

IN THE WAITANGI TRIBUNAL

WAI 2575

WAI 2240

UNDER

The Treaty of Waitangi Act 1975.

AND

IN THE MATTER OF

The Health Outcomes and Services
Kaupapa Inquiry

AND

IN THE MATTER OF

Inadequate provision of healthcare
services to Māori affected by Problem
Gambling

AND

IN THE MATTER OF

Wai 2240 a claim by Marino Murphy

AMENDED STATEMENT OF CLAIM

DATED 28 MARCH 2017

Te Mata Law

PO Box 44331

Point Chevalier

AUCKLAND 1246

Tel: 0508-TEMATA (0508-836282)

Counsel Acting: David Stone | Brooke Loader

David@tematalaw.co.nz | Brooke@tematalaw.co.nz

RECEIVED

Waitangi Tribunal

30 Mar 2017

Ministry of Justice
WELLINGTON

MAY IT PLEASE THE TRIBUNAL

PART A: INTRODUCTION

1. Pre-colonial Māori society had no history of gambling.¹
2. Nor, until recently, was there a word for ‘gambling’ in te reo Māori.²
3. This has now all changed.
4. Today – and this is what this claim is about:
 - a. Māori are now more likely to be problem gamblers than non-Māori.
 - b. Māori suffer health, social and economic problems resulting from problem gambling.
 - c. Pokie machines are strategically put where Māori live: in affluent areas, there is one pokie machine per 465 people but in lower decile areas there is one pokie machine per 75 people. That’s a difference of over 620%.
5. This claim is also about:
 - a. Māori having no right to sit on the boards that grant gambling licences.
 - b. Those who grant pokie licenses do not need to consult with mana whenua/tangata whenua nor take into account Article 3 of the Treaty of Waitangi before granting pokie licenses.

The Claimant

6. The claimant is Marino Murphy (“the claimant”) who has first-hand experience of the effects of problem gambling on the health of Māori through her work as a registered Problem Gambling Practitioner at Nga Manga Puriri Problem Gambling Service in Whangarei.

¹ Ministry of Health “Problem Gambling in New Zealand Preliminary findings from the New Zealand Health Survey” (July 2011 to March 2012) August 2012 at 9.

² Above n 1.

7. The claimant brings this claim on behalf of herself, her whanau and hapu of Ngāti Hine and those Māori suffering from problem gambling.

The claim

8. Current Crown policy at both a central and local government level concerning gambling and problem gambling does not adequately incorporate principles of the Treaty of Waitangi in its structure, design and implementation.
9. This applies to policy concerning the licencing and management of gambling machines and games themselves, and the healthcare support provide to Māori problem gamblers who suffer from adverse healthcare outcomes as a result of their participation in this activity.
10. Māori suffer greater negative health outcomes due to the addictive nature of problem gambling, and the subsequent adverse effects of participating in this Crown-controlled activity.
11. The claimant was motivated to bring this claim to advocate for the droves of Māori and their whanau that suffer from adverse health effects as a result of problem gambling addiction.
12. This claim is an amendment to the existing Wai 2240 claim and should be read in conjunction with the earlier versions of the amended statement of claim.

The Treaty of Waitangi Act 1975

13. The claimant says that this claim falls within section 6(1) of the Treaty of Waitangi Act 1975 namely:
 - a. That she is Māori; and
 - b. Has been and continues to be or is likely to be prejudicially affected by the various Acts and Crown policies, practices, acts and omissions adopted by, or on behalf of the Crown or its agents.

PART B: MĀORI AND PROBLEM GAMBLING

Duty

14. The Crown has a duty to take into account the principles of the Treaty of Waitangi in respect of gambling, in particular the process and procedure involved with granting gaming licences.
15. The Crown has a duty to take into account the best health outcomes for Māori when considering the granting of gaming licenses.
16. The Crown has a duty to work with Māori in respect of all issues concerning problem gambling and its resultant prejudice to Māori.

Breach

17. The Crown has failed to ensure that those who grant gaming licenses take into account Article 3 principles in respect of the Treaty of Waitangi. This includes:
 - a. Consulting with those most likely to suffer from having too many pokie machines in their community, namely Māori.
 - b. Taking into account the effects of targeting Māori communities as places to put pokie machines.
 - c. Making provision for adequate Māori representation on those boards that grant gambling licenses.
18. The Crown has also failed to mitigate Māori against the affects resulting from the aforementioned breaches, namely health and social care required to deal with problems arising from problem gambling.

Particulars: Māori Society and Gambling

19. Early post-colonial gambling related activities were generally positive experiences for the purpose of fundraising for marae.³
20. Māori are likely to be at risk of gambling problems than those in other ethnic groups.⁴
21. Māori people were more likely to be affected by other people's gambling than those in other ethnic groups (6% of Māori compared to 2.1% of European and other).⁵

National Gambling Study of 1991 Shows Extent of Māori Problem Gambling

22. In 1991, the New Zealand national gambling prevalence study found that 16% of the Māori adult population had a problem with gambling sometime in their life and were two to three times at risk to either problem or pathological gambling than non-Māori (European).⁶
23. Further, 3.2% of the New Zealand population would have had problems within the last six months, defined as current prevalence.⁷

National Gambling Study of 1991 Shows No Strong Improvement in Statistics

24. Māori are approximately three and a half times more likely to be problem gamblers than the average New Zealand population⁸ and about a third of all moderate-risk and problem gamblers are Māori.⁹

³ Wātene, N., K. Thompson, A. Barnett, M. Balzer and M. Turinui (2007). "Whakatau Mai Ra: The impacts of gambling for Maori communities – A national Maori collaborative approach." in Problem Gambling Foundation of New Zealand, "Māori and gambling" Fact Sheet 8, March 2012.

⁴ Above n 1 at 7.

⁵ Above n 1 at 9.

⁶ Abbott, M., & Volberg, R. (1991). *Gaming and problem gambling in New Zealand* Research Series No. 12. Wellington, Department of Internal Affairs in L. Dyall and J. Hand, *Maori and Gambling: Why a Comprehensive Māori Public-health Response is Required in New Zealand* International Journal of Mental Health & Addiction, 1(1) at 7.

⁷ Above n 6.

Particulars: Adverse Effects of Problem Gambling on Māori

Definition of Māori health wellbeing

25. Problem gambling affects all four cornerstones of wellbeing considered important to Māori, namely spiritual wellbeing, mental wellbeing, family wellbeing and physical wellbeing.
26. The definition of health wellbeing in general medical practice and from a World Health Organisation perspective is much narrower than the holistic approach to health that is adopted by Māori according to tikanga.¹⁰
27. Accordingly, the adverse effects of problem gambling on Māori health wellbeing are not fully recognised by the medical fraternity due to a difference in definitions on what constitutes health wellbeing.
28. Problem gambling affects both the quality of life of problem gamblers and those people whom they closely associate with such as whanau members. Gambling and problem gambling in New Zealand requires recognition as a serious health issue, especially for Māori and should not be treated any differently than alcohol or tobacco which creates real harm for Māori in terms of health status.¹¹

⁸ Abbott, M., Bellringer, M., Garrett, N., & Mundy-McPherson, S. (2014). New Zealand 2012 National gambling study: Gambling harm and problem gambling. Wellington: Ministry of Health in Problem Gambling Foundation of New Zealand, "Māori and gambling" Fact Sheet 8, March 2012.

⁹ Devlin, M. (2011). "Technical report: Groups at risk of at-risk gambling." Health Sponsorship Council in Problem Gambling Foundation of New Zealand, "Māori and gambling" Fact Sheet 8, March 2012.

¹⁰ Durie, M. (1998b). Whaiora: Maori health development. Auckland, Oxford Press in L. Dyal and J. Hand, *Maori and Gambling: Why a Comprehensive Māori Public-health Response is Required in New Zealand* International Journal of Mental Health & Addiction, 1(1) at 7.

¹¹ L. Dyal and J. Hand, *Maori and Gambling: Why a Comprehensive Māori Public-health Response is Required in New Zealand* International Journal of Mental Health & Addiction, 1(1) at 17

Adverse effects on individual Māori

29. Health consequences arising from problem gambling can include the following:¹²
 - a. An increase in smoking and second hand smoke inhalation,
 - b. Eating disorders,
 - c. Depression;
 - d. Suicidal tendencies; and
 - e. Various other mental health illnesses.

30. Some women admitted to losing jobs, turning to crime or neglecting their children as a result of gambling.

Adverse effects on the wider whanau

31. Māori have suffered the most from the increase in the number of gambling machines in New Zealand, particularly since the 1980's.¹³

32. Māori don't have to be gamblers to feel the effects of gambling.

33. Half of the Māori surveyed for the National Gambling Study said they knew someone who likely had a problem with gambling, higher than any other ethnic group.

34. Māori reported higher-than-average rates of gambling among their families while they were growing up, and in their current whanau.¹⁴

35. The National Gambling Study reported high rates of arguing with someone about time or money spent gambling, and high rates of someone in their

¹² Morrison, L. (2008). "Maori women and gambling: Every day is a war day!" Doctor of Philosophy thesis, University of Waikato, 2008 in Problem Gambling Foundation of New Zealand, "Māori and gambling" Fact Sheet 8, March 2012.

¹³ Wheeler, B., J. Rigby and T. Huriwai (2006). "Pokies and poverty: Problem gambling risk factor geography in New Zealand." Health & Place 12(1). in Problem Gambling Foundation of New Zealand, "Māori and gambling" Fact Sheet 8, March 2012.

¹⁴ Above n 8.

family going without something they needed due to money being spent on gambling.¹⁵

36. The negative consequences of gambling can be the loss of relationships, mistrust and isolation from whānau, and financial mismanagement so whanau are not provided the everyday essentials for adequate healthcare, including access to doctors and adequate nutrition.
37. Children of parents who have a gambling problem are more likely to become problem gamblers themselves. Parents and whānau who gamble act as role models, especially when gambling activities are a central part of social life. Early participation and views of gambling as entertainment and a way to escape financial difficulties are part of the developmental cycle of problem gambling.¹⁶
38. A study of family members of Māori problem gamblers found they were most strongly affected by the neglect they suffered as children while parents were busy gambling. Aside from the lack of essentials, they reported feelings of not being loved or valued.¹⁷

Gambling and Prison Health

39. Prison studies have provided evidence showing the adverse effects of gambling on indigenous people.¹⁸
40. In the development of public policies relating to gambling (and other matters), aimed at reducing the effects of alcohol and gambling-related harm, the

¹⁵ Above n 8.

¹⁶ Dyall, L., Y. L. Thomas and D. Thomas (2009). "The impact of gambling on Māori." Ngā Pae o te Māramatanga in Problem Gambling Foundation of New Zealand, "Māori and gambling" Fact Sheet 8, March 2012.

¹⁷ Dyall, L., Y. L. Thomas and D. Thomas (2009). "The impact of gambling on Māori." Ngā Pae o te Māramatanga in Problem Gambling Foundation of New Zealand, "Māori and gambling" Fact Sheet 8, March 2012.

¹⁸ Ministry of Health. (2000). New Zealand health strategy. Wellington, Ministry of Health. See also above n 11 at 10.

interrelationship between alcohol abuse, problem gambling, mental ill health and criminal offending is complex and requires special recognition for Māori.¹⁹

41. Research has found that a single focused approach in addressing gambling-related harm will achieve little for Māori as the effects of gambling-related harm are generally invisible but require recognition in all areas of the health, disability, accident, justice and social service sectors in New Zealand.²⁰

Particulars: Geographical Location

42. Gambling machines are the most harmful form of gambling and are highly concentrated in areas with high Māori populations which tend to be more deprived areas.²¹
43. In affluent areas, there is an average of one pokie machine per 465 people. In poorer areas, there is one pokie machine for every 75 people.²²
44. Each pokie takes in an average of \$47,500 per year, usually from those who can least afford it.
45. Restricting per capita density of pokie machines leads to a decrease in gambling harm.²³

Particulars: Normalisation of Gambling

46. Māori cultural icons are used in advertising to promote and normalise gambling.
47. When the first casinos were opened in the early 1990s, Māori carvings were placed in entrances.

¹⁹ Above n 11 at 10.

²⁰ Above n 11 at 10.

²¹ Above n 13.

²² Wheeler, B., J. Rigby and T. Huriwai (2006). "Pokies and poverty: Problem gambling risk factor geography in New Zealand." Health & Place 12(1). in Problem Gambling Foundation of New Zealand, "Māori and gambling" Fact Sheet 1, March 2012.

²³ Storer, J., M Abbott, J Stubbs "Access or adaption? A meta-analysis of surveys of problem gambling prevalence in Australia and New Zealand with respect to concentration of electronic gaming machines" (2009) International Gambling Studies 9(3): 225-244.

48. More recently, lottery scratch tickets have featured native flora and fauna, and marae display plaques with logos of the New Zealand Lottery Board or gaming trusts.²⁴

Particulars: Access to Healthcare Generally

49. According to the Ministry of Health, Māori were overrepresented among those seeking counselling services in 2014 and 2015: among face-to-face counselling clients, more than one-third (35%) were Māori.²⁵
50. The freephone Gambling Helpline reported the same, with one-third (35.3%) of callers being Māori.²⁶
51. One in four people presenting for help through gambling treatment or helpline services self-identify as Māori and the number is increasing, with more Māori women than Māori men seeking help,²⁷ but there are still barriers in accessing treatment services.²⁸

Particulars: Admissions to the Nga Manga Puriri Northland Problem Gambling Service

52. Problem gambling is the cause of many adverse health outcomes for Māori in Te Tai Tokerau.

²⁴ Dyall, L., S. Tse and A. Kingi (2009). "Cultural icons and marketing of gambling." International Journal of Mental Health and Addiction 7(1) in Problem Gambling Foundation of New Zealand, "Gambling in New Zealand" Fact Sheet 1, March 2017.

²⁵ Ministry of Health (2015). "Intervention client data." Retrieved from <http://www.health.govt.nz/our-work/mental-health-and-addictions/problem-gambling/service-user-data/intervention-client-data> in Problem Gambling Foundation of New Zealand, "Māori and gambling" Fact Sheet 8, March 2012.

²⁶ Ministry of Health (2015). "Gambling helpline client data." Retrieved from <http://www.health.govt.nz/our-work/mental-health-and-addictions/problem-gambling/service-user-data/gambling-helpline-client-data> in Problem Gambling Foundation of New Zealand, "Māori and gambling" Fact Sheet 8, March 2012.

²⁷ Paton-Simpson, G., & Gruys, M. (2001). Problem gambling counselling in New Zealand: 2000 national statistics. Wellington, Department of Internal Affairs in L. Dyall and J. Hand, *Maori and Gambling: Why a Comprehensive Maori Public-health Response is Required in New Zealand* International Journal of Mental Health & Addiction, 1(1) at 12

²⁸ Above n 11 at 12.

53. Problem gambling increases the risk of suicide and mental health issues. It increases stress in the whanau. The gambler's whanau is often left poor and living in squalid conditions as they cannot afford necessities such as healthcare and food.
54. Nga Manga Puriri Problem Gambling Service provides assistance to those affected by gambling in Te Tai Tokerau and it has experienced an increase in the numbers of those using the service.
55. This the only problem gambling service in all of Tai Tokerau, from Wellsford through to Cape Reinga. The Ministry of Health funds only three full time practitioners to manage problem gambling issues and family affected by these issues throughout Tai Tokerau.
56. Gamblers are at risk of gambling away their family wealth. This impacts the wider whanau as it leaves them with little money for everyday expenses such as healthcare and food, which can result in negative health outcomes for both the gambler and the gambler's whanau.

Particulars: Government response to problem gambling and the role of the Treaty

57. Gambling should be seen like alcohol and tobacco as health hazards, which have and continues to limit the development of tangata whenua in Aotearoa.²⁹
58. The term public health is defined broadly to encompass development and implementation of interventions, which aim to improve the health and wellbeing of communities as well as protect people from ill-health and minimize the risk of disease.³⁰
59. The term gambling-related harm is defined broadly to cover all the effects that may arise at individual, family, and community levels as result of gambling.³¹

²⁹ Above n 11 at 2.

³⁰ Above n 11 at 2.

³¹ Above n 11 at 3.

60. Legislation was developed in 2002 to improve health outcomes concerning problem gambling. This new legislation included:³²
- a. defining areas where different forms of gambling can occur;
 - b. licensing requirements for different classes of gambling;
 - c. specific requirement for local government involvement in the siting of outlets for gambling machines;
 - d. a restriction of nine gambling machines on new gambling machine sites;
 - e. provision for a community to veto new gambling machine sites;
 - f. a requirement for the development of harm minimisation regulations, including electronic monitoring of gambling machines;
 - g. a requirement for gambling operators to pay a compulsory levy to cover the costs of services for problem gambling; and
 - h. the establishment of a Gambling Commission to oversee ongoing casino licences and to consider appeals where applications for gambling machines licences have been declined.
61. This bill not did make it past its second reading.
62. There is government recognition that problem gambling should now be considered a public health issue especially for Māori with the Ministry of Health having policy responsibility to purchase services with gambling money to prevent and treat problems associated with gambling.³³ Yet the response from the Crown to improve problem gambling health outcomes for Māori has been limited.
63. The Department of Internal Affairs has the responsibility to develop harm minimisation regulations and monitor overall gambling developments in New Zealand.³⁴

³² Select Committee on Government Administration (Responsible gambling) Bill 2002. (200-2). Wellington, Parliament in L. Dyal and J. Hand, *Maori and Gambling: Why a Comprehensive Māori Public-health Response is Required in New Zealand* International Journal of Mental Health & Addiction, 1(1) at 4.

³³ Above n 11 at 4.

³⁴ Department of Internal Affairs. (2001a). Gaming reform in New Zealand: Towards a new legislative framework. Wellington, Department of Internal Affairs in L. Dyal and J. Hand, *Maori and Gambling: Why a Comprehensive Māori Public-health Response is Required in New Zealand* International Journal of Mental Health & Addiction, 1(1) at 4.

64. This proposed legislation compliments the new Local Government Act 2002, which became enforceable on July 1, 2003, giving local authorities specific statutory responsibilities to recognise the Treaty of Waitangi in their work and the power to develop bylaws to protect the public health and safety of people.³⁵
65. These new powers are now only being considered in relation to addressing gambling by local governments – 14 years later.³⁶
66. However, local governments are yet to adopt a Treaty-compliant approach to the issue of problem gambling. There is no Māori representation on government licencing boards, and it is not a requirement for Article 3 of the Treaty to be considered in the issuing of gambling licences.
67. To redress the effects of gambling a comprehensive public health response is required which recognises New Zealand's cultural context of gambling and Treaty of Waitangi obligations.³⁷
68. To change the position of Māori requires new gambling and related policies that recognise Treaty of Waitangi obligations, empower Māori to be able to conduct their own research, support the development of comprehensive health related services which focus on Māori at risk to problem gambling, and result in the reallocation of economic wealth for Māori and tribal development.³⁸
69. A harm minimisation approach proposed in New Zealand to reduce gambling related harm will achieve little for Māori if Treaty of Waitangi rights and obligations are ignored. This ignores the reality that the health status of Māori today, especially problem gambling, is a reflection of the interaction and

³⁵ Department of Internal Affairs. (2001b). People's participation in and attitudes to gaming 1985-2000: Final results of the 2000 survey. Wellington, Department of Internal Affairs in L. Dyall and J. Hand, *Maori and Gambling: Why a Comprehensive Māori Public-health Response is Required in New Zealand* International Journal of Mental Health & Addiction, 1(1) at 4.

³⁶ Rankine, J., & Haigh, D. (2003). Social impacts of gambling in Manukau City. Auckland, Manukau City Council in L. Dyall and J. Hand, *Maori and Gambling: Why a Comprehensive Māori Public-health Response is Required in New Zealand* International Journal of Mental Health & Addiction, 1(1) at 4.

³⁷ Above n 11 at 6.

³⁸ Above n 11 at 6.

reaction Māori whanau, hapu, iwi and communities have had with previous and current government policies.³⁹

70. Until recently the Treaty in relation to gambling has received little attention.⁴⁰
71. The Ministry of Health has recognised the role and place of the Treaty of Waitangi in the development of its harm minimisation approach to reduce gambling related harm, which validates recognition.⁴¹
72. Māori have requested a greater role in licensing and regulation of gambling to minimise the impact of problem gambling for tangata whenua but have been largely ignored.⁴²

PART C: PREJUDICE

73. Because of the Crown's breaches of the Treaty in respect of problem gambling both a policy and practical level, Māori suffer in many forms, including but not limited to:
 - a. Poor healthcare outcomes in all its various and numerous forms:
 - i. Anxiety and depression including suicide.
 - ii. Poverty.
 - iii. Domestic violence.

³⁹ Above n 11 at 6.

⁴⁰ Department of Internal Affairs. (1996). Gaming: A new direction for New Zealand: Department of Internal Affairs policy options. Wellington, Department of Internal Affairs in L. Dyal and J. Hand, *Maori and Gambling: Why a Comprehensive Māori Public-health Response is Required in New Zealand* International Journal of Mental Health & Addiction, 1(1) at 6. See also Dyal, L., & Morrison, L. (2002). Maori, the treaty of Waitangi and gambling. Gambling in New Zealand. B. Curtis. Palmerston North, Dunmore Press.

⁴¹ Department of Internal Affairs. (1996). Gaming: A new direction for New Zealand: Department of Internal Affairs policy options. Wellington, Department of Internal Affairs in L. Dyal and J. Hand, *Maori and Gambling: Why a Comprehensive Māori Public-health Response is Required in New Zealand* International Journal of Mental Health & Addiction, 1(1) at 6. See also Dyal, L., & Morrison, L. (2002). Maori, the treaty of Waitangi and gambling. Gambling in New Zealand. B. Curtis. Palmerston North, Dunmore Press.

⁴² Abbott, M., & Volberg, R. (1999). Gambling and problem gambling in the community: An international overview and critique: Report number one of the New Zealand gaming survey. Wellington, Department of Internal Affairs in L. Dyal and J. Hand, *Maori and Gambling: Why a Comprehensive Māori Public-health Response is Required in New Zealand* International Journal of Mental Health & Addiction, 1(1) at 6.

- iv. Anxiety.
 - v. Stress.
 - vi. Hunger.
 - vii. Being unable to concentrate at school.
 - viii. Alcoholism and drug addiction.
 - ix. Other mental health illnesses.
- b. Breakdown of traditional Māori support structures.

PART D: FINDINGS AND RECOMMENDATIONS

74. The claimants seek the following findings and recommendations:
- a. That this claim is well founded.
 - b. That Article 3 principles provide the foundation for legalised gambling in New Zealand including the development and implementation of gambling policy.
 - c. That Māori be a key stakeholder with the Crown in the development of gambling policy in New Zealand.
 - d. That Māori and the Government work in partnership to minimise the harm from gambling and to provide the help needed for those harmed by gambling.
 - e. That the Crown make problem gambling visible by raising awareness of the risks associated with gambling and provide information on the signs and symptoms of problem gambling; provide opportunities for early intervention and treatment; assist in reframing gambling and problem gambling as a public health issue.⁴³

⁴³ Shaffer, H., & Korn, D. (2002). Gambling and related mental disorders: A public health analysis. *Ann. Rev. Public Health*, 23, 171-212 in L. Dyal and J. Hand, *Maori and Gambling: Why a Comprehensive Māori Public-health Response is Required in New Zealand* *International Journal of Mental Health & Addiction*, 1(1) at 13.

- f. To recognise cultural identity and belonging as a major factor which influences people including both problem gamblers and those affected by it, to seek help with gambling.⁴⁴

DATED at Auckland this 28th day of March 2017.



David Stone
Counsel for the Claimant



Brooke Loader

TO: The Registrar, Waitangi Tribunal; Crown Law Office; and those on the notification list for the Wai 2575 Health Inquiry.

⁴⁴ Above n 11 at 16.