

Tātau Tātau o Te Wairoa Trustee Limited.

Wai Maori

February 2022

Q & As

What is a statement of claim?

A statement of claim is the first document filed in a legal case. It explains what the plaintiffs want, and the relevant law and facts that justify their arguments.

Why is the case against the Attorney-General?

The Attorney-General (David Parker) is the person against whom cases are taken against the Crown as a whole.

What is standing?

Standing is the word the courts use to describe the requirement that a plaintiff is connected with the subject of the case they are asking the Court to consider.

What is the case asking the courts to do?

The case is asking the court to make declarations. Declarations are statements such as Hapū/ Iwi has Rangatiratanga entitlements to Wai Māori. The impact of a declaration on the Crown is to make the Crown take action on Wai Māori in a political and moral respect.

Why are there two separate causes of action?

A cause of action is a particular legal basis for the claim. Cases often have a number of causes of action, so that if one cause of action doesn't succeed, another might succeed instead.

In the Ngāi Tahu case, they have two causes of action. The first cause of action asks the court to make declarations that Ngāi Tahu has putake-mauka/rangatiratanga entitlements to Wai Māori, and that the Crown must work with them to design **a new system** that takes account of these. The second cause of action argues they have rights and interests in Wai Māori and that the Crown has a duty of good faith to work with them to **design a new system**.

While the two causes of action are similar in their effect, having two ensures they have back-up legal justifications for their arguments.

What are rangatiratanga entitlements/putake-mauka?

Ngāi Tahu use the term rangatiratanga entitlements to describe the modern-day entitlements of Ngāi Tahu to exercise rights, responsibilities and obligations in accordance with Ngāi Tahu tikanga – in this case, over freshwater.

Ngāi Tahu also refer to their rangatiratanga entitlements with the term putake-mauka, a unique Ngāi Tahu term used to refer to the ancestral source of rights upon the landscape, whether it be the land, water or other taonga. Putake means both 'source' and 'ancestor'. The phrase putake-mauka refers to the ancestral rights of Ngāi Tahu represented in the mountains themselves as their Tipuna.

It is important to note that rangatiratanga entitlements and putake-mauka are not arguments for applying the western concept of “ownership” to Wai Māori. They are about their ability to exercise their rights, but also their responsibilities and obligations over freshwater as a natural resource.

Why does the case refer to Ngāi Tahu exercising rangatiratanga before 1840, and then since 1840?

Ngāi Tahu use examples of how rangatiratanga was exercised over Wai Māori before 1840 to show that their Rangatiratanga pre-dated Te Tiriti o Waitangi. Ngāi Tahu uses examples of how rangatiratanga was exercised over Wai Māori since 1840 to show how they have continued to try to exercise their rangatiratanga, despite all of the roadblocks the Crown has put in their way. The point of the case is to argue that the Crown has to remove these roadblocks.

Is the case about Wai Māori in particular areas?

No – the case is about Wai Māori as a resource generally.

Why are particular lakes and rivers referred to in Schedule 1 of the statement of claim but not others?

A selection of waterbodies from across the Takiwā was chosen to provide examples of the Ngāi Tahu relationship with Wai Māori. These are examples to help back up their arguments – the case is not about the Wai Māori in these waterbodies specifically, it is about Wai Māori everywhere in the takiwā.

What should I do if the case is raised with me by media or the Crown (e.g., DOC or another department)?

TToTWT Board will take into account your whakaaro and feedback received in making a decision on what position or option, if any, we will move forward on. Any decision to participate will be communicated to you and this will be supported with a comprehensive communications strategy and package inclusive of how to respond, treat or defer media queries or contact from the Crown. In any case and pending a decision of the Board, media queries should be reported to our Board Chair or GM so we can ensure we have a record of queries and can take a consistent response. The same applies to any contact or queries received from the Crown, DOC or other agency of the Crown..