

## IN THE WAITANGI TRIBUNAL

WAI-

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF **The New Zealand Māori Council Trans Pacific Partnership Claim** being a claim by Cletus Maanu Paul and Edward Taihākurei Durie for the New Zealand Māori Council and Māori generally; Kereama Pene, of Kia Maia Māori Committee of Tamaki ki te Tonga for Ngāti Rangiteaorere generally in relation to geothermal interests; and Tamati Cairns, of the Wellington District Māori Council and chair of the Pouakani Claims Trust for Pouakani iwi in relation to freshwater interests, and Cletus Maanu Paul for Mataatua District Māori Council, Edward Taihakurei Durie for Raukawa District Māori Council, Tamati Cairns for Wellington District Māori Council, Rihari Dargaville for Tai Tokerau District Māori Council, Titewhai Harawira for Auckland District Māori Council, Desma Kemp Ratima for Takitimu District Māori Council and Anthony Toro Bidois for Te Arawa District Māori Council

## STATEMENT OF CLAIM

Dated: 10 July 2015

RECEIVED

Waitangi Tribunal

**13 Jul 2015**Ministry of Justice  
WELLINGTON

Solicitor: **Donna Hall**  
**Woodward Law**  
Address: PO Box 30-411  
Lower Hutt 5040  
Telephone: (04) 560-3680  
Email: [info@mokoia.co.nz](mailto:info@mokoia.co.nz)

**STATEMENT OF CLAIM**

1. This claim is brought by
  - 1.1 Cletus Maanu Paul and Sir Edward Taihakurei Durie for the New Zealand Māori Council and in the interests of Māori generally;
  - 1.2 Kereama Pene of Kia Maia Māori Committee of the Tamaki ki te Tonga District Māori for Ngāti Rangiteaorere Council generally as a group involved in the claim of the New Zealand Māori Council in relation to Māori proprietary interests in hot water and geothermal fields;
  - 1.3 Tamati Cairns of the Wellington District Māori Council, and of the Pouakani Claims Trust for Pouakani iwi generally as group involved in the claim of the New Zealand Māori Council in relation to Māori proprietary interests in freshwater;
  - 1.4 The following District Māori Councils
    - 1.4.1 Cletus Maanu Paul above for Mataatua District Māori Council;
    - 1.4.2 Edward Taihakurei Durie above for Raukawa District Māori Council;
    - 1.4.3 Tamati Cairns above for Wellington District Māori Council;
    - 1.4.4 Titewhai Harawira for Auckland District Māori Council;
    - 1.4.5 Desma Kemp Ratima for Takitimu District Māori Council;
    - 1.4.6 Rihari Dargaville for Tai Tokerau District Māori Council;
    - 1.4.7 Anthony Toro Bidois for Te Arawa District Māori Council; and
    - 1.4.8 Such further District Māori Councils as shall notify their position in relation to this claim in due course.
2. The Māori Council is a body established by the Māori Community Development Act 1962 with statutory authority to represent Māori interests.

3. The claimants are Māori, and claim that Māori are or are likely to be prejudicially affected by the government's ongoing negotiation of the Trans-Tasman Partnership Agreement. They say also that the government's ongoing negotiation of the Trans-Tasman Partnership Agreement is an act of the Crown which is contrary to the principle of active protection of Māori interests and rangatiratanga in the Treaty of Waitangi.
4. In bringing this claim the claimants wish first to express their support for the claims of Paparangi MJ Reid and other academics and advocates in Wai 2522 and of Natalie Kay Baker and others of Ngapuhi in Wai 2523. Paragraph 70 of the statement of claim for Wai 2522 refers to the actual or pending prejudice in relation to the introduction of laws and policies affecting
  - 4.1 Water quality regulation and agricultural water use
  - 4.2 Energy regulation
  - 4.3 Regulation of deep sea drilling
  - 4.4 Smoking control
  - 4.5 Affordable medicines
  - 4.6 Electricity prices
  - 4.7 Treaty of Waitangi Assessments of foreign investments
  - 4.8 The alleviation of poverty
5. Paragraph 56 of Wai 2523 refers to the actual or pending prejudice in relation to:
  - 5.1 Treaty settlements,
  - 5.2 Crown policies in relation to Māori generally,
  - 5.3 Māori forestry interests,
  - 5.4 The Wai 262 findings on international agreements
  - 5.5 Māori sovereignty
6. While recognising the importance of each of these areas of prejudice, and while supporting each of the claims made, the claimants in the present claim draw particular attention to and seek to be heard on the following more specific claim by which the claimants bear the burden of a more particular prejudice.
7. In particular, the New Zealand Māori Council claims that Māori claims to natural resources are or are likely to be prejudicially affected by the Trans-

Pacific Partnership Negotiations. Claims that may be prejudicially affected include, but are not limited to the claim of the New Zealand Māori Council and supporting parties to Māori proprietary interests in both freshwater and geothermal resources (Wai 2358).

### **Grounds on which the claimants seek relief**

8. The signing of the Treaty of Waitangi established a partnership and imposed on both the Crown and Māori the duty to act in good faith towards each other. It also required the Crown to actively protect Māori interests and rangatiratanga.
9. In *New Zealand Māori Council v Attorney General* [1987], then Justice Cooke expressed<sup>1</sup>:

“The Treaty signified a partnership between Pakeha and Māori requiring each to act towards the other reasonably and with the utmost good faith. The relationship between the Treaty partners creates responsibilities analogous to fiduciary duties. The duty of the Crown is not merely passive but extends to active protection of Māori people in the use of their lands and waters to the fullest extent practicable. That duty is not a light one and is infinitely more than a formality. If a breach of the duty is demonstrated at any time, the duty of the Court will be to insist that it be honoured.”

10. This involves the Crown taking steps not only to ensure that Māori interests are currently protected, but that they will be protected into the future.
11. Because of the nature of the relationship, it is seen as one which imparts fiduciary duties. The Tribunal has stated, in the *Te Maunga Railways Land* report:

“Because the Crown is in the more powerful position as the government in this partnership, the Crown has a fiduciary obligation to protect Maori interests.”

12. In line with that duty, the Crown should not put itself in a place where its obligations to Māori would be unjustly challenged. This may arise where the Crown has trade obligations to foreign nations and foreign investors that conflict with the promises that have been made to Māori.

### **Prejudice**

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<sup>1</sup> *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641

13. The New Zealand Māori Council claim that, as a result of the Crown's actions in relation to the Trans-Pacific Partnership Agreement, there is a risk that Māori claims to natural resources will be threatened.

### **Water**

14. Māori have proprietary interests in water, as has now been accepted by the Waitangi Tribunal in the stage one hearing of the Wai 2358 Claim. The Tribunal has still to determine how that interest may now be provided for.
15. In relation to freshwater the New Zealand Māori Council has developed a framework by which the Māori interest may be provided for and which it intends to submit to the Tribunal. Amongst other things the framework envisages payments for the commercial use of water. Pouakani iwi are an example of a group which may benefit from such payments.
16. Without an exempting clause, the Crown is unlikely to accede to any provision for payments in respect of water uses if that exposes government to damages on the claim of a foreign investor who invested in New Zealand businesses on an understanding that no such payment is required by New Zealand law. The current Treaty of Waitangi exemption clause developed for trade agreements since the concept was first introduced in 2001, is inadequate to protect these rights and interests.

### **Geothermal Resources**

17. In relation to geothermal resources, it will be argued in the Wai 2358 claim that there are certain geothermal fields which should be reserved for Māori traditional owners. The Tikitere field of Ngāti Rangiteaorere is an example.
18. Presently foreign investors may be able to acquire an interest in land or geothermal projects by which they gain access to geothermal resources owned by Māori, or to which Māori have a claim but with no benefit to the Māori owners or claimants.
19. Any new laws or regulations that the Crown may impose on geothermal development to protect the Maori interest and claims may be subject to

ramifications under the Trans-Pacific Partnership Agreement as constraining free trade.

20. There is also a risk that the Crown is unlikely to recognise the legitimate property claims of Māori in relation to geothermal fields if this could expose them to substantial damages at the suit of foreign investors.

### **Relief Sought**

21. In relation to the foregoing specific claim the claimants seek a recommendation that Government assures Māori that the Trans-Pacific Partnership Agreement will contain provisions protecting Māori claims to natural resources and will negotiate with claimant representatives for the claims as a whole an appropriate provision that will provide for that protection.
22. The claimants reserve the right to amend this statement of claim.



This Statement of Claim is filed by **Donna Hall**, solicitor for the Claimant. The address for service of the applicant is at the offices of Woodward Law.

Documents for service on the above-named Claimant may be left at that address for service or may be:

- (a) posted to the solicitor at PO Box 30-411; or
- (b) transmitted to the solicitor by facsimile to (04) 560-3680; or
- (c) transmitted to the solicitor by email at [info@mokoia.co.nz](mailto:info@mokoia.co.nz)