



Briefing Note: WAI 2770 Kura Hourua (Charter Schools) Claim: Application for Urgency Declined

To:	Hon Chris Hipkins, Minister of Education		
Date:	9 April 2019	Priority:	Routine
Security Level:	In Confidence	METIS No:	1184375
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Purpose of Report

The purpose of this paper is for you to:

Note that the Waitangi Tribunal (the Tribunal) has declined the application for an urgent hearing on the claim WAI 2770, the Kura Hourua (Charter School) Claim;

Agree that this Briefing will be proactively released.

☒ Agree / ☐ Disagree

Summary

- The application for an urgent hearing on the Kura Hourua (Charter Schools) Claim, WAI 2770 has been declined. The Tribunal did not consider that the high bar for granting an urgent application had been met.
- The Tribunal was not convinced that each of the urgency criteria had been clearly addressed. In particular the Tribunal was not convinced that the changes to the model as articulated by the applicants clearly showed a risk of significant prejudice to Māori. The Tribunal noted that the former charter schools have reopened as state schools and in absence of further detail of alleged prejudice caused by the conversion, the prejudice alleged appeared to fall short of the required standard for a grant of urgency.
- The Tribunal noted that the Government are undertaking an independent review of Tomorrow's Schools, which will consider the ability of schools to meet the needs of Māori students. The tribunal considered the findings of such a review may inform the progression of the WAI 2770 claim. The Tribunal also noted that the significant issue of the current education system historically failing to achieve the desired results for Māori was one that would be addressed in the forthcoming kaupapa inquiry in education services and outcomes. The Wai 2770 claim would be best to be heard in the context of that broad and in-depth kaupapa inquiry rather than on its own as an urgent inquiry.


Ellen MacGregor-Reid
Deputy Secretary
Early Learning and Student Achievement


Hon Chris Hipkins
Minister of Education

9/4/19

30/4/19

Background

1. On 3 July 2018, Sir Toby Curtis and Dame Iritana Tawhiwhirangi lodged a claim with the Waitangi Tribunal in relation to the Government's policy to remove Partnership Schools Kura Hourua (charter schools) from the education system.
2. The claim alleges that the Crown's policy, acts and omissions in relation to charter schools, breached the Treaty of Waitangi by failing to:
 - act in good faith to the claimants and Māori generally by terminating the contracts between the Crown and existing kura hourua;
 - take into account the effect the decision to terminate the contracts will have on Māori students, their families, their communities and Māori generally; and
 - provide alternatives which make appropriate provision for the needs of Māori as represented by the claimants.
3. The claim was formally registered by the Waitangi Tribunal on 28 August 2018. As the claim did not include an application for an urgent hearing there were no directions from the Tribunal requiring a response from the Crown at that time. The claim was amended in September to add Dame Tariana Turia and Pembroke Bird as claimants.

Application for an urgent hearing

4. On 16 October the Tribunal received an application for an urgent hearing and an amended statement of claim from the claimants. An urgent hearing was sought on the basis that significant prejudice would be suffered as a result of current or pending Crown actions or policies.
5. The Crown responded in November advising the Tribunal that in its view the application for an urgent hearing did not meet the criteria for an urgent application. Instead the Crown supported either a non-urgent but expedited inquiry if this claim was to be heard in a stand-alone inquiry, or the hearing of the claim as part of the Tribunal's proposed Education Services and Outcomes kaupapa inquiry.
6. On 1 April 2019, the Chairperson of the Tribunal (Chief Judge W W Isaac) issued his decision on the application for an urgent hearing (attached as Annex 1 to this briefing note. Paragraphs 28-35 are the salient paragraphs containing the Tribunal's reasoning). The application was declined as the Tribunal did not consider that the high bar for granting an urgent application had been met.
7. Based on the submissions and evidence provided, his Honour was not convinced that the changes to the model under which charter schools operated clearly showed risk of significant prejudice to Māori. It appeared to his Honour that the reopening of former charter schools as state schools had not significantly impacted their operation. Without further detail on the alleged prejudice caused by the conversion, it appeared to the Tribunal that the prejudice alleged by the applicants fell short of the significant prejudice required to succeed in an application for a grant of urgency. His Honour further noted that evidence from the schools or the whānau directly affected by the disestablishment of the charter schools was absent and would have strengthened the applicant's case for demonstrating significant and irreversible prejudice would arise from the Crown's actions.
8. The Tribunal also noted the Government is undertaking an independent review of Tomorrow's Schools which will consider the ability of schools to meet the needs of Māori students. The Tribunal considered the findings of the review may inform progression of this claim.
9. His Honour was of the view that this claim would be best heard in the context of the broad and in-depth Education Services and Outcomes kaupapa inquiry rather than on its own as

an urgent inquiry. The recently reprioritised list of kaupapa inquiries would bring forward this inquiry ensuring the matters raised by this claim will be heard in the near future.

10. It remains unclear exactly when the kaupapa inquiry process will take place.

Next Steps

11. No response is required from the Crown to the Tribunal's decision at this time. We expect the Tribunal's decision to be publicly available. The claim remains live and is likely to be heard as part of the Education Services and Outcomes kaupapa inquiry subject to the findings of the Tomorrow's Schools review informing progression of the claim.

Proactive Release

12. We recommend that this Briefing is released. Decisions and related filings of the Waitangi Tribunal are made publicly available.

Annexes

- Annex 1: Decision on Application for an Urgent Hearing, WAI 2770, #2.5.6