

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Wai 3308
Wai 682
Wai 3077

E PĀ ANA KI
CONCERNING

the Treaty of Waitangi Act 1975

Ā,

te Ngāi Te Rangi Coalition
Government Urgent kereme
(Wai 3308);

ME,

te Ngāti Hine Lands, Forests
and Resources kereme (Wai
682); me

ME,

Te Reo Māori and Justice
System (Rameka) kereme (Wai
3077).

TE WHAKATAUNGA MŌ TE TONO OHOTATA**E PĀ ANA KI TE REO MĀORI**

1 Maramatoru 2024

Hei tīmatanga kōrero / Introduction

1. This decision concerns three applications for urgent hearing:
 - a) Wai 3308, the Ngāi Te Rangi Coalition Government Urgent claim lodged by Charles Tawhiao on behalf of Ngāi Te Rangi Settlement Trust, its Māori beneficiaries and the iwi of Ngāi Te Rangi (Wai 3308, #1.1.1 & #3.1.1);
 - b) Wai 682, the Ngāti Hine Lands, Forests and Resources claim lodged by Rewiti Paraone, Erima Henare, Pita Tipene and Waihoroi Shortland on behalf of Te Rūnanga o Ngāti Hine on behalf of the descendants of Torongare and Hauhaua (Wai 682, #1.1(v) & #2.37); and
 - c) Wai 3077, Te Reo Māori and Justice System (Rameka) claim lodged by Nora Rameka on behalf of Te Rūnanga o Ngāti Rēhia (Wai 3077, #1.1.1(b) & #3.1.2).
2. These applications concern current or pending Crown actions or policies relating to the proposed Treaty Principles Bill as well as policies concerning the use and status of te reo Māori in the public sector.
3. On 30 January 2024, I confirmed that those parts of the applications concerning the proposed Treaty Principles Bill would be determined by the Constitutional Inquiry panel (Wai 3308, #2.5.6).
4. This decision addresses only the parts of the above applications which concern policy in relation to te reo Māori.
5. The applicants seek an urgent hearing of their claims and findings that the Crown's actions or policies concerning te reo Māori is in breach of the principles of the Treaty and likely to prejudicially affect Māori (Wai 3308, #3.1.1 & Wai 682, #2.37 & Wai 3077, #3.1.2).

Ko te hātepe o te tono nei / Procedural history

6. On 11 December 2023, counsel for the Wai 3308 applicants, Mai Chen and Caleb Saunders, filed a statement of claim and an application for urgent hearing with supporting documents (Wai 3308, #1.1.1, #3.1.1 & #A1).
7. On 13 December 2023, I held an urgent judicial teleconference with Ms Chen and counsel for the Crown, James Watson, to better understand the scope of the application and the position of the Crown to obtain instructions and respond to the application within a short timeframe (Wai 3308, #2.8.1).
8. On 21 December 2023, counsel for Wai 682, Dr Season-Mary Downs, Chelsea Terei-Tipene and Heather Jamieson, filed an amended statement of claim and an application for an urgent hearing with supporting documents (Wai 682, #1.1(v), #2.37, #A1, #A2, #A3, #2.38 & #2.39).
9. On 3 January 2024, counsel for Wai 3077, Ihipera Peters, Aroha Herewini, Amber Evans and Te Hau Ariki Gardiner-Toi, filed an amended statement of claim and on 10 January 2024, an application for an urgent hearing with supporting documents all in te reo Māori (Wai 3077, #1.1.1(b), #3.1.2 & #A1). English translations of these documents were filed on 12 January 2024 (Wai 3077, #1.1.1(c), #3.1.2(a) & #A1(a)).
10. The Wai 3077 application for urgency was initially lodged by Kipa Munro and Nora Rameka on behalf of Te Rūnanga Nui o Ngāti Rēhia. However, on 9 February 2024, counsel for Wai 3077 filed an amended statement of claim seeking to remove Kipa Munro

as a named claimant. On 19 February 2024, this change was confirmed in memorandum-directions (Wai 3077, #3.1.9, #3.1.9(a) & #2.2.1(b)).

11. On 22 December 2023, Crown counsel, Mr Watson and Grace Seeley filed a response opposing the Wai 3308 application (Wai 3308, #3.1.6). On 17 January 2024, Mr Watson filed a response opposing both the Wai 682 and the Wai 3077 applications (Wai 682, #2.41 & Wai 3077, #3.1.3).
12. The Tribunal received the applicants' replies to the Crown on 19 January, 26 January and 1 February 2024 (Wai 3308, #3.1.20, Wai 682, #2.44 & Wai 3077, #3.1.3).
13. Between 18 December 2023 and 5 February 2024, the Tribunal received several requests to participate in the Wai 3308 urgent application as interested parties.
14. On 15 January 2024, the Tribunal received one request from Dr Rapata Wiri to participate as an interested party in the Wai 682 application for urgency.
15. Between 25 January and 29 January, the Tribunal received four requests to participate as interested parties in the Wai 3077 urgent application.
16. The parties listed in the first table of Appendix A meet the requirements set out in section 4A of the Commissions of Inquiry Act 1908 as having an interest in these proceedings apart from any interest in common with the public. These parties are subsequently granted interested party status.
17. The parties listed in the second table included in Appendix A were declined interested party status on the grounds that they had not indicated in their memoranda any specific or targeted evidence they wished to file (Wai 3308, #2.5.2).

Horopaki o ngā kereme / Background of the claims

18. On 24 November 2023, Coalition agreements were signed between the National Party, New Zealand First and the Act Party setting out the policy programmes the parties were committing to progress while in government.
19. In particular, the commitments in the Coalition Agreement between National and New Zealand First dated 24 November 2023 include:
 - (a) ensuring all public service departments have their primary name in English; and
 - (b) require public service departments and Crown entities to communicate primarily in English – except those specifically related to Māori.

Ngā tāpaetanga a te Kaitono / Applicants' submissions

Ngāi Te Rangi Coalition Government urgent application (Wai 3308) (Wai 3308, #1.1.1 & #3.1.1)

20. The applicants submit they will suffer significant and irreversible prejudice if te reo Māori, and its use, continues to be limited and/or prevented, and denigrated. The acts and omissions of the Government will undermine the progress of the last decades.
21. Since the formation of the Coalition Government, Deputy Prime Minister, the Hon Winston Peters has referred to te reo Māori names for departments as tokenism. Transport Minister, the Hon Simeon Brown has instructed his agency not to use their Māori name,

Waka Kotahi, but to refer themselves as the New Zealand Transport Agency. The agency has since confirmed it will take steps to put the new policy into effect.

22. Public Service Minister, Hon Nicola Willis, stated in the media that she will ask for advice on how to stop paying any more public servants 'bonuses' for te reo Māori proficiency.
23. The applicants submit these payments are not bonuses, but allowances for sought after skills. The use of the word bonus is pejorative and incites hostility against Māori public servants. Removing such allowances is unfair to public servants who bring those skills and proficiencies to allow public agencies to properly serve Māori. Many of those agencies assist the Crown to perform its Treaty partnership obligations.
24. The applicants submit these actions are a breach of the empowering Acts of specific departments, such as Waka Kotahi, with s 4 of the Land Transport Management Act 2003 referring to the principles of the Treaty of Waitangi and s 14(1) of the Public Service Act 2020 which outlines that the role of the public service includes supporting the Crown in its relationships with Māori under the Treaty of Waitangi.
25. The applicants submit that the Crown has breached article 2 of te Tiriti by failing to actively protect both the taonga of te reo Māori and 'te tino rangatiratanga o o ratou whenua o ratou kāinga me o ratou taonga katoa'. The Crown has acted contrary to key sections of Te Ture mō Te Reo Māori 2016 (the Māori Language Act), including ss 3(2), 5, 6(2), 8 and 9.
26. The applicants submit actions undermining te reo Māori in breach of te Tiriti are happening now, there is no alternative remedy available, and they are ready to proceed urgently to hearing.

Ngāti Hine Lands, Forests and Resources urgent application (Wai 682) (Wai 682, #1.1(v) & #2.37)

27. The applicants for Wai 682 submit they are already suffering prejudice because of the Coalition Government's plan and actions to limit and discourage the use of te reo Māori, which in effect actively belittles and devalues Ngāti Hine as a Tiriti partner and their capacity to influence decision making over matters of importance to them.
28. The applicants submit Ngāti Hine have a long history of struggle, resistance, and advocacy for the protection and maintenance of te reo Māori. Ngāti Hine say the Coalition Government's stance towards te reo Māori is a step backwards; for Māori, for te Tiriti of Waitangi, for te reo Māori.
29. The applicants submit the Crown seeks to make decisions about the place and standing of te reo Māori without input, engagement, negotiation and/or agreement from Ngāti Hine and Māori more broadly.
30. The exclusion of Ngāti Hine and Māori from decision making, and the imposition of unilateral kāwanatanga decision making and actions over the top of rangatiratanga has serious consequences for Ngāti Hine, for Māori and for te reo Māori.
31. The applicants submit the right to speak, promote and enhance te reo Māori has been something Māori have fought for and sought under its Tiriti partnership with the Crown for over a century. The seriousness of the issues justifies urgency.
32. The applicants submit there is no reasonable alternative remedy and they are ready to proceed urgently to hearing.

Te Reo Māori and Justice System (Rameka) urgent application (Wai 3077) (Wai 3077, #1.1.1(b), #1.1.1(c), #3.1.2, #3.1.2(a), #A1 & #A1(a))

33. The applicant for Wai 3077 submits that they are currently experiencing prejudice through the Coalition Agreements and other Crown actions and objectives which seek to oppress and subjugate the Māori language. They submit this is a serious violation of the authority and position of Ngāti Rēhia as a sub-tribe that has fought for many years for their identity, chieftainship and sovereignty through the Māori language, customs and knowledge.
34. The new government's position on the Māori language and te Tiriti o Waitangi threatens to take the nation backwards. The sovereignty of Ngāti Rēhia has been violated, particularly their hard work on various projects relevant to them.
35. The applicant submits the Crown persistently makes decisions on matters of importance and relevance to Ngāti Rēhia, such as the Māori language, without consultation with Ngāti Rēhia nor the wider Māori community. Ngāti Rēhia did not take part in any consultation or decision-making concerning the use and status of te reo Māori.
36. The applicant submits the current government designates English as the primary language in the public service and prioritises English names over te reo Māori names for Government departments. The applicant submits these initiatives lack consideration for the Treaty of Waitangi and its principles, particularly concerning te reo Māori.
37. The applicant submits the proposed policies and actions that purport to silence te reo Māori in the public sector, are inconsistent with both the Māori Language Act itself, and te Tiriti o Waitangi.
38. Finally, the claimants assert that their chieftainship has been violated by the Crown's plans for the Māori language. This includes their authority over all their treasures including te reo and management of matters related to those treasures and the descendants of Ngāti Rēhia.
39. The applicant submits there is no alternative remedy available and they are ready to proceed urgently to hearing.

Ngā tāpaetanga a te Karauna / Crown's submissions

Ngāi Te Rangī Coalition Government urgent application (Wai 3308) (Wai 3308, #3.1.6)

40. The Crown submit that, as recorded in the Māori Language Act, the Crown has acknowledged the detrimental effects of its past policies and practices that have failed to actively protect and promote the Māori language. The Crown submit it is well informed about its Treaty obligations in respect of te reo Māori.
41. The broader Crown strategy for the revitalisation and protection of te reo Māori is a durable and ongoing commitment, reflected in the Māori Language Act which confers substantive protections on te reo Māori, and imposes obligations on the Crown, including obligations as to consultation (for instance, the Maihi Karauna strategy).
42. The Crown submit that whilst public statements have noted the Government intended to review the range of bonuses and remuneration across the public service, including allowances for te reo Māori, no policy decisions have been made, including by Cabinet.
43. The Crown further submit that the Government has not prohibited public sector departments from using their te reo Māori names, and no policy or Cabinet decisions have been made in this regard.

44. The Coalition Agreement foreshadows a policy to the effect that public service departments should have their primary name in English, except for those departments specifically related to Māori. The Crown submits this policy would likely have a limited impact and would not meet the requirements for an urgent hearing.
45. The Crown submit that the Government's commitments are specific and limited; any further decisions or steps to be taken are as yet, unknown, let alone any detail about implementation.
46. The decisions made are part of an agreement made at a political level by political parties in the process of forming a government, following the recent General Election. Further decisions have not been taken by Cabinet, and the content of their application remain to be worked out.
47. The Crown submit the unparticularised allegations that the Government has breached enactments or other public law principles are better suited for the High Court and are not matters for the Waitangi Tribunal.

Ngāti Hine Lands, Forests and Resources claim (Wai 682) and Te Reo Māori and Justice System (Rameka) claim (Wai 3077) (Wai 3077, #3.1.3 & Wai 682, #2.41)

48. The Crown adopts and relies upon the submissions in its memorandum in response to the Wai 3308 urgent application outlined in its Wai 3308, #3.1.6 memorandum.
49. In addition to those submissions, counsel note that Te Whakakitenga o Waikato Incorporated, the representative body for Waikato-Tainui, has recently filed a statement of claim in the High Court. The claim, amongst other things, seeks declarations concerning the Crown's duties under the Māori Language Act. As representatives of Waikato-Tainui have indicated in public statements, this proceeding could be brought on urgently.
50. The Crown submit that the Tribunal has previously held that the existence of proceedings in another forum which overlap with the subject matter of a claim seeking urgency will be material to whether urgency is granted, a principle which the Crown submits, is now engaged.

Ngā tāpaetanga whakahoki o te Kaitono / Applicant's submissions in reply

Ngāi Te Rangī Coalition Government urgent application (Wai 3308) (Wai 3308, #3.1.20)

51. The applicants submit that the actions and omissions set out in paragraphs [9]-[11] and [23]-[31] of their statement of claim refute the assertion that the Crown is well informed about its Treaty obligations in respect of te reo Māori. Even if the Crown is informed through the Tribunal reports they refer to, it has consistently failed to meet its obligations to Māori in relation to te reo.
52. The applicants reject the assertion in the Crown response that although the Government has noted in public statements it intended to review the range of bonuses and remuneration levers in place across the public service, no decisions have been made by Cabinet on this point. The applicants submit this is misleading and inconsistent with statements made by the Minister of Finance and Public Service.
53. The applicants submit that statements made by Minister Willis are inconsistent with, and undermine Maihi Karauna, which specifically recognises the important role the public sector has to play in the revitalisation of the Māori language as well as the Government Workforce Policy Statement which among other things, prioritises Māori Crown relations through workforce and workplace practices.

54. The applicants also reject the assertion in the Crown response that no policy or Cabinet decisions have been made about the use of te reo Māori in public sector departments. They submit that direct instructions have been issued to departments by Ministers, including the Minister of Transport who instructed his agency not to refer to themselves using their Māori name, Waka Kotahi. They also reject the Crown's assertion that the implementation of public service departments having their primary name in English would likely have a relatively limited impact and that the impacts of any such decisions are difficult to assess.
55. Regarding the Crown's submission that the application overlaps with the proceedings brought by Waikato-Tainui in the High Court, the applicants submit the Trust is not a party to the Waikato-Tainui settlement or the High Court proceeding and the Tribunal is an expert on matters of 'te reo Māori me ōna tikanga' and breaches of Te Tiriti o Waitangi.

Ngāti Hine Lands, Forests and Resources claim (Wai 682) (Wai 682, #2.44)

56. The applicants submit the Crown has not articulated in its submissions what it considers its Treaty obligations are, from which the Tribunal can assess whether the Crown is adhering to appropriate principles and standards concerning te reo.
57. The applicants submit that the Crown's agreements and actions in relation to te reo, which seek to limit and discourage the use of te reo within Government, while promoting English as a primary language, calls in to question its understanding of relevant Tiriti principles. In any case, the applicants submit that the Treaty does not provide the Crown with the authority to independently determine its Treaty obligations and to act based on that self-assessment.
58. The applicants submit the decisions of the Coalition Government concerning te reo fails to implement a Treaty-compliant regime focused on te reo revitalisation where decisions are made without Māori, are based on favouring English, and discourage the use of te reo Māori within Government agencies. These actions directly undermine the rangatiratanga of the claimants and contradict the Crown's legislative and te Tiriti obligations concerning te reo Māori.
59. The statements made by Ministers will have the effect of minimising and subjugating te reo Māori usage and promotion in Government. The applicants submit the Government are making decisions and taking actions to curtail the use of te reo Māori in Government departments without engaging with Māori.
60. The applicants submit that for the Crown to say there are no restrictions on the use of te reo, whilst promoting policy diminishing the place and value of te reo within the public service without Māori input is misleading, disingenuous and lacks basic awareness and respect for te reo as a taonga and for Māori as the te Tiriti partner.
61. Further, the Crown's submission that the Government has not "prohibited" te reo Māori in the public service does not address the decisions and steps already taken that impact the use and status of te reo. The Minister of Transport instructed Waka Kotahi to change its name to the English name first and the Ministry of Foreign Affairs and Trade are discouraging the use of te reo by removing it from documentation.
62. The applicants reject the Crown's submission that their policies will have a relatively limited impact. The applicants submit that the impact on Māori of the policies is not something the Crown can speak to.

63. The applicants further submit that for the Crown to say the principle of overlapping proceedings is engaged by Waikato-Tainui's statement of claim in the High Court without further submissions on the matter is not sufficient.

Te Reo Māori and Justice System (Rameka) claim (Wai 3077) (Wai 3077, #3.1.8 & #3.1.8(a))

64. The Wai 3077 applicant submits the Coalition Government and its constituent parties have collectively committed to implementing and pursuing te reo Māori policies outlined in the Coalition Agreement.

65. The Crown's assertion that there are no proposed changes to existing legislative settings concerning te reo Māori within the Action Plan, are not the primary cause of concern for the applicant. Nevertheless, they submit that the Tribunal has jurisdiction to inquire into issues raised in the applicant's statement of claim, as confirmed in s 6 of the Treaty of Waitangi Act 1975.

66. In response to the Crown's submissions that it is well informed about its Treaty obligations in respect of te reo Māori, the applicant submits that the Crown did not articulate its own interpretation and understanding of its Treaty obligations in respect of te reo Māori. Additionally, the applicant submits that the Crown did not provide evidence supporting its assertions.

67. Irrespective of this, the applicant submits that the Government has not adhered to its Treaty obligations because the policies concerning te reo were not developed through engagement and consultation with the applicants and Māori.

68. Counsel submit that the Crown failings as found by the Wai 262 Tribunal are relevant to the current Government and its Coalition Agreement and are in fact the same failings. The Crown admitted past wrongs and acknowledged its responsibility under the Māori Language Act to contribute to the revitalisation of te reo Māori, however the Coalition Agreement overlooks the Māori Language Act, its principles and obligations.

69. In response to the Crown's assertion that the broader Crown strategy for the revitalisation and protection of te reo Māori is a durable and ongoing commitment, the applicant agrees, although submits that the Crown must embody and realise these obligations in its actions, conduct, plans, policies, and laws daily. Additionally, the applicant submits that the Government's Maihi Karauna strategy established under the Māori Language Act should be considered.

70. In response to the statement made by the Crown that the Government has not prohibited public sector departments from using their te reo Māori names nor has any policy or Cabinet decisions been made in this regard, the applicant submits that this contradicts the Minister of Transport's direction for Waka Kotahi to use its English name first. The Crown has also made statements regarding te reo Māori names and allowances for te reo in the public service.

71. The applicant submits the Crown's assertion that policy would likely have a limited impact and would not of itself meet the requirements for an urgent hearing ignores the significant breaches against te reo Māori and the wider Māori worldview. It is for the applicant and Māori to speak to the impacts these policies have on them, and not the Crown.

72. Although the Crown submits that details of policies have not yet been decided and it is only an agreement between political parties, the detail contained in the Coalition Agreement indicates the policy the Government has committed to follow concerning the status and use of te reo in the public sector.

73. The applicant disagrees that urgency should be declined while the High Court deals with alleged breaches of enactments. The applicant submits the Waitangi Tribunal, with expert panel members and judges, is the appropriate forum as their claim concerns rights conferred by te Tiriti o Waitangi. The applicant also submits it is too costly for them to run proceedings in the High Court.
74. As to the claim filed by Te Whakakitenga o Waikato in the High Court, the applicant supports the submissions of Ngāi Te Rangi and Ngāti Hine. Additionally, Ngāti Rēhia says that while they have not yet seen the details of the High Court claim it appears that the claim concerns breaches by the Crown under the Waikato-Tainui Settlement Deeds that Ngāti Rēhia are not a party to.

Whaimana / Jurisdiction

75. The Tribunal has jurisdiction to inquire into this claim, pursuant to section 6(1)(c) of the Treaty of Waitangi Act 1975. Section 6(1)(c) of the Treaty of Waitangi Act 1975 states the Tribunal can inquire into any policy or practice adopted by or on behalf of the Crown or proposed to be adopted by or on behalf of the Crown which is likely to prejudicially affect any Māori or Māori group.

Ngā paearu ruku tātari ohotata / Urgency Criteria

76. The Tribunal's *Guide to Practice and Procedure* states the following with regards to applications for an urgent hearing:

In deciding an urgency application, the Tribunal has a regard to a number of factors. Of particular importance is whether:

- 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;
- There is no alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise; and
- The claimants can demonstrate that they are ready to proceed urgently to a hearing.

Other factors that the Tribunal may consider include whether:

- The claim or claims challenge an important current or pending Crown action or policy;
- 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
- Any other grounds justifying urgency have been made out.

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

Kōrerorero / Discussion

77. These applications raise important issues concerning the commitment by the Crown to support te reo Māori, specifically in the public service. In the *Ko Aotearoa Tēnei Report*, the Tribunal stated that te reo is a taonga and the protection it enjoys as such under the Treaty of Waitangi means the Crown owes special obligations in respect of it.¹ Since that landmark report the Crown has taken steps including through legislation, to formalise

¹ Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (Wai 262, 2011) vol 1 at 161.

those obligations. The question is whether current or pending Crown actions or policy is likely to erode that commitment thereby causing prejudice to Māori.

78. An application for an urgent hearing will only be granted in exceptional circumstances where the applicant can demonstrate that the Tribunal should prioritise a new urgent inquiry and redirect its limited staff and resources from its programme of current inquiries to do so. The threshold is high, and the application will fail if the criteria set out above are not satisfied.
79. It is not my role to assess the merits of the applications as such, except where necessary, but to determine whether the threshold for granting the application has been reached. In my assessment the two key issues that arise in these applications are:
- (a) Whether the claim or claims challenge an important current or pending Crown action or policy; and
 - (b) If so, whether the applicants are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown policies.

Crown action or policy?

80. The applicants argue that the policies set out in the Coalition Agreement concerning the use of te reo Māori in the public service are current or pending Crown actions or policies and thereby fall within the urgent jurisdiction of the Tribunal. The Crown in response says the Coalition Agreement contains limited and specific policy intentions that have not been part of a policy process but rather are political agreements. To this extent, until further decisions are made by Cabinet and policy detail worked out, it is hard to assess likely impacts of the commitments.
81. It is not for me to go behind the words of the Coalition Agreement to determine their meaning and effect or to contextualise the statements to infer their intention. I instead rely on the plain words of the Coalition Agreement for present purposes.
82. The key provisions of the Coalition Agreement for this purpose are paragraphs 10, 11 and 14. In paragraph 10, the parties agree to progress “in this term” several National Party key policies and priorities. In paragraph 14, the parties agree they “will also progress the following additional policies which are a priority for the New Zealand First Party.” On page 9, under the heading “Strengthening Democracy and Freedoms” is the statement; “To uphold the principles of liberal democracy, including equal citizenship and parliamentary sovereignty, the Parties will: ...” Then follows a bullet-pointed list which includes the two specific policies that are the focus of these applications.
83. From my reading of it, the meaning and intention of the Coalition Agreement is clear; the parties have set out the policies they have agreed to progress while in Government and they intend to implement them. This includes the policies to limit the status and use of te reo Māori in the public sector. I conclude these are important current or pending Crown actions or policies.
84. To round out this point before moving to the next issue, I note the Crown does not argue that the policy statements set out in the Coalition Agreement are not Crown actions or policy by virtue of having been agreed prior to the formal formation of the Coalition Government.

Significant and irreversible prejudice?

85. The next key issue is whether the applicants can demonstrate that they are suffering or are likely to suffer, significant and irreversible prejudice as a result of the policies complained of. On this, we have evidence of some actions that have already taken place. These include public statements by Ministers expressing opposition for te reo names for public sector agencies as well as a Ministerial directive concerning the name of Waka Kotahi. There were also statements by the Public Service Minister, the Hon. Nicola Willis to the effect that she wants to stop public servants being paid “bonuses” for te reo proficiency. Finally, there is the decision by the Ministry of Foreign Affairs and Trade to remove te reo from its Ministerial briefing and correspondence.
86. These actions may seem minor when examined individually and the Crown argues that the policy will have ‘relatively limited impact’. But it is the direction of travel that is concerning when these actions and the pejorative rhetoric that accompanies them is looked at in the round. I note the Crown made no specific submission concerning the policy requiring public agencies to communicate primarily in English, except where specifically related to Māori. This is potentially the most pernicious policy as it appears from a plain reading that it is intended to restrict the use of te reo to those agencies that specifically relate to Māori, thereby diminishing the status and limiting the use of te reo in the public sector. This also appears to be in direct contradiction of the Crown’s te reo revitalisation strategy, of which I say more below. It is difficult to assess the full extent of likely prejudice without knowing exactly what further actions the coalition Government will take to progress these policies.
87. The *Ko Aotearoa Tēnei Report*, set out the four primary duties on the Crown in terms of te reo. These are partnership, wise policy, appropriate resources to achieve policy goals, and a Māori speaking government.² This last duty echoes the findings and recommendations in the *Report of the Waitangi Tribunal on the Te Reo Māori Claim*, which resulted in te reo being recognised as an official language.³ In 2016 the Māori Language Act was passed in which the Crown committed to work in partnership with iwi and Māori to actively protect and promote te reo.⁴ That act also sets out guidance for public agencies including that iwi and Māori should be consulted on matters relating to te reo, that te reo should be used in the promotion of government services and provision of information to the public, and that government services and information should be accessible to iwi and Māori including through the use of te reo.
88. The Māori Language Act also established the Maihi Karauna which is the Crown te reo revitalisation strategy.⁵ The most recent Maihi Karauna for the period 2019 – 2023 had a strong focus on the public sector for the reason that in order for the Crown to recognise the value of te reo, to actively protect it and reflect the people of New Zealand, the Crown and its staff need to speak te reo.⁶ The Crown will now need to update or replace the strategy with a new Maihi Karauna following consultation as required by the Act.⁷
89. This is the established landscape into which these Crown actions or policies have landed. There are several bases on which the applicants can show prejudice. First, there has been no consultation. The Crown says the policies are a political agreement, part of the process of forming a new government, and further decisions have not been taken by Cabinet. While

² Above n 1, at 161.

³ Waitangi Tribunal *Report of The Waitangi Tribunal on The Te Reo Māori Claim* (Wai 11, 1986).

⁴ Māori Language Act 2016, s 6.

⁵ At s 10.

⁶ “Maihi Karauna” Te Puni Kōkiri <www.tpk.govt.nz>.

⁷ Māori Language Act 2016, s 10(3).

this seems to suggest that Treaty compliance is subject to election promises, the fact is that Māori have not been consulted either in the promulgation or roll-out to date of these policies and can demonstrate that they are suffering or will likely suffer prejudice.

90. Second, despite there being an established legislative and policy framework to protect and promote te reo, these new policies arguably diminish and threaten the use of te reo in the public sector. This is problematic for several reasons not least the mixed messages being sent by the Crown about whether it values te reo, and the potential chilling effect on the Crown's te reo revitalisation obligations.
91. I am therefore satisfied that the claimants are suffering, or will likely suffer, significant and irreversible prejudice through the Crown's policies to limit the status and use of te reo Māori in the public sector.
92. In relation to the other grounds, I am satisfied that the claimants have no other reasonable alternative remedy but to seek an urgent hearing in relation to this Crown policy. They are ready to proceed to a hearing. These matters also weigh in favour of granting the urgent applications.
93. I have already noted the Treaty and legislative obligations for the Crown to partner with iwi and Māori to actively protect and promote te reo and the policy framework that already exists to support that process. It is likely that these policies and subsequent actions by the Crown in line with the policies are also in breach of legislative obligations, but that issue is not the primary focus of this decision.

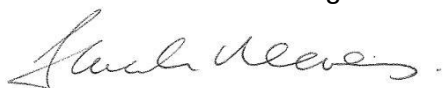
Kupu Whakatau / Decision

94. The applications for urgency are granted.
95. The urgent inquiry will be targeted and specific and is to focus on "whether the policies of the Coalition Government to limit the status and use of te reo Māori in the public sector are in breach of the principles of the Treaty of Waitangi."
96. Further memorandum-directions will be issued shortly to appoint a presiding officer and panel to hear the claims for urgency as well as further details of arrangements for the hearing.

Me tuku atu te Kairēhita i tētehi kape o tēnei whakahau ki ērā ki ngā rārangi whakamōhio mō Wai 3308, the Ngāi Te Rangi Coalition Government Urgent claim, Wai 682, the Ngāti Hine Lands, Forests and Resources claim and Wai 3077, the Te Reo Māori and Justice System (Rameka) claim.

The Registrar is to send a copy of this direction to counsel for the applicant, Crown counsel and those on the notification list for Wai 3308, the Ngāi Te Rangi Coalition Government Urgent claim, Wai 682, the Ngāti Hine Lands, Forests and Resources claim and Wai 3077, the Te Reo Māori and Justice System (Rameka) claim.

I HAINATIA ki Te Whanganui-a-Tara i te 1st o Maramatoru i te tau 2024



Kaiwhakawā Sarah Reeves
Hiamana Tuarua

TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI / WAITANGI TRIBUNAL