



# COURT OF APPEAL OF NEW ZEALAND

## TE KŌTI PĪRA O AOTEAROA

13 May 2024

**MEDIA RELEASE — FOR IMMEDIATE PUBLICATION**

*Colleen Skerret-White and Ors v Minister for Children and Ors* [2024] NZCA 160

PRESS SUMMARY

**This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

### Summary

Today, the Court allowed two appeals against a decision of the High Court which set aside a summons issued by the Waitangi Tribunal to the Minister of Children. The summons had required her to give evidence in the course of an inquiry into the proposed repeal of section 7AA of the Oranga Tamariki Act 1989.

For the reasons set out in its unanimous judgment, the Court has concluded:

- (a) The Tribunal has a role of constitutional importance. It has a statutory duty to inquire into the claims made to it under s 6(1) of the Treaty of Waitangi Act that a Crown policy to enact legislation is inconsistent with the principles of the Treaty of Waitangi. The Act provides that, in fulfilling that duty, it has the powers of a commission of inquiry under the Commissions of Inquiry Act 1908, including the power under s 4D of that Act to summons a minister of the Crown to provide evidence to it for the purposes of its inquiry if the minister has relevant evidence.

- (b) We agree with the High Court that the Minister had relevant evidence to give to the Tribunal. It was legitimate for the Tribunal to consider that the Minister might be able to provide more information both relevant and necessary to the Inquiry.
- (c) When issuing the summons, the Tribunal was also appropriately sensitive to relevant issues, including collective Cabinet responsibility, the confidentiality of Cabinet discussions, and legal privilege. It also indicated it preferred that the Minister provided the requested information voluntarily.
- (d) Contrary to the view of the High Court, we do not accept that the principle of comity necessarily applies to limit the power of the Tribunal. It is a principle that typically operates as between the judicial and legislative branches of government, which is a different context from that in which the Tribunal operates. The Tribunal is fulfilling a statutory duty, and s 6(6) of the Treaty of Waitangi Act identifies when its jurisdiction is limited by the proceedings of Parliament. Moreover, even if comity applies it applies to the Crown as well as the Tribunal, and such a duty would involve the Minister voluntarily providing the information that the Tribunal requested. That would also be consistent with the Crown's Treaty obligations.
- (e) Since the Tribunal issued the summons, a number of events have taken place. The Minister has now provided a letter to the Tribunal responding to the questions it asked; officials have given evidence related to those matters; and the Tribunal has issued both an interim and a full report. It also appears that the introduction of a Bill repealing s 7AA is imminent. These changed circumstances give rise to issues of mootness. However, even if the appeal were moot, that would not preclude the Court from deciding the appeal and issuing a fully reasoned decision, given the important public interests involved.
- (f) Accordingly, for these reasons we are formally allowing the appeal, but make no further orders.