

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 PRESIDING OFFICER
REGARDING NEXT STEPS IN INQUIRY

21 December 2016

Introduction

1. In memorandum-directions dated 30 November 2016, the Chairperson of the Waitangi Tribunal commenced the Health Services and Outcomes Kaupapa Inquiry (Wai 2575, #2.5.1). I was appointed as Presiding Officer.
2. This direction addresses next steps to be taken in this inquiry. It calls for submissions indicating which claimants wish to participate in the inquiry and, in doing so, considers factors affecting the eligibility of claims to participate. It also seeks information from claimants as to a preferred inquiry process.
3. I note at the outset that it is intended that the submissions the Tribunal receives in response to this direction, as well as a discussion paper currently being prepared by Tribunal staff and which will be distributed no later than 21 April 2017, will form the basis of discussion for an initial judicial conference, likely to be scheduled for early May 2017.

Claims and eligibility

4. Tribunal staff have identified approximately 100 claims which raise health-related grievances and which appear to be eligible to participate. The list of claims is attached as **Appendix A** to this direction. However, other claims not yet identified may also raise health-related grievances and there may be claimants who intend to add such grievances to their claims but have not yet done so.
5. While this inquiry is open to all claimants who wish to be heard on their outstanding health grievances, not all claims will be eligible to participate. Those principal exclusions were noted in the commencement direction (Wai 2575, #2.5.1 at [13]). For clarity, they 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.

Claims affected by settlement legislation

6. As foreshadowed, some claims that raise health related grievances and which wish to participate in the inquiry, may be affected by settlement legislation. The impact of settlement legislation on the Tribunal's ability to inquire into claims was comprehensively addressed by the Tribunal in the Military Veterans Kaupapa Inquiry (Wai 2500, #2.5.15).
7. The Military Veterans Tribunal determined that, generally speaking, settlement Acts conclude all claims brought on behalf of the iwi and hapū specified in the settlement,

and remove those claims from the Tribunal's jurisdiction. Where the settlement Act lists a specific claim as settled by virtue of relating 'exclusively' to the settled group, this also has the clear effect of removing the Tribunal's jurisdiction.

8. The way in which claimants specify the group on whose behalf they bring a claim then is highly relevant to any determination of the Tribunal's jurisdiction to inquire into the claim where it is affected by settlement legislation. Commonly, claimants state a single group on whose behalf a claim is brought. However, in some cases, especially where there have been multiple amended statements of claim adding causes of action, distinct grievances may be defined as having prejudiced different groups of Māori, for example a descent group and individual members of that group.
9. The Military Veterans Tribunal noted that these general conclusions will vary from case to case according to the specific wording of the claims and legislation.
10. 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 health grievances once their claims have been settled. It would assist the Tribunal in preparing for this inquiry if any claimant whose health claim is, or is likely to be, affected by settlement could inform the Tribunal, should they wish to participate in the inquiry.

Amending statements of claim

11. There may be claimants who wish to amend existing claims to add health-related grievances. The Tribunal is able to register amendments only to statements of claim for which it has jurisdiction. Fully settled claims cannot be further amended. This applies in particular to claims that are listed in a settlement Act as fully settled, but also to claims not listed but included within the scope of the settlement of all present and future claims of the settled group.
12. To the extent that a claim remains partly within the Tribunal's jurisdiction, there is no general limitation on amending or adding health grievances or on changing the named claimants or group bringing a health claim. However, no amendment can raise issues that have been removed from the Tribunal's jurisdiction by settlement legislation.
13. Notwithstanding the limitations on the Tribunal's jurisdiction set out above, nothing in this direction prevents the filing of new contemporary claims that raise health-related issues.

Directions

14. In light of the above discussion, before the claims concerning health issues can proceed to hearing, some preparatory groundwork is essential. The Tribunal needs to know:
 - (a) Which claimants wish to have their health grievances heard in the Tribunal inquiry; including any questions of eligibility;
 - (b) What principal issues the claimants wish to bring;
 - (c) Whether the claimants and the Crown are ready to proceed;
 - (d) Whether there are matters that should have priority; and

- (e) Whether any other organisations wish to participate as interested parties and on what basis.
15. Furthermore, the Tribunal wishes to consult with the claimants and the Crown on how they consider the inquiry might best be conducted, in particular:
- (a) What existing evidence is likely to be available and what additional evidence from the claimants, expert witnesses and technical research may be required;
- (b) What inquiry process the Tribunal should adopt in preparing the evidence, setting the issues, and hearing and reporting on the claims.
16. All claimants wishing to participate are requested to file written submissions addressing the matters set out in paragraphs 14-15, either in person or through their representative or counsel. The submissions should be sent by email to WT.Registrar@justice.govt.nz, by post or hand delivered to the Tribunal's Registrar at the following address:
- The Registrar
Waitangi Tribunal Unit
Level 7
141 The Terrace
Fujitsu Tower
DX SX 11237
Wellington
17. Claimants and claimant counsel are directed to file their submissions no later than **midday, Monday 13 March 2017**.
18. The Crown is directed to file written submission in response by **midday, Monday 3 April 2017**. It would be helpful for the Crown to give a preliminary indication of its likely approach to the inquiry.
19. All written submissions filed by the claimants and the Crown will be circulated to all claimants and third party organisations on the provisional circulation list and to the Crown.

Judicial Conference

20. The first judicial conference for the Health Services and Outcomes Kaupapa Inquiry is tentatively proposed for early May 2017. An exact date and location will be confirmed in due course.
21. The purpose of the conference will be to further discuss with the claimants and the Crown matters raised in their submissions, including:
- (a) Indications of which claimants wish to participate in the inquiry, and who their spokespersons and/or legal counsel are;
- (b) The readiness of claims and the Crown to proceed;
- (c) The main health issues that the claimants wish to bring before the Tribunal, and any indications of which should have priority for hearing;
- (d) The claimant, expert and technical evidence likely to be needed for the inquiry;

(e) Preferred options for an inquiry process;

(f) Any matters that need to be expedited.

The Registrar is to send this direction to all those on the notification list for Wai 2575, the Health Services and Outcomes Kaupapa Inquiry and to publish it on the Tribunal's website.

DATED at Hamilton on this 21st day of December 2016.

A handwritten signature in black ink, appearing to be 'S Clark', written in a cursive style.

Judge S Clark
Presiding Officer

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 Waioatahe 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 Ngähere (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 Ngähere 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