

In the High Court of New Zealand
Wellington Registry
I Te Kōti Matua o Aotearoa
Te Whanganui-ā-Tara Rohe

CIV-2022-485-650

under: the Judicial Review Procedure Act 2016 and the
Declaratory Judgments Act 1908

between: **Te Rūnanga o Ngāi Tahu**
Plaintiff

and: **Te Ohu Kai Moana Trustee Ltd**
First Defendant

and: **Minister for Primary Industries**
Second Defendant

Plaintiff's reply to the second defendant's statement of defence
dated 2 December 2022

Dated: 9 December 2022

Reference: J W J Graham (justin.graham@chapmantripp.com)
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PLAINTIFF'S REPLY TO THE SECOND DEFENDANT'S STATEMENT OF DEFENCE DATED 2 DECEMBER 2022

The plaintiff says:

- 7 In respect of paragraph 7:
- 7.1 in respect of paragraph 7.1:
- (a) the obligations of the Crown to Māori in respect of commercial fishing are satisfied only insofar as the Fisheries Settlement is upheld and protected;
 - (b) the Court has jurisdiction to determine whether the terms of the Fisheries Settlement have been breached.
- 7.2 it denies that customary rights have no relevance to this proceeding.
- 15 In respect of paragraph 15, it admits that the Commission held assets on behalf of and for the benefit of Māori;
- 16 In respect of paragraph 16, it says that the manner by which the Treaty of Waitangi Fisheries Commission would facilitate the allocation of pre-settlement and post-settlement assets to iwi was through the functions at paragraphs 16.1 and 16.2 of the first defendant's statement of defence.
- 21 In respect of paragraph 21:
- 21.1 a key mechanism by which the Fisheries Settlement achieved a just and honourable solution to the disputes in relation to commercial fishing rights and interests was by distributing cash and cash generating assets, and 75 per cent of deep-water quota, on a population basis; and
- 21.2 the Amended Surplus Funds Resolution represents a derogation from the terms of the Fisheries Settlement.
- 31 In respect of paragraph 31, it says that:
- 31.1 Ngāi Tahu and 57 other iwi are beneficiaries of the Fisheries Settlement;
- 31.2 Ngāi Tahu and 57 other iwi are beneficiaries of TOKM; and further
- 31.3 by virtue of administering the funds in accordance with the purpose of the MFA, and the purpose of TOKM including performing the duties and functions set out in sections 34 and

35 of the MFA, TOKM Trustee Ltd must administer the funds in a manner which benefits iwi and Māori.

- 42 It denies paragraph 42 and says that the draft Bill attached to the August 2017 Report included a provision that would give effect to the Amended Surplus Funds Resolution.
- 44 In respect of paragraph 44:
- 44.1 It has insufficient knowledge and therefore denies paragraphs 44.1–44.3;
- 44.2 In respect of paragraph 44.4, the Minister has decided he will not support an amendment giving effect to the Amended Surplus Funds Resolution at this time, but:
- (a) the Minister has indicated he may reconsider this view; and
 - (b) Cabinet has not yet made a decision as to whether to give effect to the Amended Surplus Funds Resolution;
- 44.3 In respect of paragraph 44.5, the Minister was not supportive of the inclusion of a clause that reflected the Amended Surplus Funds Resolution, but the decision was yet to go through Cabinet;
- 44.4 In respect of paragraph 44.6, says that on 16 November 2022:
- (a) the second defendant wrote to the plaintiff advising he shared the concerns of Ngāi Tahu about the equal distribution proposal and did not intend to promote a Bill giving effect to the Amended Surplus Funds Resolution and that it was his intention to recommend that Cabinet introduce a Bill without a clause to that effect;
 - (b) the second defendant separately wrote to TOKM Trustee Ltd advising he did not consider it appropriate to support the Amended Surplus Funds Resolution at this time, but was willing to consider a change to the distribution model of surplus funds in the future;
 - (c) the second defendant separately wrote to other MIOs, advising he did not consider it appropriate to support the Amended Surplus Funds Resolution at this time, but would be willing to consider the matter again if there was widespread support for a change to the distribution model of surplus funds.

Affirmative defence

- 65 It denies paragraph 65 and further says:
- 65.1 the Court has the jurisdiction to make declarations as to the meaning and effect of the legal principles and requirements pleaded at paragraphs 60 and 63 of the plaintiff's statement of claim;
 - 65.2 the Court has jurisdiction to make declarations as to the consistency of Crown conduct with the legal principles and requirements pleaded at paragraphs 60 and 63 of the plaintiff's statement of claim; and
 - 65.3 this proceeding does not challenge, or seek to interfere with, the introduction of legislation into the House.