

**WAITANGI TRIBUNAL**

Wai 2358

**CONCERNING**

the Treaty of Waitangi Act 1975

**AND**the National Fresh Water and  
Geothermal Resources Inquiry**MEMORANDUM-DIRECTIONS OF THE PRESIDING OFFICER**

1. In memorandum-directions dated 6 July 2012 I notified counsel that questions for claimant witness Professor Veronica Strang should be filed in writing by midday, Tuesday 10 July 2012 (Wai 2358, #2.5.34).
2. The Tribunal also has a number of questions for Professor Strang. They are as follows:
  - a) On page 6 of your report (Wai 2358, #A69(a)), you cite Altman and Cochrane (2003) noting a 'range of implications for indigenous groups' in a situation where indigenous interests are now recognised in water, 'albeit with limited recognition of potential commercial benefits'. Altman and Cochrane suggested that 'indigenous interests in any property rights that are to be newly created should be acknowledged and a portion reserved (hypothecated) for indigenous interests'. Can you supply the Tribunal with any examples where indigenous interests have been acknowledged and provided for in this way during the creation of new water rights?
  - b) On page 8 of your report, you state: 'In post-colonial contexts where customary resources may have been transferred to colonial settlers via controversial methods, broader collective interests may extend nationally to indigenous people in general to compensate for the inability to restore them to their full entitlements.' Can you supply the Tribunal with any examples of such general compensation of an indigenous people or peoples for the inability to fully recognise or restore their water rights?
  - c) At page 7 paragraph 4 of your report you refer to privatisation radically increasing 'the difficulty of accommodating the rights and interests of indigenous communities and non – commercial water users' – can you provide any examples of that where sales of part parcels of shares have occurred leaving over 50% of the shareholding in public hands?
  - d) Do you recognise any distinction between the effects on customary rights arising from the consumptive use i.e. irrigation use, or water supplies for consumptive purposes on the one hand, and water use for power generation on the other where water is returned to the water course? If not, explain why not?
  - e) Can we have your views on the transportability of the Australian situation, in particular, the decision in the *Arnhem* case, to the New Zealand situations and environment?

3. Written answers to these questions should be filed at the same time as the answers to questions from counsel by **midday, Monday 16 July 2012.**

The Registrar is directed to send a copy of this direction to counsel for the claimants, Crown counsel and all those on the distribution list for Wai 2358, the National Fresh Water and Geothermal Resources Inquiry.

**DATED** at Wellington this 10<sup>th</sup> day of July 2012

A handwritten signature in black ink, appearing to read 'W W Isaac', with a period at the end.

Chief Judge W W Isaac  
Presiding Officer

**WAITANGI TRIBUNAL**