunal received submissions from the Crown responding to the application (Wai 682, #2.151). Filed alongside the memorandum was the relevant Cabinet minute requested by the applicants (Wai 682, #2.151(a)).

16. On 14 August 2026, the Tribunal received a joint memorandum of counsel from Tamaki Legal, Te Mata Law and Mahony Horner, who represent a number of interested parties. Counsel sought leave to file reply submissions in response to the Crown by midday on 21 August 2026. (Wai 682, #2.141).

17. On 18 August 2026, via email from the Registrar, the Presiding Officer declined that request to file reply submissions, with reasons to follow.

18. On 20 August 2026, the Crown filed a memorandum confirming that amendment papers had been lodged in the House incorporating into the Bills the Crown's decision not to transfer MWAR into the new regime (Wai 682, #2.161).

19. On 21 August 2026, counsel for the applicants filed a memorandum seeking an extension for the filing of reply submissions by midday on 25 August 2026, in order to review the amendment papers and prepare updated submissions in response to the Crown (Wai 682, #2.162). This request was granted via email from the Registrar on 24 August 2026.

20. On 25 August 2026, counsel for the applicants filed reply submissions (Wai 682, #2.163).

21. On 26 August 2026, counsel for the Crown filed a memorandum addressing the applicants reply submissions from 25 August 2026 (Wai 682, #2.166).

22. On 3 September 2026, counsel for the applicants filed a memorandum responding to the Crown's memorandum from 26 August 2026 (Wai 682, #2.167).

Ngā kēreme me ngā tono ruku tātari ohotata / The claim and application for urgent inquiry

23. The applicants submit significant and irreversible prejudice arises from the Crown's decision and decision-making process regarding the MWAR, particularly (Wai 682, #1.1(ao)):

    (a) the further reduction of Māori Tiriti rights and inability to give effect to treaty guarantees in terms of tino rangatiratanga and partnership;

    (b) the immediate and ongoing damage to the treaty relationship between Māori and the Crown requiring restoration and resolution;

    (c) the loss of the statutory status of MWAR and the specific procedural rights and commitments that depend on it;

    (d) the additional resource burden of responding to these matters of urgency with already stretched and under-resourced capacity;

    (e) the emotional stress and impact to Ngāti Hine and iwi Māori arising from the proposed legislative changes; and

    (f) the harm that may be caused to the taiao after removing Ngāti Hine's ability to influence resource management in the rohe of Ngāti Hine.

24. The applicants also maintain there is no alternative remedy, as Ngāti Hine no longer has access to the ordinary select committee process, the practical opportunity for the Tribunal to recommend preservation of the existing statutory position will be substantially diminished once the legislation is enacted, and a future iwi participation agreement is not presently an adequate alternative. An urgent Tribunal inquiry is the only remedy available to the applicants.

25. Lastly, the applicants submit they are ready to proceed to hearing and respectfully seek a timely inquiry and reporting while the issues are live.

Ngā tāpaetanga tāpiri / Further submissions received

26. Between 31 July 2026 and 17 August 2026, the following groups seeking interested party status also filed submissions in support of the application seeking an urgent inquiry:

    (a) Te Mata Law on behalf of the Fast-track Approvals Act (Kepa) (Wai 3481) claim (Wai 682, #2.143);

    (b) Kaupare Law on behalf of Ngāti Rēhia Hapū (Wai 1341) claim (Wai 682, #2.145);

    (c) Tamaki Legal on behalf of the Land Alienation and Wards of the State (Harris) (Wai 1531), Waimiha River Eel Fisheries (King Country) (Wai 762), the Disability and Rehabilitation Support Services (Kingi) (Wai 2894), Ngāti Pakahi (Aldridge) (Wai 2377), Tutamoe Pa (Wai 1968), Tahawai (Aldridge) (Wai 2382), Ngāti Rangi Trust Mandate Strategy (Wai 2838) and Te Whanau-a-Koiauruterangi (Wai 1862) claims (Wai 682, #2.146);

    (d) Dixon & Co Lawyers on behalf of Patuharekeke Hapū Lands and Resources (Wai 745) claim (Wai 682, #2.147);

    (e) Loader Legal on behalf of Puhi Ariki Rita Beckmannflay (Wai 682, #2.148);

(f) Whāia Legal on behalf of Pou Taiao for the National Iwi Chairs Forum (Wai 682, #2.149);

(g) Whāia Legal on behalf of Te Whakakitenga o Waikato Incorporated (Te Whakakitenga) (Wai 682, #2.150);

(h) Whāia Legal on behalf of Ngāti Tūrangitukua Charitable Trust (Ngāti Tūrangitukua) (Wai 682, #2.164);

(i) Mahony Horner on behalf of the Whangaroa Lands and Fisheries (Wai 58), Larry Parr on behalf of Ngāti Hikitanga (Wai 113J), Ngā Hapū o Himatangi (Wai 1618), and the Muriwhenua Hapū Collective (Wai 1662) claims (Wai 682, #2.152);

(j) Bennion Law on behalf of the Muaūpoko Lands and Resources (Greenland) (Wai 2139) claim (Wai 682, #2.153);

(k) McCaw Lewis on behalf of the Trustees of the Rangitāne Tū Mai Rā Trust (the Trust) (Wai 682, #2.154);

(l) Mahony Horner on behalf of the Baker Whānau Land Alienation (Wai 1628) claim (Wai 682, #2.155);

(m) Te Nahu Legal on behalf of the Ngā Hapū o Kererū (Wai 1944) claim (Wai 682, #2.159); and

(n) Te Nahu Legal on behalf of Natural Resources and Environmental Management (Ngāti Whakatere) (Wai 3539) claim (Wai 682, #2.160).

Ngā tāpaetanga a te Karauna / Crown's submissions

27. In the Crown's submission dated 7 August 2026, the Crown opposes the application for an urgent inquiry. At that time, the amendment papers had not been lodged to incorporate into the Bills the Crown's decision not to transfer MWAR into the new regime.

28. The Crown submits that any practical inquiry would exceed the limits of the Tribunal's jurisdiction, and would otherwise breach parliamentary privilege. The Crown submits that the appropriate time for an inquiry is after the Bills are enacted.

Inquiry would breach the Tribunal's jurisdiction

29. The Crown submits that pursuant to s 6(6) of the Treaty of Waitangi Act 1975 (the Act), the Tribunal does not have jurisdiction to inquire into this claim because the Crown proposal not to transfer MWAR and the Bills are so inextricably intertwined, that the Tribunal could not inquire into the Proposal without also analysing the Bills.

30. The Crown notes that the Tribunal has previously commented that there "may be occasions where it is possible to sever from a claim from those issues which are before the House"[3]. However, the Crown submits that this urgency application is "so inextricably intertwined that to sever them without running contrary to s 6(6) would be impossible"[4].

31. The Crown submits that the implications of the Crown's proposal would require the Tribunal to turn its mind to the policy decisions behind the reform of the resource

[3] Wai 2560, #2.5.2 at [15].
[4] Wai 2560, #2.5.2 at [16].

management system and to consider any other proposed arrangements that provide for iwi participation and engagement within that proposed system.

32. Further, the Crown submits that there is no sensible or practical way the Crown's proposal can be severed from the Bills currently before Parliament. The Crown submits that severing those issues for inquiry would artificially divorce it from the Bills and system under reform within which the Crown's proposal is intended to operate.

Parliamentary privilege and comity call for restraint in these circumstances

33. The Crown submits that s 6(6) reflects parliamentary privilege, and that the Tribunal is also subject to art 9 of the Bill of Rights Act 1988 and the Parliament Act 2025 which prohibit proceedings in Parliament being called into question in any place out of Parliament.

34. The Crown notes that in *Te Rūnanga o Ngāi Tahu v Minister of Conservation*, the High Court held that parliamentary privilege attaches to legislation still in its draft form and not yet introduced to Parliament and reaffirmed that privilege and comity likely apply from the time a proposal to legislate crystallises.[5]

35. The Crown acknowledges the differences between the Tribunal's jurisdiction and that of the High Court. In particular, the Tribunal's usual practice has been to maintain its jurisdiction to inquire into proposed policy until a Bill is introduced to the House. However, in the circumstances, the Crown submits that given the proximity to Parliament's processes, restraint in the terms described by the High Court is appropriate and necessary.

Practical considerations

36. The Crown submits that even if the Tribunal considered it could inquire into the Crown's proposal separate from the Bills and even if it considered the proposal could be separated from the legislative process before the amendments are lodged with the Clerk, any inquiry at this juncture would be impractical given the amendment papers will shortly be lodged and then fall squarely within the intent of s 6(6).

37. The Crown submits that as the new system for resource management is encompassed by the Bills, it will be a matter of great care for the Tribunal and parties to avoid steps, evidence, or comment which cast a shadow over the Bills.

38. Further, the Crown submits that the Tribunal could not consider the amendment papers when they are available due to the protections of parliamentary privilege.

39. The Crown also submits that the appropriate time for an inquiry would be after the Bills have been enacted, by which time the barriers to the Tribunal's ability to inquire will have fallen away.

Ngā tāpaetanga whakahoki o ngā kaitono / Applicant submissions in reply

40. On 25 August 2026, the Tribunal received the applicants' reply submissions. By this time, the amendment papers had been lodged that incorporate into the Bills the Crown's decision not to transfer MWAR into the new regime.

41. Counsel submit that the need for urgency has not dissipated. The relevant Cabinet minute and amendment papers reinforce the need for urgency where they confirm the extent of the Crown's decision-making and the prejudice Māori stand to suffer if and when the

[5] *Te Rūnanga o Ngāi Tahu v Minister of Conservation* [2026] NZHC 722 at [36].

Crown's decision regarding MWAR is enacted. Further, counsel submit that the grounds for urgency set out in the applicants' claim and application for the urgency continue to apply.

42. Counsel submit that the Crown's legislative process for the Crown's decision is a further point of prejudice for Ngāti Hine and speaks to the breakdown in the Tiriti partnership, as counsel note:

    (a) the Crown progressed the Bills through its legislative process on the basis that existing or initiated MWAR would not be impacted;

    (b) the Crown departed from the Environment Select Committee's recommendation to retain MWAR within the new system, without procedural justification;

    (c) the Crown decided and announced its proposal regarding the MWAR without any prior discussion or notice to Ngāti Hine and other parties to an existing or initiated MWAR; and

    (d) despite being notified of this claim and a potential urgent Tribunal inquiry, the Crown lodged the amendment papers with the House removing the jurisdiction of the Tribunal to inquire into the claim.

43. Counsel submit there is utility in the Tribunal issuing an urgent report on the Crown's decision regarding the MWAR, as an urgent report will:

    (a) ensure the Crown has the Tribunal's findings and recommendations on the Tiriti implications of the Crown's decision on the MWAR as soon as possible;

    (b) inform other legislative reforms being progressed by the Crown, for example in proposed local government reforms; and

    (c) be invaluable in the present circumstances where an election is imminent and there is potential for a change in the Crown's policy direction.

44. Counsel submit that the Crown can refer the relevant amendment papers and the Bills to the Tribunal in good faith under ss 6(6) and 8 of the Act. Such a referral, they submit, would be consistent with the Crown's Tiriti obligations, particularly given that the MWAR proposal was not considered through the Select Committee process. Further, counsel submit that this would also enable the Tribunal to inquire into the proposal now, at a time when its findings may still inform the legislative process and can minimise the prejudice to Māori and the Māori-Crown relationship.

45. Counsel suggest the Tribunal direct the Crown to advise whether it would refer the amendment papers and/or the Bills to the Tribunal in these circumstances. In the event that the Crown does not refer this matter to the Tribunal, counsel seek an urgent inquiry once the Bills are enacted.

Ngā tāpaetanga tāpiri a te Karauna / Further submissions from the Crown

46. On 26 August 2026, the Tribunal received a subsequent memorandum of counsel for the Crown in response to the reply submissions filed by the counsel for the applicants on 25 August 2026 (Wai 682, #2.166).

47. In response to the applicants raising that the Crown did not address the claim itself in its submissions of 7 August 2026, the Crown maintains their submissions that the Tribunal has no jurisdiction to grant urgency at this point in time. The Crown submits that addressing the merits of the application would require consideration of matters currently

before the House, hence the Crown not doing so, as it would also not be appropriate at this stage to look beyond the question of jurisdiction.

48. The Crown remains of the view that the lodging of the amendment papers has crystallised what was previously a proposal. If the Tribunal disagrees, the Crown submits it would be premature to grant urgency prior to the enactment of the Bills. Legislative decisions of the House and, therefore, the final details of the reformed resource management landscape cannot be assumed. Therefore, the Crown submits that this landscape will no doubt form relevant context to determining whether the high threshold for urgency is met. Further, the Crown submits that the applicants inviting the Tribunal to make decisions on the basis of the content of the Bills in anticipation of inquiring on enactment, is not only premature but inconsistent with the underlying intent of s 6(6) of the Act.

49. The Crown maintains that the urgency should be declined. In relation to the applicants requesting the Tribunal to direct the Crown to consider referral under s 8 of the Act, the Crown submits that s 8 of the Act gives Ministers of the Crown discretion to refer only proposed secondary legislation to the Tribunal for inquiry. The Crown further submits that s 8(2)(a) anticipates that a Bill may be referred to the Tribunal for inquiry only be resolution of the House (i.e. Parliament). Therefore, a direction of the nature sought would not produce the result the applicants seek.

Ngā tāpaetanga tāpiri a ngā kaitono / Further submissions from the applicants

50. On 3 September 2026, the Tribunal received a memorandum of counsel on behalf of the applicants, considering it necessary to respond to the Crown's submissions from 26 August 2026, regarding the Tribunal's jurisdiction to determine the applicants' application for urgency (Wai 682, #2.167).

51. In relation to the Crown's position that the Tribunal does not have jurisdiction, the applicants disagree. The applicants submit that the language of s 6(6) is clear that jurisdiction cannot be exercised with respect to any Bill that has been introduced into the House. However, at this stage, the applicants are not asking the Tribunal to exercise its jurisdiction in respect of the Bills. Counsel reiterate that the application asks the Tribunal to determine the procedural track upon which their claim will progress, once the Bills are enacted and s 6(6) is no longer engaged, so that the prejudice experienced by them can be addressed with urgency.

52. Counsel point to *Attorney-General v Mair*, where the Court made observations in relation to the scope and application of s 6(6) of the Act. Baragwanath J, in his minority judgment, said the following:[6]

> It is the very purpose of the Treaty of Waitangi Act to subject to the jurisdiction of the Tribunal all conduct of the Crown both as Executive and as Legislature, even including Acts of Parliament, other than what falls within the language of the s 6(6) exception.
> …
> Parliament has chosen to limit the constraint on the Tribunal's jurisdiction only to specific interference with its own processes; apart from that the Tribunal is empowered to examine all prior conduct. There is no reason to make any assumption to the contrary.
> …
> Since Parliament has authorised the Tribunal to review statutes it must a fortiori countenance review of all Legislative and Executive conduct short of the bills referred to in s 6(6).

53. Counsel therefore submit that, consistent with Baragwanath J's observations, the application for urgency can be determined having regard to the Crown's actions and omissions which predate and sit outside the Bills - that is the Crown's decision not to

6 *Attorney-General v Mair* [2009] NZCA 625, at [158], [161] & [162], per Baragwanath J.

transfer existing or initiated Mana Whakahono ā Rohe agreements into the new resource management legislation.

54. Counsel also refer to *Skerret-White v Minister for Children*, where they submit that interference is not an issue here because a determination of urgency will not impact Parliament's processes nor can it prevent Parliament from continuing its legislative process.[7] This is particularly so when urgency can be determined without considering the Bills or their contents. Therefore, counsel submit that while the Bills will be relevant to the Tribunal's consideration of the claim at the inquiry phase, if granted, that will occur after the Bills are enacted and s 6(6) is no longer engaged.

55. Therefore, the applicants submit that the Tribunal has jurisdiction to determine their application for urgency while the Bills are before the House, having regard to:

    (a) the Crown's decision itself not to transfer existing or initiated Mana Whakahono ā Rohe agreements;

    (b) the details set out in the claimant's claim, application and submissions; and

    (c) the Crown's submissions in response to the claim, should the Crown choose to make any.

56. If the Tribunal considers that it cannot determine the application while the Bills are before the House, the applicants ask the Tribunal to determine their application upon the enactment of the Bills. The applicants do not consider a renewed application for urgency to be necessary, because unless the Bills are amended to restore Mana Whakahono ā Rohe agreements, the position with respect to urgency will not change.

Ngā paearu ruku tātari ohotata / Urgency criteria

57. The Tribunal will only grant an urgent inquiry into an eligible claim in exceptional cases and only once adequate grounds for urgency have been made out. There are a range of factors for granting urgency, but the important ones include whether:

    (a) 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;

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

    (c) the claimants can demonstrate that they are ready to proceed urgently to a hearing.

58. Other factors may include whether:

    (a) the claim or claims challenge an important current or pending Crown action or policy;

    (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.

---

7 *Skerret-White v Minister for Children* [2024] NZCA 160.

59. 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 sch 2 cl 5A of the Act.

60. Last year, the Tribunal issued a new and standardised procedure for the management of urgencies*, Te Tukanga Taihoro: An Expedited Urgent Inquiry Process (2025)*, which maintains the criteria noted above, and informs any urgency process which will occur should an application be granted.[8]

61. In the present case, there is a question as to whether we have jurisdiction to inquire into this issue. We consider this first, as if we do not have jurisdiction, we may not be able to proceed any further.

Kōrerorero / Discussion

Does the Tribunal have jurisdiction to inquire into this issue?

62. Under s 6(2) of the Act, the Tribunal must inquire into every claim submitted to it under s (6)(1), unless the claim is contrary to s 6AA(1) or s 7 applies.

63. However, s 6(6) of the Act provides that:

> Nothing in this section shall confer any jurisdiction on the Tribunal **in respect of any Bill that has been introduced into the House of Representatives** unless the Bill has been referred to the Tribunal pursuant to section 8.
>
> (emphasis added)

64. When the Tribunal received the application for urgency on 24 July 2026, the Crown's decision not to transfer the MWAR agreements into the new resource management system had only been announced by pānui. The Bills, as they were originally drafted, explicitly provided for the transfer of the MWAR agreements. They did not, at the time, give effect to the termination of the MWAR agreements in the new resource management system. However, on 20 August 2026, the amendment papers were lodged that amended the Bills to give effect to the Crown's decision.

65. Amendment papers are parliamentary documents that propose amendments to a bill already before Parliament.[9] Once the amendment papers were lodged, the issues that are the subject of this application seeking an urgent inquiry formed part of Bills currently before the House. Therefore, the Tribunal's jurisdiction to conduct an urgent inquiry into this issue has been suspended per s 6(6) of the Act.

66. This finding is consistent with the approach the Tribunal has taken on other occasions where the matter at issue is part of, or has been incorporated into, a Bill before the House.[10]

67. We note that the question remained open whether we had jurisdiction to inquire into this issue before the amendment papers were lodged. The Crown argued for a broad interpretation of s 6(6) and submitted that the Tribunal's jurisdiction was suspended even

---

8 Waitangi Tribunal, *Te Tukanga Taihoro: An Expedited Urgent Inquiry Process* (2025).

9 New Zealand Parliament "Amendment Papers (previously known as SOPs)" <www.bills.parliament.nz>.

10 See Waitangi Tribunal *The Priority Report on the Whakatōhea Settlement Process* (Wai 1750, 2021) at 28–39; Waitangi Tribunal *Hautupua: Te Aka Whai Ora (Maaori Health Authority) Priority Report Part 1* (Wai 2575, 2024) at 9 and Wai 2575, #2.6.163 & #2.6.166; the Tribunal's decisions on the applications for urgency by the Rangitāne Settlement Negotiations Trust (Pattison) (Wai 2560) claim (Wai 2560, #2.5.2) and the New Zealand-India Free Trade Agreement (Taiuru) (Wai 3567) claim (Wai 3567, #2.5.2). Also see the obiter comments in *Skerret-White v Minister for Children*, above n 7, at [86].

before the amendment papers were lodged on the basis that the principles of parliamentary privilege and comity call for Tribunal restraint in those circumstances.

68. Ultimately, it is not necessary to make a decision about that. The amendment papers have now been lodged and it is clear that we no longer have jurisdiction to inquire into this issue. The question raised by the Crown should be left for the Tribunal to determine when that matter is squarely before it.

Can we still proceed to consider whether the grounds for urgency are met?

69. Counsel for the applicants argue that the Tribunal's jurisdiction to determine the application for urgency is not restricted by s 6(6) of the Act. They contend that urgency can be determined without considering the Bills or their contents. Counsel submit that:

> …the application for urgency can be determined having regard to the Crown's actions and omissions which predate and sit outside the Bills – that is the Crown's decision not to transfer existing or initiated Mana Whakahono ā Rohe agreements into the new resource management legislation.

70. It is difficult to follow this argument. Counsel appear to suggest that we should only consider the Crown's actions prior to the amendment papers being lodged. It is not clear how we can do so.

71. In order to grant urgency, we have to consider whether the claimants are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown action or policy. In order to do that here, we would have to consider the effect of the Bills as now amended by the amendment papers. Counsel for the claimants appear to suggest that we can consider the earlier Crown actions prior to the amendment papers being lodged, but somehow ignore the fact that the Crown's decision has now been incorporated into the Bills. Taking that approach requires artificially separating out the Crown's earlier actions from the reality now before us. We cannot escape the fact that determining whether the grounds for urgency are met would require considering the effect of the Bills. We cannot do so per s 6(6) of the Act.

72. Even if we could, there is no utility deciding whether the grounds for urgency are met at this time. Although the Bills are before the House, there is no guarantee that the Bills will be enacted, or at least enacted in their current form. Any changes could render any decision on urgency now nugatory. The application for urgency was also predicated, at least in part, on the imminent introduction of the Crown's decision into the Bills. If the Bills are enacted, that may be relevant to whether grounds for urgency remain.[11]

73. For these reasons, we cannot consider whether the grounds for urgency are met at this time. The question remains what should happen to this application.

74. In the urgent inquiry proceedings on the disestablishment of Te Aka Whai Ora, the Tribunal's jurisdiction to inquire into the disestablishment of Te Aka Whai Ora was suspended upon the introduction of a Bill that gave effect to the disestablishment. The Tribunal vacated its scheduled urgent hearing. However, the Tribunal observed that its jurisdiction may recommence once the Bill has passed into law and indicated that it would, upon the Bill's enactment, invite further submissions from parties on whether to reconvene the inquiry (Wai 2575, #2.6.163).

---

11 Wai 2575, #2.6.166.

75. In these proceedings, the Crown submits that the appropriate time for any inquiry would be after the Bills have been enacted, by which time the barriers to the Tribunal's ability to inquire will have fallen away.

76. Taking this into account we will take a similar approach to that adopted in the Te Aka Whai Ora proceedings. We will not at this stage determine whether the application before us meets the grounds for urgency. However, we will reconsider this and will invite further submissions from the parties if the Bills are enacted.

Should we direct the Crown to advise whether the Bills will be referred to the Tribunal?

77. Under s 8(2) of the Act, where a Bill is before the House, the proposed legislation can only be referred to the Tribunal by resolution of the House. We anticipate that Crown Counsel is receiving instructions in this proceeding from the Minister, or the Ministry, responsible for the Bills.

78. Directing the Crown to advise whether a referral will occur would be of limited practical utility. The Minister responsible cannot refer the Bills to us and could not provide a definitive answer on the outcome of any potential resolution from the House. In these circumstances, we do not consider it is reasonable, or appropriate, to issue such a direction.

Whakataunga / Decision

79. The application for urgency is **declined**.

80. As indicated at [76] above, further submissions on whether to convene an urgent inquiry will be invited if the Bills are enacted.

Me tuku atu te Kairēhita i tētahi kape o tēnei whakahau ki ērā ki te rārangi whakamōhio mō:

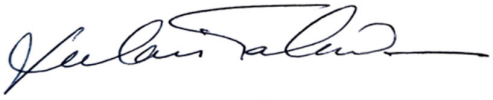
- Wai 682, the Ngāti Hine Lands, Forests and Resources claim; me
- Wai 3450, the Natural Resources and Environmental Management Kaupapa Inquiry.

The Registrar is to send a copy of this direction to all those on the distribution list for:

- *Wai 682, the Ngāti Hine Lands, Forests and Resources claim; and*
- *Wai 3450, the Natural Resources and Environmental Management Kaupapa Inquiry.*

WHAKAPŪMAUTIA ki Whangārei i te 14 o te Hepetema 2026

Kaiwhakawā Armstrong
Mana Whakahaere
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI



Professor Tafaoimalo Leilani Tuala-Warren
Mema o te Taraipiunara
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Juliet Tainui-Hernandez
Mema o te Taraipiunara
TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI