

**IN THE WAITANGI TRIBUNAL
TE ROOPU WHAKAMANA
I TE TIRITI O WAITANGI**

**WAI 2577, WAI 2579,
WAI 2580, WAI 2581,
WAI 2582, WAI 2583,
WAI 2584, WAI 2585,
WAI 2586, WAI 2587,
WAI 2588**

IN THE MATTER OF the Treaty of Waitangi Act 1975

and

IN THE MATTER OF application for an urgent inquiry into
the impacts of the Marine and
Coastal Area (Takutai Moana) Act
2011

**MEMORANDUM OF COUNSEL
FOR THE NGĀTIWAI TRUST BOARD
DATED 1 MAY 2017**

OCEANLAW NEW ZEALAND
PO Box 921, Nelson
Telephone: 03 548 4136
Solicitor acting: Justine Inns
EMAIL: justine@oceanlaw.co.nz

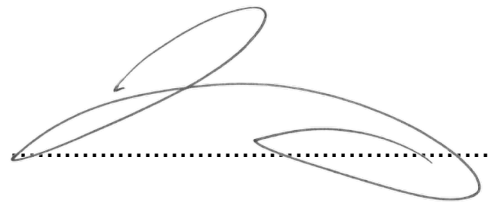
MAY IT PLEASE THE TRIBUNAL:

1. This Memorandum:
 - (a) Is filed on behalf of the Ngātiwai Trust Board (“the Board”), an interested party in relation to the various claims relating to Marine and Coastal Area (Takutai Moana) Act 2011 (“the Act”) filed since December 2016; and
 - (b) Responds to the Chairperson’s direction inviting submissions on how, and to what extent the claims should be progressed (Wai 2577, #2.2.5 at [45]).
2. Counsel has had the opportunity of reviewing the Memorandum of Counsel for the Wai 2577 claimants filed on 31 March 2017 and the Board supports the position of those claimants that these claims should be progressed as a prioritised Kaupapa inquiry.
3. Like many other representatives of iwi, hapū and whānau, the Board filed applications for recognition orders under the Act before the statutory deadline of 3 April 2017. This was not a step the Board took lightly, as Ngātiwai has always been a vocal opponent of the Act and its predecessor, the Foreshore and Seabed Act 2004. The board felt compelled to make the applications, however, in order to protect the ability to seek recognition of the customary rights and customary title of Ngātiwai iwi, hapū and whānau through the only legal route that currently exists, however unsatisfactory that route might be.
4. In particular, the Board felt it was necessary to make applications under the Act covering the whole Ngātiwai rohe moana (including areas where interests are shared with other iwi and hapū), so as to protect the options of Ngātiwai hapū and whānau who may have lacked the information and resources necessary to file applications in their own right.

5. Counsel submits that it would be appropriate for the Tribunal to give priority to a discrete Kaupapa inquiry in respect of claims relating to the Act for the following reasons:
 - (a) It is understood that in excess of 100 applications under the Act were filed on, or shortly before the statutory deadline. It can safely be assumed that many of those applicants shared the view of the Board that they were doing so under duress, in order to protect their future options.
 - (b) Nationwide, significant resources will have been expended by iwi, hapū and whānau already in the preparation, filing, service and advertising of such applications, but this time and cost will be dwarfed by the huge resources that will be required to actually advance the applications in accordance with the Act.
 - (c) At a less tangible, but not less important, level, those advancing applications are likely to suffer immeasurable mamae through being forced to participate in a process that does not accord with their tino rangatiratanga, tikanga and customary rights, but which presents the only hope of securing recognition of their customary rights and customary title. It is no exaggeration to say that the process effectively requires applicants to be participants in their own oppression.
 - (d) An expedited Kaupapa inquiry would avoid these negative impacts by giving applicants and the Crown the benefit of the Tribunal's views on the Treaty-compliance (or otherwise) of the Act. The Board's hope is that those views would result in the Crown substantially overhauling the Act, which would render any efforts to advance applications under the Act, as it stands presently, a waste of time and money.
6. Counsel respectfully submits that it is within the Tribunal's power to ameliorate the potential negative effects of the Act by

undertaking an expedited Kaupapa inquiry into it and that that power should be exercised in this case.

1 May 2017

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Justine Inns

Counsel for the Ngātiwai Trust Board