



# THE HIGH COURT OF NEW ZEALAND TE KŌTI MATUA O AOTEAROA

04/02/2025

**MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

*Dickson v Real Estate Agents Authority* CIV-2024-485-134 [2025] NZHC 50

**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).**

## **What this judgment is about**

This judgment is about whether the Real Estate Agents Authority (the Authority), the Associate Minister of Justice, or the Registrar of licensed real estate agents (the Registrar) acted invalidly while making decisions connected with Te Kākano, a 90-minute course focussed on Māori culture, language and te Tiriti o Waitangi | the Treaty of Waitangi (the Treaty) which the Authority made mandatory for all real estate agents, branch managers and salespersons (licensees) as part of their continuing professional development (CPD) requirements for 2023.

## **Background**

In 2023, the Authority directed that Te Kākano was a mandatory CPD course for all licensees to undertake during the 2023 year. Mrs Janet Dickson, an experienced real estate agent, did not complete Te Kākano despite completing all other CPD requirements for 2023.

Mrs Dickson chose not to complete Te Kākano as a matter of principle, rather than because she was in some way unable to complete the course. She considers that Te Kākano would not add any value to the performance of her real estate agency work and says the course conflicts with her personal beliefs. Under the Real Estate Agents Act 2008, the Authority is required to cancel a real estate agent’s licence if they do not complete their CPD requirements. A licensee who has had their licence cancelled becomes ineligible to hold a real estate licence for the following five years. In late 2023, Mrs Dickson applied to the Registrar for an exemption from completing Te Kākano. That application was declined. Mrs Dickson therefore faces the prospect of being ineligible to practise as a real estate agent for five years.

Mrs Dickson brought this judicial review against the Authority, Associate Minister and Registrar as a result. Mrs Dickson has also applied to the Real Estate Agents Disciplinary

Tribunal (the Tribunal) for a review of the Registrar’s decision declining her application for an exemption. That application has been adjourned pending the determination of this judicial review proceeding.

### **Mrs Dickson’s claim**

Mrs Dickson says the practice rules under which the Authority and the Associate Minister prescribed (and continue to prescribe) CPD requirements are invalid under the Real Estate Agents Act. She also says that the Authority’s decision to mandate Te Kākano was invalid because it was ultra vires (beyond the scope of) the Act, failed to adhere to the regulatory scheme, and breached her right to freedom of expression. Finally, Mrs Dickson says that the Registrar’s decision to decline to grant her an exemption from completing Te Kākano was invalid.

### **Decision**

*Were the practice rules invalid under the Real Estate Agents Act?*

Mrs Dickson says that the Real Estate Agents (Continuing Professional Development Rules) Notice 2018 (the Practice Rules), under which the Authority said it had mandated Te Kākano, are invalid on two grounds. The first is that the Practice Rules do not adequately specify the content of continuing education topics as they are required to by s 15 of the Act, should the Authority mandate courses. The second is that the Associate Minister, when approving the Practice Rules, did not have regard to criteria under s 17 of the Act as they were required to.

McQueen J held the Practice Rules were made validly by the Authority and the Associate Minister. The proper interpretation of s 15 of the Real Estate Agents Act does not require practice rules made by the Authority to specify the content of continuing education topics at anything more than a very high level. Any other interpretation would impose an excessive administrative burden on the Authority and Associate Minister, with the Authority having to carry out industry consultation and receive Ministerial approval for each course selection, which Parliament likely did not intend.

The harsh penalty facing those who do not complete CPD requirements—becoming ineligible to carry out real estate agency work for five years—did not change that interpretation: it was Parliament that chose to impose such a penalty in the Act and the Authority clearly informed all licensees, including Mrs Dickson, about the consequences should they fail to complete the required CPD.

The Associate Minister was able to, and did, have sufficient regard to the criteria under s 17 of the Act as they approved the Practice Rules.

*Was the Authority’s decision to make Te Kākano mandatory invalid?*

Mrs Dickson says that the Authority’s decision to make Te Kākano mandatory was invalid for three reasons. First, she says Te Kākano was too specifically prescribed and so did not comply with the requirements of the Practice Rules. Second, she says the decision was a power exercised for an improper purpose because Te Kākano was not necessary to protect consumers and was not core to real estate agency work. Third, she says that the decision was inconsistent with the right of freedom of expression.

McQueen J held that the Authority’s decision to make Te Kākano mandatory was made validly. First, the Practice Rules enable the Authority to set down prescribed, specific topics for licensees to complete as part of their CPD requirements.

Second, McQueen J held there is no requirement that CPD courses be “necessary” to protect consumers; the purpose of the Real Estate Agents Act demands that any CPD courses promote or protect the interests of consumers and promote public confidence in the industry. Te Kākano did promote and protect the interests of a significant subset of consumers. It provided information that would assist licensees to live up to their professional conduct obligations in respect of Māori consumers. It also assisted licensees with meeting their professional obligations under the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012. Licensees must act in good faith and deal fairly with all parties. They must also avoid any conduct that would bring the industry into disrepute. Finally, they must have a sound knowledge of legislation relevant to real estate agency work; something the Treaty and the Treaty principles are relevant to given legislation relevant to the real estate sector refers explicitly to the Treaty or the principles of the Treaty.

Third, McQueen J held Te Kākano did not in any way restrict freedom of expression for its participants. The course, mandatory only for those who have chosen to perform real estate agency work, in no way prevents participants from forming and sharing views on the course content that are different than what was taught—just as any mandatory education, for example in schools, may impart a particular viewpoint but does not restrict students from forming and sharing different views.

*Did the Registrar act invalidly by refusing to grant Mrs Dickson an exemption from completing Te Kākano?*

Mrs Dickson claimed that the Registrar had refused to grant her application for an exemption invalidly because they had applied a blanket “no exemptions for Te Kākano” policy that meant they based their decision on irrelevant considerations.

McQueen J rejected this argument. There was no evidence the Registrar applied a blanket “no exemptions for Te Kākano” policy; to the contrary, the evidence demonstrated that the Registrar applied the test for an exemption that was set by the Authority in the Practice Rules and had since been developed through the case law of the Tribunal.

## **Result**

The application is dismissed.