IN THE WAITANGI TRIBUNAL Wai 2575

UNDER The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF A claim by Rex Timu (awaiting registration); a claim by Lily Stone (awaiting registration); a claim by Dr Keri Lawson Te Aho (awaiting registration); a claim by Leanne Te Karu (awaiting registration); a claim by Susan Mary McKenna (awaiting registration); a claim by Pauline Kopu (awaiting registration); a claim by Marion Wilkie (awaiting registration); a claim by Mervyn Ransom (Wai 1622); an amended statement of claim by Ian Shadrock (Wai 1804); a claim by Mike Pehi (Wai 1864); a claim by Jillian Munro (Wai 2051); a claim by Marama Pala (Wai 2145); and an amended statement of claim by Jack Mahara (Wai 2183).

SUBMISSIONS OF COUNSEL

DATED 14 MARCH 2017

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Ministry of Justice
WELLINGTON

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MAY IT PLEASE THE TRIBUNAL

1. The Wai 2575 Health Inquiry is unique and poses considerable challenges to the Tribunal simply because of the complexity and importance of issues being addressed, the ramifications and consequences of those claims for Maori and the potentially massive number of claimants likely to participate in the Inquiry.

2. Counsel wishes to sincerely thank and acknowledge the Tribunal for initiating the Inquiry sooner rather than later. Much in the same way that the Wai 2500 Military Veterans Inquiry recognised the need to hear from potential witnesses many of whom were aged and ailing, the same need exists in this Inquiry. While there are similarities between these two Inquiry, they differ in the sense that witnesses in the Military Inquiry suffered ill-health as a result of serving in the armed forces (and the resultant prejudice to their families in its various forms), whereas in this Inquiry, Maori suffer simply for being Maori[1].

3. To be clear, the Wai 2575 Inquiry concerns an issue that affects every single Maori in the country: ill-health. It is probable that a significant number of Maori are unaware that the Inquiry is about to begin, but once they do they too will want to participate in the Inquiry. And given that Maori are disproportionately affected by ill-health in nearly every area of health, it is only right that they participate.

4. Issues then arise in respect of how the Inquiry is to proceed and how the Tribunal will hear the multitudes of Maori wanting to present their claims and this issue is reflected in the Presiding Officer's memorandum-direction dated 21 December 2016 (Wai 2575, 2.5.2) and this memorandum replies to the same.

[1] Several of counsel's claim allege that the claimants suffer from institutional and interpersonal racism.

Korero Tuku Iho Hearing Structure

5. Cognisant of the need to hear from witnesses, the Wai 2500 Military Veterans Inquiry established a korero tuku iho process to enable the elderly and unwell to present their korero sooner rather than later.

6. In counsel's submission the same need exists in this Inquiry. The Wai 2500 process focused on hearing from the witnesses and left the formation of the statement of issues and other matters to be finalised later and the same process could be adopted here, and doing so would enable vulnerable claimants to speak of their experiences, and thereby assist in the formation of the statement of issues.

7. Any hearing structure must take into account the financial restraints faced by the claimants. In the Military Veterans Inquiry the Crown Forestry Rental Trust did not assist the claimants with the costs associated with preparing and presenting their respective claims. While it is unclear if the same will occur here, it is probable that it will. If it does, then logistical issues then such as travel and the associated costs for claimants must be minimised. That would necessitate that claimants present their respective issues within their rohe and if a korero tuku iho approach is adopted then in counsel's submission the claimants should present their korero in full regardless of what that evidence is, much in the same way that occurred in the Military Veterans Inquiry.

8. In the Military Veterans Inquiry korero tuku iho hearings were approximately located to align with boundaries similar to those used by the 28th Maori Battalion. No similar paradigm exists for this Inquiry but counsel submits that when hearings do occur they should follow similar geographical locations to those used in the Military Veterans Inquiry.

9. In counsel's submission the scope of this Inquiry stands to easily eclipse the Military Veterans Inquiry in terms of those with an interest in this Inquiry and who have potential to give evidence. That will require more hearing time than what was permitted in the Military Veterans Inquiry to allow potential witnesses to give their evidence.

Research

10. There currently exists a considerable amount of evidence in respect of the ill-health suffered by Maori and the reasons for it such as medical literature including publications from the Ministry of Health, District Health Boards ("DHBs"), the World Health Organisation, Medical Journals and academic research. During the research phase the existing research must be compiled and added to the Health Inquiry record of inquiry. Counsel would appreciate time to seek instructions from clients to compile the same and to have that research placed on the Wai 2575 Record of Inquiry.

Principal Issues

11. In counsel's submission it is incumbent on counsel to be aware of the issues facing their respective clients and the same should be reflected in clear pleadings in the respective statements of claim. These statements of claim should clearly direct the Tribunal to what the issues are and in turn what the statement of issues should ultimately be.

12. Counsel represents several claims both registered and awaiting registration and not wanting to repeat the pleadings of those claims, a summary of those claims and their principal issues follow:

    (a) A claim by Rex Timu (awaiting registration) concerning methamphetamine and how Maori are over represented in terms of exposure and use of it. The claim alleges that institutional and interpersonal racism actively prevents the claimants from accessing the services they need to rehabilitate themselves from the effects of P.

    (b) A claim by Lily Stone (awaiting registration) concerning how Maori are disproportionately over represented and prejudiced by institutional and interpersonal racism in respect of cancer.

(c) A claim by Dr Keri Lawson Te Aho (awaiting registration) concerning the institutional and interpersonal racism and the Crown's failure to adequately address the underlying causes of Maori youth suicide.

(d) A claim by Leanne Te Karu (awaiting registration) and how institutional and interpersonal racism actively prejudices Maori in respect of gout.

(e) An amended statement of claim by Ian Shadrock (Wai 1804) alleging disproportional over representation of Maori in respect of diabetes due to institutional and interpersonal racism in the New Zealand health system.

(f) A claim by Susan Mary McKenna (awaiting registration) in respect of the health of Māori living in Canterbury and how the Canterbury District Health Board is prejudicing the health of Maori living there in breach of the New Zealand Public Health and Disability Act 2000.

(g) An amended statement of claim by Jack Mahara (Wai 2183) and the prejudice Maori suffer in respect of their oral health.

(h) A claim by Pauline Kopu (awaiting registration) and the prejudice suffered by Maori in respect of oral ill-health.

(i) A claim by Marion Wilkie (awaiting registration) in respect of institutional and interpersonal racism and how the same disproportionately prejudices Maori in respect of meningitis and coronial practices.

(j) A claim by Marama Pala (Wai 2145) in respect of the prejudice that HIV positive Maori women suffer.

(k) A claim by Jillian Munro (originally brought by Whetumarama Kenrick) (Wai 2051) in respect of the prejudice to Māori arising in the mental health system.

(l) A claim by Mervyn Ransom (Wai 1622) concerning the Tohunga Suppression Act and how the same prejudiced Maori and their ancestral, customary practices in respect of rongoa Maori.

(m) A claim by Mike Pehi (Wai 1864) concerning legislation, policy and practice in respect of Coroners and undertakers and the prejudice to Maori in respect of the tikanga involved with handling tupaapaku.

13. For the avoidance of doubt the aforementioned claimants want to be included in this Inquiry.

14. Many of the claimants represented by counsel could be ready to present their evidence quite quickly. Their evidence comprises either their own life stories, or in the case of Dr Keri Lawson Te Aho, Leanne Te Karu and Pauline Kopu their life's work, or both.

Eligibility and Hearing Process

15. Eligibility and hearing process are two matters that counsel would like further time to prepare submissions for. Only three days are sought and the request for the same is made here. This request is not made lightly and counsel's submissions on these points would have been finished but counsel's attention was dedicated to drafting the application for urgency just now filed with the Tribunal on behalf of Ian Shadrock, Marilyn Stephens and Tyrone Marks concerning the care and subsequent abuse of Maori children put into State care and the process currently used by the Ministry of Social Development to settle grievances concerning the same.

Priority of Issues

16. Counsel is genuinely reluctant to suggest what order the Tribunal should hear evidence, because as has been made plainly clear in the claims filed by counsel, Maori are disproportionately over represented in all areas of health.

Participation of Interested Parties

17. Counsel indicates that several public and private sector stakeholders, and non-governmental organisations, should have the ability to participate as interested parties to this inquiry to enable a full inquiry into the issues. These groups include all those involved with providing Māori healthcare including relevant Government Ministries, District Health Boards, government-funded healthcare providers involved in Māori healthcare, as well as charities and other NGO's with an interest.

DATED at Auckland this 14th day of March 2017.

David Stone **Brooke Loader**

Counsel for the Claimants