

IN THE WAITANGI TRIBUNAL

**WAI 2750
WAI 2699
WAI TBC
WAI 1781**

IN THE MATTER of The Treaty of Waitangi Act 1975

AND

IN THE MATTER of claims in the Housing and Social Development Kaupapa Inquiry

AND a claim by Hurimoana Nui Dennis with the support of the trustees of Te Puea Memorial Marae Trust for and on behalf of themselves, their whānau, hapū, marae, iwi and Māori of Aotearoa.

AND a claim made by Veronica Henare supported by the Manukau Urban Māori Authority ("MUMA") for and on behalf of themselves, their whānau, hapū, marae, iwi and Urban Māori of Aotearoa

AND a claim by Tracy Francis Hillier and Rita Rangitaia Wordsworth on behalf of themselves and the hapū of Ngai Tamahaua.

MEMORANDUM OF COUNSEL

DATED THIS 3rd DAY OF AUGUST 2018



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MAY IT PLEASE THE TRIBUNAL

1. This Memorandum of Counsel is filed in response to the Crown's Response to New and Amended Statement of Claims and Accompanying Submissions as to Eligibility dated the 31st of July 2018, on behalf of:
 - (a) Hurimoana Nui Dennis and Te Pūea Memorial Marae Trust; and
 - (b) Veronica Henare supported by the Manukau Urban Māori Authority for and on behalf of themselves, their whānau, hapū, marae, iwi and Urban Māori of Aotearoa; and
 - (c) Tracy Francis Hillier and Rita Rangitaia Wordsworth on behalf of themselves and the hapū of Ngai Tamahau;

("the Claimants").
2. The Crown in its recent Memorandum¹ has requested a six month hiatus for the inquiry² and seeks a deferment from 1 October 2018, which Crown counsel advise is the commencement date of the new Housing Ministry³ which has been purportedly created to do provide across-the-board advice on housing issues, including responding to homelessness. The proposed Tribunal inquiry commencement date suggested by the Crown would be on or about 1 April 2019.⁴
3. The Claimants instruct that they oppose the Crown's proposed deferment and reject the reasons provided by the Crown in support of the proposal for deferment on the grounds set out below.
4. In essence, counsel submit that the homelessness issue is not and has not abated and in fact is getting worse. As such the Claimants position is that the Housing Policy and Services inquiry cannot wait another six months.
5. There have been years of research and approaches to the Government (in

¹ Wai 2750 Crown Memorandum 31 July 2018. [Crown Memo]

² Crown Memo at [10].

³ Housing Ministry will consist of Ministry of Business, Innovation, and Employment (MBIE), the Ministry of Social Development (MSD), and the Treasury.

⁴ Crown Memo at [16].

its many forms) complaining about the state of homelessness for Māori and it is only now (2018) that the Crown appear to be taking steps to try and address the issue. That does not mitigate the years of continued failure to take action which will not be addressed by any current process the Crown now seek to implement.

Grounds for opposing delay

6. The Claimants submit that the Housing Policy and Services matters' have not been dealt with by the Crown or through its subsidiaries appropriately or adequately from 1992 to date. As outlined by the Claimants, the Crown has failed to effectively implement legislation, policies and practices to ensure Māori had access to affordable housing.⁵ The historical background provided in each claim is by way of contextual understanding. However, there are current and live issue that need to be addressed and earlier rather than later.
7. The Claimants have outlined a clear rationale on why the current housing strategies such as the Maori Housing Strategy 2014 ("MHS") have not been adequately or appropriately implemented resulting in continued prejudice to Māori.⁶
8. For example, the Claimants have expressed that the MHS sits stale and unutilised and that due to improper management, none of its objectives can or have been properly monitored or implemented,⁷ which shows a lack of genuine commitment by the Crown to implement its own Strategy.⁸
9. Further, Te Puea in its pleadings reiterated the findings from the *National Māori Housing Conference 2016* of the dire situation of Māori housing

⁵ Wai 2699 Second Amended Statement of Claim, 29 June 2018 at [43] – [46]. [Wai 2699 Claim]. Manukau Urban Māori Authority Statement of Claim, 8 June 2018 at [33] – [43]. [MUMA claim]. Wai 1781 Amended Statement of Claim, 29 June 2018 at [61] – [77]. [Wai 1781 Claim].

⁶ Wai 2699 Claim at [41]. MUMA claim at [57] – [60].

⁷ Wai 2699 Claim at [42]. MUMA claim at [48].

⁸ MUMA claim at [48] to [49].

including the impoverished and over-crowded living conditions of urban Māori who are over represented in the homeless population.⁹

10. These failures have caused the Claimants and Māori in general considerable prejudice resulting in poor housing, poor standards of living and low socio-economic status.¹⁰
11. These and other examples highlight a patent lack of awareness by the Crown of the current and real problems facing the Claimant and community organisations providing housing services and specifically for Māori.
12. In addition, the Claimants note that the Crown has failed to respond to the specific issues that have been raised in the each of their claims. Instead the Crown appear to have taken (what now seems to be its current practice) of providing a high level response which in effect, fails to respond to the specific pleadings that Claimants make.
13. It should be noted that in 2016, Te Puea Marae was forced to initiate their own Indigenous Homeless Service Delivery Model – Manaaki Tangata e Rua (MTeR) to assist Māori whanau without willing support from and due to the failures of the Crown.¹¹ Notably there are recent media reports advising that other marae are also implementing similar programmes given the parlous position Māori are in.
14. Similarly, in 2017, MUMA had no choice but to come to the aid of Maori and attempted to work with the Crown to develop an Emergency Housing Agreement. However MUMA were met with unnecessary obstruction, restrictions and constraints from the Crown to the extent that the programme failed to proceed.¹²

⁹ Wai 2699 Claim at [44] – [45].

¹⁰ Wai 2699, above n 5 at [83]. Wai 1781 Claim, above n 5 at [78] – [90].

¹¹ Wai 2699 Claim – Sixth cause of action p 25.

¹² MUMA claim, above n 5 at [59].

15. Further, the Te Paea Claim specifically pleads that entities have had to provide services in Tauranga through Te Tuinga Whānau Trust and in Northland through He Korowai Trust. Both organisations have been forced to deal with the dire housing needs of Māori due to the overwhelming rate of homelessness and inadequate or inappropriate housing availability and services for Māori in its regions.¹³
16. The Crown has made a cursory reference to its engagement through MSD with Te Paea Marae¹⁴ and in *Appendix one* of its response.¹⁵ However, that engagement has, as pleaded been frustrated by Crown red tape¹⁶ and nothing of substance has eventuated despite the proven effectiveness of the programme implemented by Te Paea.
17. The Crowns supposed current support in 2017, and any form of assistance towards programmes which are run in Tauranga and Northland do not remedy the Crowns failures since 1992 and as identified by the Claimants¹⁷ do not address the prejudice suffered by Māori and its resulting failure to provide for the socio-economic and housing needs of Māori.

Lack of certainty

18. The Claimants submit that there is no guarantee that the work programmes outlined in *Appendix one* of the *Crowns Response* will be effective based on past experiences (failures of implementing, monitoring and managing housing strategies and policies) of the Claimants working with subsidiaries of the Crown.¹⁸
19. Irrespective of the Crowns work programmes, homelessness cannot afford to wait six months and further delay will cause prejudice to those who

¹³ Wai 2699 Claim, above n 5 at [94] to [109].

¹⁴ Crown Memo, above n 1 at [20.9].

¹⁵ Ibid at [52].

¹⁶ MUMA claim, above n 5 at [59].

¹⁷ Wai 2699 Claim, MUMA claim and Wai 1781 Claim, above n 5.

¹⁸ Wai 2699 Claim [111] – [116]. MUMA claim [45] – [50]. Wai 1781 Claim at [50] – [53].

currently live in their cars, on the streets or in overcrowded housing situations.

20. A six month delay will result in further pressure on the Claimants and other community organisations and services around the country to deal with the overwhelming demands of homelessness¹⁹ and the ineffective programmes the Crown currently has in place.²⁰
21. The Claimants in each respective claim clearly highlight the urgent need for action towards homelessness now.²¹
22. The request for delay in counsel's submission, highlights the Crown's lack of understanding and commitment towards the urgency of the homelessness problem facing New Zealand and indeed an apathy towards the position expressed in the pleadings.

Uncertainty regarding Treaty Compliance

23. The Claimants submit that the Crown has not provided appropriate evidence that their response is compliant with the principles of Te Tiriti o Waitangi.
24. The Crown submits that it does not owe a duty (general Treaty or legal) to provide housing, or housing assistance. That *Article Three of Te Tiriti* requires that the Crown provide Māori with the same access to housing services as provided to the population generally. Further, Crown submits that even though at times, as part of its wider governance responsibilities, the Crown assumes the role of providing assistance, this does not imply there is duty on the Crown to do so.²² In Counsels submission, the Crown owes a duty to its Treaty partner which it must satisfy first and foremost. That is the nature of a true partnership.

¹⁹ Wai 2699 Claim, above n 5 at [109].

²⁰ Wai 2699 Claim at [41] – [46]. MUMA, above n 5 at [57] – [60].

²¹ Wai 2699 Claim at pp 22 – 31. MUMA Claim at pp 19 – 20. Wai 1787 Claim, above n 5 at [60].

²² Crown Memo, above n 1 at [26].

25. As such counsel on behalf of its claimants reject the Crown's position and reiterate the overriding principles outlined in each respective claim²³ which assert that the Crown owes a fiduciary duty of good faith to Māori²⁴ and should deal with Māori honourably, ensuring the protection and prosperity of Māori as people including their economic, physical, spiritual and cultural well-being.²⁵
26. Further, the Te Puea Claim specifically outlines the discriminatory actions towards and in respect of Māori that as a result of the Crown's implementation of its housing legislation, policies and practices it has failed to treat Māori in a fair and equal manner which is a breach of its duties of good Government and the principles of good faith and partnership when dealing with Māori.²⁶
27. The Claimants clearly outline the Crown's duties and breaches of Te Tiriti principles both in an overarching context and specifically for each cause of action.
28. Therefore, the Claimants assert that the Crown has not adequately responded to the causes of action identified by the Claimants and given that position, counsel submit that the Inquiry must proceed without further delay.

Dated at Auckland this 3rd day of August 2018



Te Kani Williams/ Coral Linstead-Panoho

Counsel for the Claimants

²³ Wai 2699 Claim at [13] – [22]. MUMA claim at [15] – [22]. Wai 1781 Claim [17] – [25].

²⁴ Wai 2699 Claim, above n 5 at [20]. MUMA Claim, above n 5 at [19]. Wai 1781 Claim, above n 5 at [24].

²⁵ Wai 2699 Claim at [14]. MUMA Claim at [21]. Wai 1781 Claim at [18].

²⁶ Wai 2699 Claim at [36] – [42].