

IN THE WAITANGI TRIBUNAL

Wai 2575

CONCERNING

the Treaty of Waitangi Act 1975

AND

the Health Services and
Outcomes Kaupapa Inquiry

MEMORANDUM-DIRECTIONS OF THE CHAIRPERSON
COMMENCING A KAUPAPA INQUIRY INTO
HEALTH SERVICES AND OUTCOMES

30 NOVEMBER 2016

Introduction

1. The purpose of this memorandum-directions is to commence a Tribunal inquiry into claims concerning health services and outcomes. It appoints a presiding officer to conduct the inquiry, outlines its scope, briefly identifies some of the issues raised in statements of claim, and considers factors affecting the eligibility of claims to participate.

Commencing an inquiry into claims concerning health services and outcomes

2. The Tribunal's kaupapa (thematic) inquiry programme is designed to provide a pathway for the hearing of nationally significant claims that affect Maori as a whole or a section of Maori in similar ways. In my memorandum of 1 April 2015 outlining the programme, I indicated that it would comprise 11 inquiries and set out the order in which they would commence.
3. The first kaupapa inquiry, into the claims of Māori military veterans and their whānau, is well under way. Next in the list is an inquiry into claims that raise issues concerning the constitution, self-government and the electoral system. Constitutional issues are, however, prominent in several Tribunal inquiries currently under way, notably the Te Rohe Pōtae and Te Paparahi o Te Raki district inquiries and the Military Veterans kaupapa inquiry. It is therefore appropriate that a national inquiry into constitutional issues be deferred until claims raising constitutional issues have been heard and reported on in those inquiries.
4. The next inquiry in the kaupapa inquiry programme focuses on claims concerning health services and outcomes. This memorandum-directions is the first formal step in initiating the inquiry and preparing for the hearing of the claims.

Appointment of an inquiry panel

5. In constituting a Tribunal inquiry, the Chairperson must appoint a panel comprising a presiding officer and Tribunal members to hear the claims. Accordingly, pursuant to clause 5(1)(a)(iii) of the Second Schedule to the Treaty of Waitangi Act 1975 I now appoint Judge Stephen Clark, a judge of the Māori Land Court, as presiding officer for the kaupapa inquiry into claims concerning health services and outcomes. I will appoint other members of the inquiry panel in the near future.
6. All documents and other evidential material will be entered on a single record of inquiry, which will be identified as the Wai 2575 combined record for the Health Services and Outcomes Inquiry.

The scope of the inquiry

7. Unlike a district inquiry, which embraces all claim issues that arise within its area of coverage, a kaupapa inquiry will usually focus on a single core issue of national scope. In this inquiry, the thematic focus is on health services and outcomes.
8. This inquiry will address a matter of national significance. In this regard, I note that in its 2011 report *Ko Aotearoa Tēnei*, the Wai 262 Tribunal concluded that Māori were currently undergoing a serious health crisis. Not only was Māori life expectancy significantly lower than that of non-Māori, but Māori were greatly over-represented in statistics concerning poor health:

In fact, contemporary Māori health status is so bad it would be wrong to describe it as anything other than a further calamity, even if it represents an undoubted improvement on a century earlier. Compared with non-Māori, Māori today have much higher rates of heart

disease, stroke, heart failure, lung cancer, diabetes, asthma, chronic obstructive pulmonary disease, infant mortality, sudden infant death syndrome (cot death), meningococcal disease, schizophrenia, and other illnesses. Māori males have much higher rates of motor vehicle accident deaths and suicides (in the latter case, after having had much lower rates of suicide until the 1980s). Māori have much higher rates of interpersonal violence and unintentional injury. They are less likely to consult a doctor, with cost and the lack of access to a vehicle being more common reasons among Māori than among non-Māori. Māori also have worse oral health, and are less likely to visit a dentist. Māori have much higher rates of smoking, with 53 per cent of adult Māori women being smokers. Māori adults are much more likely to have potentially hazardous drinking patterns, and regular marijuana smoking is significantly more prevalent among Māori adults than non-Māori. Māori are also much more likely to be obese than non-Māori. Many of these illnesses and problems are practically at epidemic levels. (*Te Taumata Tuarua*, vol. 2, p 642)

9. The Wai 262 Tribunal considered that while some health issues are closely associated with poor housing and socioeconomic status, Māori health would not automatically improve with standards of living. The issues raised in registered claims which refer to health services and outcomes are wide-ranging and complex. Claimants allege that the Crown has not fulfilled its Treaty responsibilities in the delivery of health services to Māori and that it has not addressed other factors that contribute to worse health outcomes for Māori than for non-Māori. The claims include grievances concerning, amongst others:
 - a) the national framework for primary health care;
 - b) the delivery of services to particular groups, such as the deaf, the blind and the mentally ill;
 - c) reducing particular causes of ill-health amongst Māori, such as smoking and HIV/AIDS;
 - d) the alleged disparity in the services provided to Māori and non-Māori;
 - e) the general accommodation of mātauranga Māori and rongoā in health policy and the delivery of mainstream health services; and
 - f) the disparities in health outcomes for Māori and non-Māori.
10. Some historical health-related issues reach far back into the Māori experience of colonisation and settlement. Many of the claims focus on the last half-century or raise issues that are alive today. Subject to the limitations outlined below, the inquiry will take a comprehensive approach to both historical and contemporary claim issues.

Eligibility to participate in the inquiry

11. The inquiry is open to all claimants who wish to be heard on their outstanding grievances concerning health services and health outcomes. Because some of the grievances relate also to issues to be considered in other kaupapa inquiries, for example housing, claims will be eligible where their health-related grievances are a primary concern rather than consequences of grievances about other matters.
12. Claimants wishing to have their health-related claims heard should bear in mind that kaupapa inquiries are designed to address issues of national scale and significance. Claims with specific or local grievances may serve as case studies or examples, but will otherwise be eligible to participate in the standing panel process for remaining historical claims now in preparation or for a future contemporary claims process.

13. Not all health-related claims will be eligible to participate. The principal exclusions are:
- a) Health-related grievances that relate to Crown acts or omissions prior to 21 September 1992 and form part of claims fully addressed in one or more historical Treaty settlements with the Crown. Once ratified, the claimants are bound by the deeds of settlement and further inquiry by the Tribunal would serve no useful purpose. When implementing legislation has been enacted, the Tribunal's jurisdiction is excluded from further inquiry into the claim.
 - b) Health-related grievances that have previously been fully heard and reported on by the Tribunal. The Tribunal is not able to hear for a second time claims into which it has completed its inquiry.
 - c) Claims whose remaining health-related grievances have already been fully consolidated by Tribunal direction into district or kaupapa inquiries that are currently under way. The Tribunal is not able to conduct parallel inquiries into the same claims.
14. Claimants should also be aware that current or future Treaty settlement negotiations that include their claims may remove the ability of the Tribunal to complete its inquiry into their pre-1992 health-related grievances once their claims have been settled. This applies in particular to settlements which:
- a) explicitly list a claim as relating exclusively to the tribal group concerned; or
 - b) include named iwi or hapū on whose behalf the claimants say in their statement of claim they are bringing the claim.
15. Claimants whose claims allege grievances on their own behalf as individual Māori or on behalf of non-tribal groups of Māori may also be eligible to participate notwithstanding their actual or implied affiliation with tribal groups that have settled their Treaty claims with the Crown. The Tribunal will consider the eligibility of such claims on a case by case basis.
16. Most Treaty settlements with the Crown apply to historical claim grievances that arose, in whole or part, before 21 September 1992. For claims affected by historical Treaty settlements, contemporary grievances continuing or arising on or after 21 September 1992 remain eligible for inquiry.
17. Claimants should note that for any historical grievances, they are entitled to amend their existing claims so as to provide greater detail or to include additional grounds of claim. For the avoidance of doubt, that would clearly include grievances in respect of health services and outcomes. Since 1 September 2008, however, the Tribunal has been precluded from registering new historical claims or historical amendments to purely contemporary claims that arose on or after 21 September 1992.
18. Any claimant who wishes to be heard and whose eligibility to participate in this inquiry is in any doubt will be afforded the opportunity to state their case for inclusion.

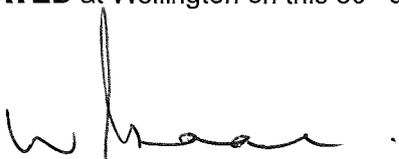
The claims

19. Tribunal staff have identified approximately 100 claims which raise health-related grievances and which appear to be eligible to participate, as described above. These are listed in **Appendix A** and will form the preliminary notification list for the inquiry.
20. Other claims not yet identified may also raise health-related grievances. There may be claimants who intend to add such grievances to their claims but have not yet done so. The Tribunal will hear all remaining claimants who clearly specify eligible health-

related grievances in their statements of claim and notify their intention to participate in the inquiry.

The Registrar is to send this direction to all claimants and the Crown, and to publish it on the Tribunal's website.

DATED at Wellington on this 30th day of November 2016.

A handwritten signature in black ink, appearing to read 'W W Isaac', with a vertical line extending upwards from the first 'W'.

Chief Judge W W Isaac
Chairperson

WAITANGI TRIBUNAL

Appendix A. Preliminary list of claims that raise health-related issues

Note: This appendix is not definitive. It comprises a preliminary listing of claims which appear to raise health-related issues that have not been fully inquired into, settled or otherwise disposed of.

Wai	Claim
201	Wairoa Ki Wairarapa claims
262	Indigenous Flora and Fauna and Cultural Intellectual Property Claim
272	Te Runanga O Ngati Porou
433	Te Whanau O He Putea Atawhai claim
508	Ngati Te Ata claim
630	Ngati Rereahu Rohe claim
804	Tawhitinui Kaumatua Rest Home Facilities (Tauranga) claim
844	Mate Pungarehu/Tobacco claim
888	Whakatane Sawmill Workers claim
901	Te Papatipu o Uepohatu Lands and Resources (East Coast)
937	Noa Tiwai Lakes, Lands and other Resources claim
967	Wellington Hospital Endowment Lands Claim
1096	Tamaki Makaurau Health Trust
1126	Ngāti Tamaoho Lands and Resources claim
1176	Te Paatu Land and Resources claim
1184	Ngati Porou Hauora claim
1256	Ngai Rakato Lands claim
1315	Primary Health Organisations claim
1511	Ngai Tamatea Hapu ki Waiotaha Lands Claim
1559	Ngati Tairawhiti hapu (Hodge/Morrell) claim
1574	Kahungunu and Rongomaiwahine Hapu (Hillman) Lands Claim
1601	Hodges and MacDonald Mana Motuhake claim
1648	Te Whanau a Aotawarirangi Claim
1690	Ngati Haua (Taylor) Claim
1698	Descendants of Rutene Te Wa Claim
1707	Mana Wahine (Mitai-Pehi) Claim
1729	Ngati Kauwhata ki te Tonga Settlement Process Claim
1739	Ngati Haua Hapu (Davis) Claim
1742	Ngati Haua (Tamou) Claim
1744	Okahu/Inuawai Hapu Claim
1748	Okahu/Inuawai and Kanihi Hapu (Kerehoma, Brooks & Kerehoma) Claim
1758	Upokorehe Hapu Ngati Raumoia Roimata Marae Trust Claim
1770	King Country Health Issues (Paki) Claim
1775	Ngati Patumoana (Hata) Claim
1781	Ngai Tama Haua (Biddle) Claim
1787	Rongopopoia Hapu Claim
1791	Ngati Whakaue ki Maketu Lands Claim
1794	Turangapikitoi Hapu Claim
1795	Ngati Ruatakena (Williams) Claim
1797	Te Whanau-a-Ehutu Claim
1813	Māori Health and Social Development (Wolfgramm) Claim
1814	Te Aitanga-a-Apanui Claim
1816	Northland Māori Historical Health Issues (O'Sullivan) Claim
1817	Northland Māori Contemporary Health Issues (O'Sullivan) Claim
1819	King Country Maori Contemporary Health Issues (Paki) Claim

Wai	Claim
1821	Kirikiroa Marae Claim
1830	Te Whanau-a-Maruhaeremuri Claim
1841	Ngati Manu (Victor Campbell) Claim
1851	Ngati Miro, Ngati Kura and Ngati Kahu ki Whangaroa (John Terewi) Claim
1858	Ngati Hine (John Paki and Whanau) Claim
1883	Waimihia Stream and Waingaehe Lands Claim
1884	Ngati Ngāhere (Carrington) Claim
1949	Whakatutu Mitiwai Whanau Claim
1964	Te Whanau-a-Apanui (Tohiariki) Claim
1981	Mangonui, Parapara and Kenana (Boynton) Claim
1988	Putauaki Mountain and Other Lands Claim
1989	Moengaroa Whanau Claim
1990	Descendants of Te Pakitua Menehini Te Wharewera Claim
1991	Matahina Forest Lands Claim
1997	Hapu of Ruawaipu (Hebberd) Lands Claim
1998	Tikapa (Kiwara) Lands Claim
1999	Uri o Ruawaipu (Evans) Lands Claim
2002	Whangaparaoa 2k2 Trust Claim
2006	Upokorehe and Whakatoia Hapu Claim
2008	Pakowhai Hapu and Whakatohea Māori Trust Claim
2009	Parewhero Hapu Claim
2030	Ngati Kurukupakiaka (Hati) Lands Claim
2035	Ngati Naho and Te Paina (Heta) Lands Claim
2038	Te Kawerau Lands (Maipi) Claim
2039	Ngati Amaru and Ngati Pou Lands Claim
2041	Te Tutanekai Lands Claim
2044	Ngati Manahiakai, Ngati Ruahine and Ngati Haupoto (Horo) Lands Claim
2047	Ngati Uerata (Jenkins) Lands Claim
2049	Hatu Lands and Resource Claim
2066	Ngati Ruatakena Lands and Resources (Papuni) Claim
2067	Ngati Wairere Lands and Resources (Wilson) Claim
2081	Ngati Amaru and Ngati Pou (Katipa) Claim
2097	Whakatane Lands (Hillman) Claim
2105	Ngati Ira Lands (Martin) Claim
2106	Heeni Rawiri Whanau and Others Lands (McDonald) Claim
2107	Ngati Ngāhere and Ngati Ira Lands (Martin) Claim
2108	Children, Young Persons and Their Families Act 1989 (Epiha, Armstrong and Stead) Claim
2109	Ngati Kapo (Tibble) Claim
2110	Ngati Hinerangi (McDonald) Lands Claim
2112	Te Ohaki Marae and Others Lands (Rawiri-McDonald and McDonald) Claim
2113	Ngati Tamapango and Ngati Tokotoko Lands (Koperu and McDonald) Claim
2143	Ngati Turi (Wilson and Pointon) Claim
2145	INA Health Issues (Mack and Others) Claim
2164	Hamilton Whanau Effects of Crown Governance Claim
2165	Te Taura Here O Ngati Porou ki Tamaki Makaurau Lands (Naden) Claim
2174	Karaka and Te Paatu Hapu Lands (Jones) Claim
2187	Hapu of Ngaruahine Lands (Noble) Claim
2188	Kanihi me etahi Lands (Noble and Others) Claim

Wai	Claim
2230	Ngati Te Ata o Waiohua Urgency Claim
2237	Maori Health Disparities (MacDonald) Claim
2302	Ngati Uepohatu Social Policies (Walker & Johnson-Haua)
2414	The Pene whanau land confiscation Claim
2425	The North Auckland land acquisition, housing, health and education claim
2499	Maori Health Disparities (Jansen, Laking and Moke) claim
2554	The Maori Education and Healthcare (Henry) Claim