



Aotearoa New Zealand UPR pre-session 46

Tuesday 13 February 2024

Wakatū Incorporation statement on the UPR Pre-Session on New Zealand

This statement is delivered on behalf of Wakatū Incorporation, an indigenous, collective-based 'Māori' organisation located in the South Island of Aotearoa New Zealand.

Wakatū was established in 1977 by its Māori owners, to manage the remnants of ancestral Māori land known as the Nelson Tenths Reserves and Occupation Lands.

Wakatū is here to present on the Aotearoa New Zealand Government's ongoing violation of the human rights of the Māori customary owners of the Nelson Tenths Reserves.

Our presentation focuses on specific legal proceedings (*Stafford v Attorney-General*), which are being led by kaumātua (revered elder) Rore Stafford on behalf of the indigenous Māori owners of the lands in question.

ISSUE 1: THE RIGHT TO LAND, TERRITORIES AND RESOURCES

In 1845, the Crown established a legal trust in Nelson designed to reserve and protect specific lands belonging to the Māori customary owners in that area.

While some ancestral land was protected as a result of the trust, the majority of land was not. Instead it was appropriated by the Crown for the settlement of Nelson.

Because of the establishment of the trust, the Crown has important fiduciary duties to the Māori landowners as a trustee.

In 2017, the Supreme Court of New Zealand ruled that the Crown owed legally enforceable duties to the original Māori landowners to reserve 15,100 acres of land in Nelson and, in addition, to protect their culturally significant ancestral lands (known as the Occupation Lands).

This decision was important, as it established the Crown's clear legal duties in this matter.

The Supreme Court directed the parties back to the New Zealand High Court to determine remedies, the extent of the Crown's breaches and any defences available to the Crown. The High Court hearing took place from August to October 2023.

Despite this, the strong preference of the traditional Māori owners has been to resolve the matter directly, and in particular to prevent the loss of any further ancestral land in the Nelson region.

Since 2017, all attempts at engaging with the New Zealand Government to resolve this matter have been unsuccessful, no land has been returned, nor any compensation paid for the Crown's failure to meet its legal obligations.

In addition, the New Zealand Government has attempted to sell or dispose of further land within the Nelson area, which we believe is subject to the trust and the ongoing legal proceedings.

This is a clear and ongoing violation of Articles 25, 26, 27, and 28 of the Declaration.

ISSUE 2: THE RIGHT TO REDRESS

In the period since 1845, the Crown has failed to provide any redress for failing to reserve and protect the lands as agreed, and for the losses resulting from the owners' inability to access or use their lands.

During our recent High Court hearing, the New Zealand Government continued to oppose redress, stating that no land was held on trust, the evidence was insufficient, and it is too late to do justice.

This hardline approach contradicts the Supreme Court's ruling, which confirmed the Crown's duties as trustee and their legal obligations to the traditional Māori landowners. and fails to acknowledge the clear evidence of injustice.

Our litigation against the Crown has now been on foot for over 15 years. Despite the Supreme Court ruling, the Crown has yet to recognise its role and responsibility as trustee.

RECOMMENDATIONS

Aotearoa New Zealand has recently elected a new coalition government.

Wakatū and kaumātua Rore Stafford, the plaintiff who represents the Māori customary owners, are hopeful that the new government will take a different approach to its predecessors, and proactively engage with us to reach a solution.

With this in mind, Wakatū recommends that the New Zealand Government:

1. **Recognises** and takes proactive steps to fulfil its legal duties, as determined by the Supreme Court of New Zealand in 2017, in its first term of Government.
2. **Engages** meaningfully with the Māori customary owners to negotiate a principled, fair and robust solution that includes the return of lands or, where this is not possible, compensation for losses, in line with the Supreme Court's 2017 decision, as a matter of urgency and by the end of 2024.