



Tatau Tatau

LEAGUE FILES CLAIM TO HALT LAW CHANGES

The Maori Women's Welfare League has filed a claim in the Waitangi Tribunal challenging the policy changes proposed for the care and protection of children and young persons.

Those groups and individuals present at the Hui Whakatipu called by the National President, Prue Kapua, last Monday unanimously agreed to lodge the claim.

"Essentially the claim is brought on the basis that the policy changes to a safe, stable, loving home without the existing priority of placement within whanau, hapu and iwi is a breach of the rangatiratanga and partnership guarantees under the Treaty of Waitangi," Ms Kapua says.

Last week the President wrote to the Minister of Social Development and the Minister for Māori Development asking that any proposed legislation reflecting the policy is deferred until Māori have had a chance to consider and discuss the changes. The President has also asked the Iwi Leaders for their support in the call to delay the introduction of any new law.

"The policy outlines significant changes that will impact on our tamariki and rangatahi who make up the majority of children in state care. The existing provisions arose out of a report that identified institutional racism within the Department of Social Welfare and the urgent need to involve whanau, hapu and iwi in the decisions about proper care and protection. That the Department has fallen short of those requirements does not justify abandoning them," Ms Kapua stated. "We know how important it is for our tamariki and rangatahi to know who they are and where they come from and to ensure that their whanau, hapu and iwi connection is made and maintained."

The League is keen to work with all organisations and bodies and with Government to find solutions that will keep tamariki and rangatahi safe within the context of their whanau, hapu and iwi.

ENDS

Contact: Prue Kapua, National President M: 0274 721 770

Attached: Waitangi Tribunal Claim; Letters to Ministers Tolley and Flavell

4 December 2016

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

WAI

IN THE MATTER OF

the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

a claim by **PRUDENCE JANE TAMATEKAPUA** on behalf of **TE ROPU WAHINE MAORI TOKO I TE ORA / MAORI WOMENS WELFARE LEAGUE INC.** concerning Investing in Children Legislative Reform outlining legislative changes to Children Young Persons and their Families Act 1989 and related legislation

STATEMENT OF CLAIM
Dated the 2nd day of December 2016

TAMATEKAPUA LAW

PO Box 10081

Dominion Road, Auckland 1446 **Counsel: K Dixon/A Castle**

Telephone: (09) 620 6240

Facsimile: (09) 620 6250

KO NGA KAIHONO - THE CLAIMANTS

1. This Statement of Claim is filed by Prudence Jane Tamatekapua, as a Māori, being a descendant of Ngati Whakaue and Ngati Kahungunu and as the National President of Te Ropu Wahine Maori Toko i te Ora / Maori Women's Welfare League Inc. (hereinafter referred to as "**the League**"). The claimant brings this claim on behalf of herself, the members of the League and for Māori generally, together referred to as "**the Claimants**".
2. The League was established in 1951 and was incorporated in 1957. From the outset the principal purpose of the League, as set out in the Constitution, is the wellbeing of Maori women and their whanau.
3. The League is comprised of over 2,600 members in 160 branches located in eight regions in Aotearoa/New Zealand, based on Maori Land Court districts, and one branch in Australia. The branches in Aotearoa/New Zealand are located thus:
 - 8 in Aotea
 - 30 in Ikaroa
 - 23 in Tainui
 - 18 in Tairawhiti
 - 26 in Tamaki Makaurau
 - 24 in Te Taitokerau
 - 13 in Te Waipounamu; and
 - 17 in Waiariki.
4. The League has since its establishment been involved in matters relating to Child Welfare Division, Department of Education, housing surveys, Department of Social Welfare, consultation in relation to Puao-Te-Ata-Tu and as part of the community component of programmes such as Kohanga Reo, Tu Tangata and Matua Whangai. Today the League provides services under an integrated contract aimed at strengthening whanau, He Kete Aronui and previously as providers of Whanau Toko i te Ora.

TE KERĒME - WHAKAMĀRAMATANGA

5. In 1986 a Ministerial Advisory Committee chaired by the late John Rangihau presented its report on a Maori perspective for the Department of Social Welfare, entitled "Puao-Te-Ata-Tu" to the then Minister of Social Welfare, Hon. Ann Hercus. The Ministerial Advisory Committee was tasked with advising the Minister of Social Welfare on the most appropriate means to achieve the goal of an approach which would meet the needs of Maori in policy, planning and service delivery in the Department of social Welfare.¹ Puao-Te-Ata-Tu recognised the existence of institutional racism within the Department of Social welfare and recommended (inter alia) that the "Children and Young Persons Act 1974 be reviewed having regard to the following principles:
- i. That in the consideration of the welfare of a Maori child regard must be had to the desirability of maintaining the child within the child's hapu;
 - ii. that the whanau/hapu/iwi must be consulted and may be heard in Court of appropriate jurisdiction on the placement of a Maori child;
 - iii. that Court officers, social workers, or any other person dealing with a Maori child should be required to make inquiries as to the child's heritage and family links;
 - iv. that the process of law must enable the kinds of skills and experience required for dealing with Maori children and young persons hapu members to be demonstrated, understood and constantly applied. The approach in recommendation (iv) will require appropriate training mechanisms for all people involved with regard to customary cultural preferences and current Maori circumstances and aspirations;
 - v. that prior to any sentence or determination of a placement the Court of appropriate jurisdiction should where practicable consult, and be seen to be consulting with, members of the child's hapu or with persons active in tribal affairs with a sound knowledge of the hapu concerned;

¹ Puao-Te-Ata-Tu, September 1988, Terms of Reference, p.5

- vi. that the child or the child's family should be empowered to select Kaitiaki or members of the hapu with a right to speak for them;
 - vii. that authority should be given for the diversion of negative forms of expenditure towards programmes for positive Maori development through tribal authorities; these programmes to be aimed at improving Maori community service to the care of children and the relief of parents under stress."²
6. The Children Young Persons and their Families Act 1989 was part of the Crown response to the report and included in the Objects and Principles (particularly sections 4,5 and 13) provisions that reflected Recommendation 4(c) as outlined above.
7. While the changes to legislation and to some structures occurred they were not implemented properly in accordance with the recommendations, were shortlived and inadequately resourced. As Margaret Bazley, the Director-General of Social Welfare from 1993 conceded before the Waitangi Tribunal in the Te Whanau o Waipareira Tribunal hearing:
- "... the early impetus given by Puaa te Atatu had gone and many Maori staff were very angry and bitter about the failure to follow through. It is difficult to speculate as to the reasons behind this failure to follow through ..."*³
8. The Minister of Social Development, Hon. Anne Tolley, has presented three papers to Cabinet entitled "Investing in Children Legislative Reform: Underpinning the New Operating Model". Paper One was entitled "Overview", Paper Two entitled "Foundations for a Child-Centred System" and Paper Three "Intensive Intervention and Care Support". The three papers outline a shift in emphasis in policy from children being understood within the context of whanau to securing safe, stable and loving homes at the earliest opportunity. Paper Three includes the statement that the proposed revision of the care principles in section 13 of the 1989 Act have the aim *'that they will help practitioners make more child-centred placement decisions by strengthening the requirement for a child's involvement in these decisions, focusing on preserving key relationships (including with*

² Puaa-Te-Ata-Tu, September 1988, Recommendation 4(c), pp 10,11

³ Te Whanau o Waipareira Report, Waitangi Tribunal, 1998, p.120

siblings) and increasing the ability for non-kin placements where it is in the child's best interests."⁴ [emphasis added].

Ko te Tuatahi – First Cause of Action: Breach of Principle of Te Tino Rangatiratanga

9. In breach of Articles II and III and principles of the Treaty of Waitangi, the Crown has failed to respect the rangatiratanga of Māori, including Māori organisations, in proposing significant changes to the policy and delivery of social services to Māori currently undertaken under the Children, Young Persons and their Families Act 1989 and related legislation.
 - 9.1. Rangatiratanga encompasses fundamental relationships between Māori culture and identity within the context of a Māori community.
 - 9.2. Children and young people and their nurturing and identity are a taonga.
 - 9.3. The responsibility of the Crown under the Treaty of Waitangi is to enhance rangatiratanga.
 - 9.4. The Crown has a responsibility under the Treaty of Waitangi to respect Māori rangatiratanga and recognise the status Māori have as tangata whenua and Treaty partners.
 - 9.5. In recognition of the status of Māori as Treaty partners, the interests and protection of Māori tikanga and taonga must be accorded an appropriate priority.
 - 9.6. The proposed policy changes outlined in the Cabinet papers are in conflict with the Crown position taken in the Te Whanau o Waipareira Report⁵ in respect of the policy underpinning the provisions introduced by the Children, Young Persons and their Families Act 1989.

⁴ Paper 3: Intensive Intervention and Care Support, para 44

⁵ Te Whanau o Waipareira Report, Waitangi Tribunal, 1998

10. The overarching principle of the Treaty is that the cession by Māori of kawanatanga to the Crown was in exchange for the protection by the Crown of Maori tino rangatiratanga over their taonga katoa.⁶ Inherent in this basic principle is the Crown obligation to actively protect Māori Treaty rights and tino rangatiratanga.
11. The Crown has breached its kawanatanga responsibilities through failing to adhere to its reciprocal duty to respect and protect the exercise of tino rangatiratanga by Māori over their children and young people within the context of their whanau, hapu and iwi.
 - 11.1. Prior to colonisation, Māori exercised their mana and their tino rangatiratanga in accordance with tikanga. Those rights have been removed, compromised and/ or eroded by the Crown in a myriad of ways, through legislation, policy, practices, acts and omissions, all of which have impacted on the relationship that Māori have with their taonga.
 - 11.2. The Crown has failed to respect the mana and te tino rangatiratanga of Māori by pursuing assimilationist policies in relation to social policy and child welfare.
 - 11.3. The Crown has failed to meet its obligations under Article III of the Treaty of Waitangi by failing to provide Māori with systems and services that meet their needs and are of the same standard as Pakeha.
 - 11.4. The historical issues will be exacerbated by the proposed legislative reforms evidenced by the policy that will result in further systematic dismantling of the relationship between Māori and their children and young people within the context of the traditional units of whanau, hapu and iwi.

Ko te Tuarua - Second Cause of Action: Breach of Principle of Partnership

12. The cession of kawanatanga and the acknowledgement of rangatiratanga gives rise to partnership, whereby the Crown has an

⁶ Waitangi Tribunal, *Turangi Township Report* (1995), section 15.2.1.

obligation to protect Māori rangatiratanga while assisting Māori to strengthen themselves in respect of empowering them to exercise rangatiratanga.

13. The development of policies in matters as important to Māori as care and protection of children and young people requires the Crown to do so in accordance with the principles of reciprocity and partnership in a way that gives effect to te tino rangatiratanga.

13.1. There has been no genuine attempt at consultation with the Māori community, including organisations, by the Crown in proposing significant policy changes that will impact on legislation that was enacted in an attempt to address identified institutional racism.

13.2. There has been no provision of relevant information provided to Māori generally, including Māori community organisations or attempts made to discuss in detail the effects of changes to the policy and underlying purpose of legislation that guides the care and placement of Māori children and young people.

PREJUDICIAL EFFECTS

14. The prejudicial effects suffered by Māori include (but are not limited to):

14.1. the erosion of rangatiratanga in respect of care and protection of tamariki and rangatahi by Māori;

14.2. the imposition of policies that are likely to result in legislative changes that do not reflect the tikanga and customary values of Māori;

14.3. increased negative effects on tamariki and rangatahi placed in care situations that do not reflect their identity as Māori;

14.4. increased probability of negative outcomes for Māori children in care who comprise the majority of children in care;

14.5. the negative effects on Māori whanau and traditional whanau structure;

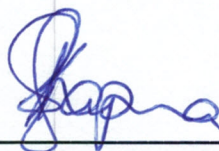
- 14.6. the inability for Māori to participate as a Treaty partner in addressing systemic change that aims to address the disproportionate numbers of Māori children and young people in care.

RELIEF SOUGHT

15. That any introduction of legislative reforms that relate to purposes and principles of placement of Māori children and young people are deferred until full and appropriate consultation and discussion with Māori has occurred.
16. That the Crown undertakes an extensive consultation programme with Māori to identify issues and to explore solutions that address specifically the position of Māori children and young persons in care.
17. That any policy and legislative reforms proposed, after appropriate consultation, reflect the importance of whakapapa and identification as Māori and emphasise intervention that is aimed at strengthening whanau to facilitate a greater opportunity for children and young people to remain within their wider whanau.
18. That the Crown pay the full costs to Maori Women's Welfare League Inc for the preparation and presentation of this claim.
19. Such other recommendations that the Tribunal deems appropriate.

LEAVE TO AMEND

20. The claimants reserve their right to file further amendments to this claim if required.



Prue Kapua

Claimant, for and on behalf of Maori Women's Welfare League Inc

This Statement of Claim is filed by **KELLY DIXON**, Solicitor for the Claimants, of Tamatekapua Law, Auckland. The address for service of the claimants is at the offices of Tamatekapua Law, 2a Kings Road, Balmoral, Auckland.

Documents for service on the plaintiff may be left at that address for service, or may be-

- Posted to the solicitor at PO Box 10081, Dominion Road, Auckland;
- Transmitted by facsimile to 09 620 6250;
- Emailed to kelly@tamatekapua.co.nz



Tatau Tatau

30 November 2016

Hon. Anne Tolley
Minister of Social Development
Parliament Buildings
WELLINGTON

By email:

E te Minita, tena koe

Nga mihi i nga tini ahuatanga o te wa

You may be aware that I called a Hui Whakatipu to bring together ropu, organisations and individuals, including members of the Maori Women's Welfare League, to discuss the proposed reforms to the Children, Young Persons and Their Families Act 1989 as outlined in the three Cabinet papers entitled "Investing in Children Legislative Reform: Underpinning the New Model".

At the conclusion of the hui, there was a clear consensus that the papers indicated a move away from the provisions in the 1989 Act that emphasised the role of whanau, hapu and iwi and the vision of strengthening whanau to enable tamariki and rangatahi to remain in their whanau, and if not, then within their hapu and iwi. The proposed changes to the purposes and principles of the Act and particularly to section 13 as outlined in the papers have alarmed many of those who attended.

We also noted that it is intended that legislation will be introduced into the House before the end of the year and the participants at the Hui unanimously agreed that I write to you, as a matter of urgency, asking that any introduction of proposed legislative reform on the objects/purposes and principles of the Children, Young Persons and their Families Act 1989 and any related legislation be deferred until Maori have had the opportunity to properly discuss the proposed reforms, the impact on our tamariki, rangatahi and wider whanau and to get reassurance from you and the government in respect of the changes, including reassurance that the roles under the Act will not be assigned to private companies, as has occurred overseas.

The wellbeing of our women and their whanau has been a cornerstone of the League since its establishment in 1951, and we have continuously sought greater involvement, initially with the former Child Welfare Division in the Department of Education, and as part of the Kohanga Reo, Tu Tangata and Matua Whangai initiatives. The League took an active role throughout the consultation process that gave rise to the significant findings in Puao-Te-Ata-Tu and more recently with the Expert Advisory Panel proceedings. It is disappointing that with this significant background in the area, there has been no attempts to engage the League in discussion or consultation about this significant issue.

The general consensus of Monday's hui is that the League is not alone in terms of the lack of any discussion or consultation about the proposed changes as a number of the organisations present had had no contact about the proposed changes.

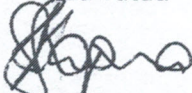
The Cabinet papers set out significant changes that affect Maori more than any other group – not only because of the systemic failures that date back over 70 years but also because of the fact that the majority of children and rangatahi in state care and youth justice are Maori.

There is no question we are collectively committed to finding solutions but cannot do that when we are excluded from any input on what changes are necessary. What is clear, though, is that the changes proposed in the Cabinet papers do not address the issue as it relates to our tamariki and rangatahi and who they are.

We are happy to assist in the facilitation of hui that will outline the changes that are necessary to improve the outcomes for our tamariki and rangatahi. But that cannot be done within the limitations of and against the backdrop of a select committee process and accordingly we ask that the introduction of any Bill that will amend the Children, Young Persons and their Families Act 1989 and related legislation is deferred until the necessary discussions have been held by Maori, particularly those who have the experience and knowledge of working in the community with our whanau, tamariki and rangatahi.

We look forward to your urgent response.

Tatau Tatau



Ptue Kapua
National President



Tatau Tatau

30 November 2016

Hon. Te Ururoa Flavell
Minister for Maori Development, Whanau Ora
Parliament Buildings
WELLINGTON

By email:

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We also noted that it is intended that legislation will be introduced into the House before the end of the year and the participants at the Hui unanimously agreed that I write to you asking that you support and advocate for the deferral of the introduction of proposed legislative reform on the objects/purposes and principles of the Children, Young Persons and their Families Act 1989 and any related legislation until Maori have had the opportunity to properly discuss the proposed reforms, the impact on our tamariki, rangatahi and wider whanau and to get reassurance from the government in respect of the changes, including reassurance that the roles will not be assigned to private companies, as has occurred overseas.

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The general consensus of those attending Monday's hui is that the League is not alone in terms of the lack of any discussion or consultation about the proposed changes as a number of the organisations present had had no contact about the proposed changes.

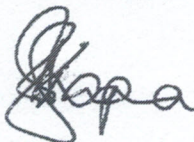
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We look forward to your urgent response.

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Prue Kapua
National President