
MEDIATION AGREEMENT

PARTIES

1. The parties to this agreement are:

1.1 “The claimants” being:

- a. Wai 2522: a claim by Moana Jackson, Director of Nga Kaiwhakamarama I Nga Ture, lecturer Māori Law and Philosophy degree programme at Te Wananga o Raukawa; Angeline Greensill, Environmental and Land Rights Advocate, former Waikato University Lecturer; Robert Pouwhare, Executive Producer and Director at Tangata Whenua Television; Hone Pani Tamati Waka Nene Harawira, Leader of the Mana Movement and former Member of Parliament for Te Tai Tokerau; Rikirangi Gage, Chief Executive of Te Rūnanga o te Whānau tribal authority, current director of the Māori fisheries commission, Te Ohu Kaimoana;
- b. Wai 2523: A claim by Natalie Kay Baker on behalf of herself and the Waimate Taiamai Alliance; Hone Tiatoa on behalf of himself and Te Waimate Taiamai; Maia (Connie) Pitman on behalf of herself and her whānau; Ani Taniwha, on behalf of herself and Te Uri o Te Pona, Ngati Haiti, Ngati Kawau, Ngati Kawhiti, Ngati Kahu o Roto Whangaroa, Ngāitupango, Te Uri o Tutehe, Te Uri Mahoe and Te Uri Tai and Te Uri o Te Aho; Pouri Harris on behalf of himself and Ngāti Toro; Owen Kingi on behalf of himself and Ngāti Uru and other Whangaroa hapū; Justyne Te Tana on behalf of herself and Ngāi Te Whiu and Ngāti Tautahi, and Ngāi Te Wake o Waoku, Ngāi Te Wake Tua Whenua, and Ngāi Te Wake o Takutai Moana; Lorraine Norris on behalf of herself and Te Uriroroī, Te Parawhau and Te Mahurehure ki Poroti.

- c. Wai 682: A claim by Rewiti Paraone, Kevin Prime, Erima Henare, Pita Tipene and Waihoroi Shortland on behalf of Te Runanga o Ngati Hine for and on behalf of descendants of Torongare and Hauhaua;
- d. Wai 2533: a claim by Professor Margaret Mutu for and on behalf of Te Rūnanga-ā-Iwi o Ngāti Kahu and the whānau, hapū and iwi of Ngāti Kahu;
- e. Wai 2531: a claim by Waimarie Bruce-Kingi for and on behalf of the whānau and hapū of Ngāti Kahu o Torongare me Te Parawhau; Kingi Taurua for and on behalf of the whānau and hapū of Ngāti Rahiri and Ngāti Kawa; Paora Whaanga for and on behalf of the whānau and hapū of Rakaipaaka; Huia Brown for and on behalf of the whānau and hapū of Rongomaiwahine; Jack Te Reti for and on behalf of the whānau and hapū of Ngāti Te Ihingārangi; Richard Tiki o Te Rangi Thompson for and on behalf of the whānau and hapū of Ngāti Tahinga; John Wī for and on behalf of the whānau and hapū of Ngāti Tūtakamoana and Ngāti Hōpu; Tracey Waitokia for and on behalf of the whānau and hapū of Ngāti Hineoneone; Karina Williams for and on behalf of the whānau and hapū of Ngāti Whākiterangi; and Michael Leulua'i of Ngatiwai for and on behalf of his whānau;
- f. 2530: Chairman of Te Tai Tokerau District Māori Council, Mr Rihari Dargaville on behalf of the Te Tai Tokerau District Māori Council;
- g. 2535: Cletus Maanu Paul for and on behalf of the Nga Kaiawhina a Wai 262, and the Mataatua District Māori Council;
- h. 1427: Ms TITEWHAI HARA WIRA of Auckland; on behalf of kuia and kaumatua of Ngapuhi nui tonu living within Tamaki and throughout Ngapuhinuitonu;
- i. 2889: This Statement of Claim (“SoC”) is filed on behalf of the following members of the New Zealand Māori Council (“the

NZMC”): a. Cletus Maanu Paul, Chairperson of the Mataatua District Māori Council (“DMC”), for and on behalf of himself, and the Mataatua DMC; b. Raymond Hall, Chairperson of the Tamaki Makaurau DMC, Titewhai Harawira and John Tamihere, for and on behalf of themselves, and the Tamaki Makaurau DMC; c. Desma Kemp Ratima, ONZM, JP, Chairperson of the Takitimu DMC, for and on behalf of himself, and the Takitimu DMC; d. Rihari Richard Takuira Dargaville, Chairperson of Te Tai Tokerau DMC, for and on behalf of himself, and Te Tai Tokerau DMC; and e. Diane Black, Chairperson of the Tamaki ki Te Tonga DMC, and Tunuiarangi McLean, JP, for and on behalf of themselves, and the Tamaki ki Te Tonga DMC.

And

- 1.12 MFAT Trade and Economic Group (represented by the Deputy Secretary Trade and Economic).

Principles/kaupapa

2. The claimants enter this Agreement recognising:

- 2.1 That shared authority in the international domain is informed by the domestic relationship between Māori Peoples Whānau, Hapū and Iwi and the Crown and the tino rangatiratanga and kāwanatanga that has endured since the 1835 He Whakaputanga o Nga Rangatira o Nga Hapu o Niu Tirenī and 1840 Te Tiriti o Waitangi.
- 2.2 The need to preserve mana tukuiho (mana inherited) and mana whakahaere (exercise of that inherited power to preserve and maintain hapū mana and rangatiratanga).
- 2.3 The responsibilities of rangatira as leaders to preserve and uphold the mana and rangatiratanga of their hapū and the responsibilities of the Crown to represent Tauīwi.
- 2.4 The importance of tikanga-based trading relationships to Māori Peoples, Whānau, Hapū, and Iwi and the significance of trade to

the economy of Aotearoa New Zealand and the livelihoods and wellbeing of its people.

- 2.5 Information is essential to the exercise of mana and tino rangatiratanga through effective participation in decision-making by collective, participatory, and accountable processes.
 - 2.6 The need to develop a new approach to trade policy and the negotiation of international trade agreements that gives effect to the Tiriti relationship and establishes mutual respect and collaboration between the parties.
 - 2.7 Reflects that Te Tiriti/the Treaty is a relationship of equals. Legally it is an international treaty whereby at least 2 sovereign nations entered into an agreement to set out how they were to structure their relationship with each other.
3. The Crown enters into this Agreement recognising:
- 3.1 Te Tiriti o Waitangi/the Treaty of Waitangi is New Zealand's founding constitutional document. It affirms te tino rangatiratanga o ngā iwi me ngā hapū, and the kāwanatanga of the Crown. It established a continuing partnership between Māori and the Crown.
 - 3.2 Ka Hikitia te whanaungatanga a te Manatu Aorere me te Iwi Māori: the overarching aspiration for this Tiriti/Treaty partnership is that Māori have confidence in their partnerships with the Ministry of Foreign Affairs and Trade (MFAT) for international trade. Through this agreement both parties wish to develop a mana-enhancing relationship that reflects Te Tiriti/Treaty principles of partnership, participation, protection and prosperity and acknowledges:
 - 3.2.1 claimants' rangatiratanga and status as Tiriti/Treaty partners;

- 3.2.2 mātauranga Māori makes an important contribution to solving policy and practical problems;
- 3.2.3 the claimants have important resources and capability to contribute to achieving beneficial outcomes internationally for Māori and for Aotearoa New Zealand; and
- 3.2.4 international trade issues affect the claimants and they must have a key role in determining how their interests are affected and how to approach those matters internationally.

Scope

- 4. The scope of this Agreement is international trade policy. This includes international multilateral (eg WTO), regional (eg APEC), plurilateral (eg DEPA, CPTPP etc) and bilateral processes and other trade-related kaupapa.

Objectives

- 5. For the claimants, active protection of rights under te Tiriti and tikanga Māori means the ability of Māori to protect their identity and taonga by the ability to protect their rights and interests in relation to trade policy, including:
 - 5.1 review of overall trade policy;
 - 5.2 development of new policy on old areas;
 - 5.3 new policy on new sectors and technologies;
 - 5.4 learning lessons from failed policies;
 - 5.5 including proposals for new negotiations, negotiating during;
 - 5.6 expansion of existing agreements, amending or remaining agreements;

which can only be given effect to by the exercise of tino rangatiratanga and mana tukuiho, mana whakahaere, mana motuhake in accordance with the values of manaakitanga, whanaungatanga, kotahitanga, kaitaikitanga, mutual respect.

6. For MFAT Trade and Economic Group (“TEG”), it is committed to strengthening the international trade dimension of the Crown-Māori partnership. To achieve this, MFAT will:
 - 6.1 engage with authenticity and integrity to continue to build a genuine and respectful mutually beneficial relationship between the claimants and Aotearoa New Zealand’s international trade policy and practices undertaken by MFAT;
 - 6.2 open and honest/tika;
 - 6.3 purposeful/koi;
 - 6.4 inclusive/manaakitanga;
 - 6.5 responsive/whakautu;
 - 6.6 relevant/whaitake.

Ngā Toki Whakarururanga

7. MFAT supports a body being established that adds to its existing partnership bodies (to be named through the agreed establishment process, working title Ngā Toki Whakarururanga).
8. The parties agree to jointly develop open and accountable processes to facilitate the establishment of Ngā Toki Whakarururanga to the extent that it involves the Crown’s functions. This will include a process to define:
 - 8.1 processes to review arrangements and to manage any concerns or disputes that arise between the parties having regard to tikanga;
 - 8.2 the nature of the ongoing role between Te Toki Whakarururanga and MFAT, to be reflected in an MOU or similar, which shall

include any legal obligations required to provide sufficient security for both parties.

9. Ngā Toki Whakarururanga will be a by Māori, for Māori body. MFAT will not appoint membership. MFAT will not prescribe the terms of reference for the Ngā Toki Whakarururanga. For the avoidance of doubt, claimants have stated the following matters will guide them in this process (the Crown acknowledges these are matters for Māori):

- 9.1 Ngā Toki Whakarururanga has obligations to Māori Peoples, Whānau, Hapu and Iwi and will fulfil those obligations in accordance with tikanga Māori, so as to ensure they maintain the mana and mandate of Te Ao Māori necessary to perform their role.

- 9.2 A working party will be established to engage with Māori Peoples, Whānau, Hapū and Iwi recognising the need for participation to reflect diversity in all its forms, and to put together an advisory paper setting out the various options for Ngā Toki Whakarururanga, and after that has been done to embark on a process of obtaining widespread consensus amongst key Māori for the establishment of Ngā Toki Whakarururanga.

10. If Ngā Toki Whakarururanga is formed, it should complement the work or roles of existing organisations and may of course collaborate or partner with those organisations.
11. The parties agree that sharing information is essential to achieving the objectives of this Agreement. MFAT commits to ensure Ngā Toki Whakarururanga is fully engaged with, and has meaningful influence over, trade policy as it falls within the remit of MFAT. Trade policy includes international multilateral (eg WTO), regional (eg APEC), plurilateral (eg DEPA, CPTPP etc) and bilateral processes.
12. MFAT will support Ngā Toki Whakarururanga, including through funding, to establish this new body through a process established by Māori. The process to establish will cover:

- 12.1 Regularity and structure of meetings;
 - 12.2 A clear point of contact within MFAT;
 - 12.3 A secretariat independent from the Crown to provide technical, administration and logistical support;
 - 12.4 Confidentiality arrangements and other measures to build trust and relationships as partners.
13. Following its establishment, Ngā Toki Whakarururanga shall, in conjunction with TEG (where required):
- 13.1 Develop a relationship with Deputy Secretary Trade and Economic [Vangelis Vitalis].
 - 13.2 Develop a relationship with the relevant Trade Ministers.
 - 13.3 Promote mutual education on mātauranga Māori and international trade policy through an ongoing, iterative process that builds understanding between Māori and the Crown and benefits each other and Aotearoa New Zealand.
 - 13.4 Discuss and develop processes of engagement that enable Māori as the Tiriti/ Treaty partner to exercise genuine influence over trade policy, broadly defined, including at various stages of decisions making in negotiations for international trade and investment agreements.
 - 13.5 Conduct or commission independent Tiriti impact assessments of proposed trade and investment agreements at various stages.
 - 13.6 Ensure transparency of process i.e. what are the steps in a negotiation process, what international engagements occur at particular times, what international engagements are occurring in the future (and when). This includes both parties proactively identifying matters (noting there may be confidentiality parameters) that potentially affect relationships with taonga and

Tiriti/Treaty rights to enable their active and effective protection, such as, their identify:

13.6.1 the need for, and opportunities for, input into, and the method of engagement appropriate for, each stage/matter:

- (a) trade policy engagement plans
- (b) formation of negotiation mandates
- (c) during negotiations, including facilitating targeted opportunities to present to negotiating partners) and reporting on negotiations;
- (d) prior to ratification;
- (e) during implementation;
- (f) during the review of international trade instruments.

13.7 Identify Māori interests and means for their effective protection and promotion. The parties acknowledge there may be mutually beneficial opportunities.

13.8 Identify options, for dialogue with TEG, for a different Treaty of Waitangi exception clause.

13.9 Information sharing (including text proposals if reasonably possible).

13.10 Proactive identification by Māori of matters that potentially affect relationships with taonga and Tiriti/Treaty rights to enable their active and effective protection.

13.11 Funding for ongoing role/work.

13.12 Building up rangatahi capacity in international trade (for example, internships).

14. The following may form elements of an engagement agreement between Ngā Toki Whakarururanga and MFAT:
 - 14.1 Sharing of negotiation timelines and identification of issues and opportunity to work together.
 - 14.2 Regularity and structure of meetings.
 - 14.3 Kanohi ki te kanohi/face to face (agree on regional hui programme including funding of same).
 - 14.4 Early and continuing bi-directional information sharing.
 - 14.5 Confidentiality as required to the extent possible.
 - 14.6 General transparency practices.

Confidentiality/Secrecy

15. MFAT is committed to enhanced transparency on trade policy, including through the measures agreed to in this agreement.
16. The approach to confidentiality with Ngā Toki Whakarururanga will depend on the specific issue at hand. The approach will be informed by the need to protect and enhance national interests. Where information cannot be shared MFAT will discuss its view of the reasons why that information cannot be shared with the Ngā Toki Whakarururanga. The parties recognise that there may be tension between issues of confidentiality and Ngā Toki Whakarururanga's obligations to Māori Peoples, Whānau, Iwi and Hapu.

Funding assistance

17. Funding assistance will be provided for Ngā Toki Whakarururanga as above. Other funding assistance for processes outside Ngā Toki Whakarururanga is to be discussed through ongoing dialogue between the parties.

OTHER MATTERS

Current negotiations

18. There are ongoing processes that will not stop for parties to develop a protocol and/or Ngā Toki Whakarururanga. MFAT is committed to engagement with the claimants in the interim on ongoing processes, such as the EU and UK free trade agreement negotiations.

Other government agencies

19. To ensure negotiations are fully appraised of, to the maximum extent possible, how Māori interests are engaged, MFAT will, in addition to the steps outlined above, establish a process where MFAT will commission the advice of portfolio agencies on the Māori interests impacted upon in their portfolio areas.
20. TEG will provide letters of introduction for Ngā Toki Whakarururanga with other Government departments and agencies.

ISDS

21. The development of the ISDS protocol is being progressed by the MFAT Trade Law Unit. TEG will facilitate dialogue between Ngā Toki Whakarururanga and the MFAT Trade Law Unit in relation to the ISDS protocol.

SETTLEMENT OF ISSUES 1 AND 2

22. The parties agree that Issues 1 and 2 are settled on the basis of the agreements reached above, claims will be withdrawn (other than Issue 4) within five working days of the date of the mediators report.
23. Any claimants participating in the Wai 2522 inquiry with pleadings as part of their generic claims withdraw only that part of their claim that relates to the Wai 2522 inquiry (other than Issue 4).

24. Claimants have advised TEG that failure to honour this agreement would result in a new claim being lodged with the Waitangi Tribunal based on this agreement.

2 October 2020

Annette Sykes

Signed for Wai 2522 by:

Annette Sykes as
Counsel for the Claimants
for Wai 2522

John Tiatoua

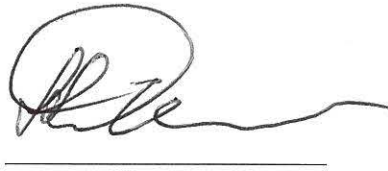
Signed for Wai 2523 by:

JOHN TIATOUA

Josey Lang

Signed for Wai 682 by:

JOSEY LANG AS COUNSEL FOR WAI 682.



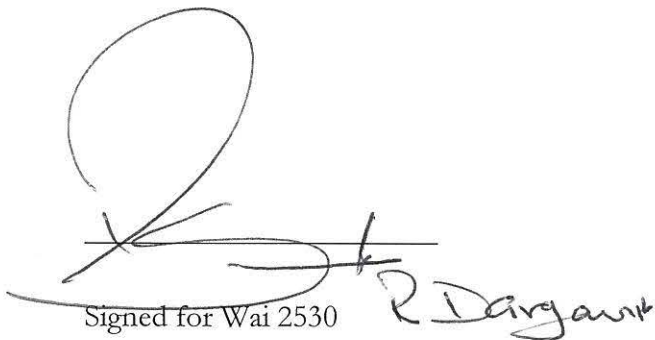
Te Kani Williams
Counsel for Wai 2533

Signed for Wai 2533 by:



BRYCE L'JALL FOR TAVAKE
APEAKI, COUNSEL FOR WAI
2531.

Signed for Wai 2531 by:



Signed for Wai 2530 R. Dargant

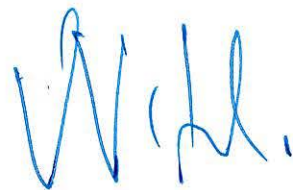


Louisa Collier

Signed for Wai 2535 by:

Signed for Wai 1427 by:

Signed for Wai 2889 by:



Signed for MFAT Trade and Economic Group (represented by the Deputy Secretary Trade and Economic) by:

