IN THE WAITANGI TRIBUNAL

WAI 1040
WAI 824
WAI 1385
WAI 1531
WAI 1957
WAI 1968
WAI 2000
WAI 2005
WAI 2021
WAI 2061
WAI 2063

RECEIVED
Waitangi Tribunal
19 Dec 2012
Ministry of Justice
WELLINGTON

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF Te Paparahi o Te Raki (Wai 1040)

MEMORANDUM OF COUNSEL REGARDING STATEMENT OF ISSUES FOR STAGE 2
Dated 19 December 2012

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MAY IT PLEASE THE TRIBUNAL

Introduction

1. This memorandum is filed on behalf of the following named Claimants represented by Tamaki Legal within Te Paparahi o Te Raki Inquiry:

    a. Wai 824 a claim by Marama Waddell;

    b. Wai 1385 a claim by Frank Rawiri and Bobby Newson in regards to Nga Tauira Tawhito O Hato Petera;

    c. Wai 1531 a claim by Te Enga Harris;

    d. Wai 1957 a claim by Wiremu Reihana for and on behalf of Ngati Tautahi ki Te Iringa hapu;

    e. Wai 1968 a claim by Ruben Porter;

    f. Wai 2000 a claim by Chappy Harrison and Robert Gable for and on behalf of Te Harihona Whanau;

    g. Wai 2005 a claim by Denise Egen;

    h. Wai 2021 a claim by Joseph Reihana;

    i. Wai 2061 a claim by James Te Tuhi; and

    j. Wai 2063 a claim by Jasmine Cotter-Williams.

    (the Claimants)

2. This memorandum responds to the directions of the Presiding Officer at the 17 December 2012 Judicial Conference to file any remaining submissions relating to the Judicial Conference agenda items in writing by Wednesday 19 December 2012.

3. We wish to address a limited number of specific issues that have arisen in regards to the Tribunal Statement of Issues for Stage 2 ("Stage 2 Issues").[1]

4. We also take this opportunity to confirm the oral submissions presented by Tamaki Legal counsel at the 17 December Judicial Conference regarding the Stage 2 Issues.

[1] Wai 1040, #1.4.2

Further Submissions Regarding Tribunal Statement of Issues for Stage 2

Use of the Word "Preferences" within Issue 13: Socio-economic issues and Issue 14: Te Reo Māori, Wāhi Tapu, Taonga and Tikanga

5. The word "preferences" is used within issues 13 (g), 13 (h) and 13 (k) of the Stage 2 issues. These issues currently read:

> *Issue 13: Socio-economic issues*
>
> *Social service delivery*
> *g. Did Te Raki Māori have particular **concerns or preferences** concerning social service delivery that the Crown failed or was reluctant to recognise? If so, what were these **concerns or preferences**, and to what extent has the situation changed over time?*
>
> *The justice system*
> *h. Have Te Raki Māori had particular **concerns or preferences** regarding the justice system? To what extent have these been acknowledged and addressed by the Crown?*
>
> *Education*
> *k. What obligations does the Crown have to be responsive to specific Te Raki Māori **educational preferences**? In practice, how has the Crown accommodated Te Raki Māori **educational preferences**, if at all, and with what impact?*
>
> *14: Te Reo Māori, Wāhi Tapu, Taonga and Tikanga*
>
> *Has the Crown acted in ways that have inappropriately weakened or undermined **Te Raki preferences** around tikanga, te reo, wāhi tapu and taonga?*

6. We submit that the use of the word "preferences" within the above issues is unduly restrictive.

7. We further submit that the word "preferences" within these issues should be replaced with the word "needs" or removed as follows:

> *Issue 13: Socio-economic issues*
>
> *Social service delivery*
> *g. Did Te Raki Māori have particular **concerns or needs** concerning social service delivery that the Crown failed or was reluctant to recognise? If so, what were these **concerns or needs**, and to what extent has the situation changed over time?*
>
> *The justice system*

*h. Have Te Raki Māori had particular **concerns or needs** regarding the justice system? To what extent have these been acknowledged and addressed by the Crown?*

Education
*k. What obligations does the Crown have to be responsive to specific Te Raki Māori **educational needs**? In practice, how has the Crown accommodated Te Raki Māori **educational needs**, if at all, and with what impact?*

Issue 14: Te Reo Māori, Wāhi Tapu, Taonga and Tikanga

Has the Crown acted in ways that have inappropriately weakened or undermined tikanga, te reo, wāhi tapu and taonga?

Confirmation of Oral Submissions Presented at 17 December Judicial Conference

Pre-emption Waiver Transactions

8. Issue 2: Old Land Claims, Script and Surplus Lands now addresses pre-Treaty transactions only. We note that the Crown's concessions on pre-emption waiver transactions still appear under Issue 2 at page 7 of the Stage 2 Issues.

9. Pre-emption waiver transactions are instead addressed in the Stage 2 Issues under Issue 4: Crown pre-emption and acquisition of Maori Land 1840-1865.

10. We submit that the following issues should be added to Issue 4: Crown pre-emption and acquisition of Maori Land 1840-1865:

    a. Were land claim inquiries cognisant of customary understandings of pre-emption waiver transactions?

    b. Were pre-emption waiver transactions deeds negotiated in te reo Māori? Were these deeds capable of being commonly understood by both parties?

    c. Did the land claims commissions assume that Māori consented to an absolute extinguishment of customary rights in pre-emption waiver transactions?

    d. Did the commissions inquire adequately into the nature of pre-emption waiver transactions, including their impact on groups with overlapping interests in the land transacted?

e. Did the commissions inquire adequately into the precise geographic extent of the pre-emption waiver transactions, and did Māori consent to the original surveys thereof?

f. What was the impact of pre-emption waiver transactions upon Te Raki whānau and hapū, on their traditional connections to their whenua, their tikanga, wairua, whakapapa, and on their ways of life in general?

Presentation by the Wai 824 Named Claimant Marama Waddell

11. The Tribunal was notified by counsel that the Wai 824 Named Claimant Marama Waddell was present at the Judicial Conference and wanted to address the Tribunal personally.

12. Due to the lack of time available and the time taken up by other speakers Marama Waddell was unable to make her presentation. Instead counsel and claimants were directed to file any remaining submissions in writing.

13. We are instructed by Marama Waddell to record her extreme dissatisfaction with this situation and respectfully request that she be given the opportunity to personally address the Tribunal in person at the next available opportunity.

Dated at Auckland this 19th day of December 2012.

Emma Whiley
Counsel Acting