IN THE WAITANGI TRIBUNAL

WAI 2575
WAI 1775
WAI 1261
WAI 507

IN THE MATTER	of the Treaty of Waitangi Act 1975
AND	
IN THE MATTER	of the Health Inquiry (Wai 2575)
AND	
IN THE MATTER	of a claim by **Mr John Hata** and **Mr Russell Hollis** for and on behalf of Ngāti Patumoana hapū (Wai 1775)
AND	
IN THE MATTER	of a claim by **Mr Aiden Gilbert** for and on behalf of Uenuku te iwi (Wai 1261)
AND	
IN THE MATTER	of a claim by **Mr Owen Lloyd** for and on behalf of Ngā Ariki Kaipūtahi (Wai 507)

SUBMISSIONS RE JOINING THE INQUIRY AND PROPOSED STRUCTURE OF INQUIRY

Dated: 13 March 2017

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Waitangi Tribunal
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WELLINGTON

BENNION LAW

Barristers and Solicitors
PO Box 25433
Panama Street
Wellington
Tel: 64-4-4735755
Fax: 64-4-4735751
Counsel: Tom Bennion / Lisa Black / Emma Whiley
tom@bennion.co.nz / lisa@bennion.co.nz / emma@bennion.co.nz

MAY IT PLEASE THE TRIBUNAL

1. These submissions are filed on behalf of:

    a. A claim by **Mr John Hata** and **Mr Russell Hollis** for and on behalf of Ngāti Patumoana hapū (Wai 1775);

    b. A claim by **Mr Aiden Gilbert** for and on behalf of Uenuku te iwi (Wai 1261); and

    c. a claim by **Mr Owen Lloyd** for and on behalf of the Ngā Ariki Kaipūtahi (Wai 507)

    (the Claimants)

2. These submissions are filed in response to directions dated 21 December 2016 (Wai 2575, #2.5.2) directing that submissions on the matters set out in paragraphs 14-15 of those directions be filed by 13 March 2017.

3. Those matters are addressed below.

14 (a) Which claimants wish to have their health grievances heard in the Tribunal inquiry; including any questions of eligibility;

4. The Claimants wish to have their heard by the Tribunal's Health Inquiry. Issues of eligibility are addressed in respect of each claimant group in turn:

Wai 1775

5. The Wai 1775 claim is a historical claim that was identified by the Tribunal's Appendix A. "Preliminary list of claims that raise health-related issues" attached to directions dated 30 November 2016 (Wai 2575, #2.5.1).

6. The claim is on behalf of Ngāti Patumoana, a hapū of Whakatōhea who are:

> "in the unique situation where an earlier attempt to settle with the Crown failed: they have no Tribunal process; and their current settlement initiative is opposed by key hapū, claimants, and pakeke."[1]

7. The Wai 1775 Ngāti Patumoana claimants and claimant community are one of those "key hapū" and the named claimant, John Hata, one of the key "pakeke" who oppose the Whakatōhea Pre-Settlement Claims Trust (WPSCT) Deed of

[1] Report of the Mediators dated 8 November 2016 Wai 1775, #2.8.1.

Mandate that seeks to engage with direct negotiation and settlement the Wai 1775 claim and instead seek a Tribunal inquiry in relation to the Whakatōhea claims. The WPSCT Deed of Mandate is now the subject of numerous urgency applications including an application by the Wai 1775 named claimants that has been registered as Wai 2593.

8. The Wai 1775 claim has therefore, not been heard or reported on by the Tribunal and is not currently affected by settlement legislation and thus the Tribunal has jurisdiction to hear the claimants' health-related grievances and the Wai 507 claim will be amended as such to further particularise those grievances.

9. This situation may change if a Tribunal inquiry is convened in relation to the Whakatōhea claims or if the WPSCT proceed with the direct negotiation and settlement of the Wai 1775 claim. We will keep the Tribunal updated in this regard.

Wai 1261

10. The Wai 1261 claim is an historical claim that was progressed before the Whanganui and National Park Tribunals, and is currently being heard in the Taihape Tribunal. The claim was reported on in the Kahui Maunga and Whanganui reports.[2] Those inquiries and reports did not inquire into health issues for Wai 1261, nor are health issues being traversed before the Taihape Tribunal.

11. Terms of Negotiation were signed by the Crown and the Uenuku Charitable Trust on behalf of central Whanganui (Te Korowai o Wainuārua) on 20 February 2017. The Wai 1261 claim is included in the Terms of Negotiation document. The Wai 1261 claim has not been addressed in any Treaty settlements with the Crown and remains unsettled.

12. The Tribunal therefore has jurisdiction and the Wai 1261 claim will be amended to add health-related grievances.

[2] Waitangi Tribunal *He Whiritaunoka – the Whanganui Land Report (Wai 903*) (2015); Waitangi Tribunal *Te Kauhui Maunga – the National Park District Inquiry Report (Wai 1130*) (2013);

Wai 507

13. The Wai 507 claim is a historical claim that was initially progressed before the Turanga Tribunal in 2001 and 2002. The claim was reported on in 2004.[3] That inquiry and report did not inquire into health issues.

14. The Wai 507 claim has not been addressed in any Treaty settlements with the Crown and remains unsettled. This is in part due to the ongoing litigation in respect of the Mangatū claims.[4]

15. The Tribunal therefore has jurisdiction and the Wai 507 claim will be amended to add health-related grievances.

14 (b) What principal issues the claimants wish to bring;

Wai 1775

16. The Wai 1775 statement of claim currently alleges that the Crown failed to provide proper and adequate health services to Ngāti Patumoana and that this led to the detriment of their socio-economic position.[5] Connected to this are the health effects suffered by the hapū when they were confined to the Ōpape reserve following the war and raupatu.[6]

17. The 1775 statement of claim will be amended in order to further particularize these issues.

Wai 1261

18. The Wai 1261 claim will be amended to include health related issues as follows:

    a. Mental health services and treatment, including provision for te ao Māori;

    b. The P epidemic;

    c. Suicide, particularly youth suicide;

    d. Whānau health and hapū health;

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[3] Waitangi Tribunal *Turanga Tangata, Turanga Whenua, The Report on the Turanganui a Kiwa Claims* (Wai 814) (2004).
[4] See *Haronga v Waitangi Tribunal* HC Wellington CIV-2009-485-2277, 23 December 2009; *Haronga v Waitangi Tribunal* [2013] NZCA 201; *Haronga v Waitangi Tribunal* [2010] NZSC 98; *Haronga v Waitangi Tribunal* [2011] NZSC 53; Waitangi Tribunal *The Mangatū Remedies Report* (2013); *Haronga v Waitangi Tribunal* [2015] NZHC 1115; *Attorney-General v Haronga* [2016] NZCA 626.
[5] Wai 1775, #1.1.1 at para 75.
[6] Ōpōtiki Mai Tawhiti – Capital of Whakatōhea, Walker, 2006, p.128.

e. Provision of health services for Uenuku members; and

f. Boundaries of DHBs and their impact on services and treatment of people within the Uenuku rohe.

Wai 507

19. The Wai 507 claim will be amended to include health related issues as follows:

a. The failure of the Crown to comply with article III rights of equal protection in respect of the provision of health services.

b. Institutional racism within primary health care.

c. The failure of the Crown to create 50% Māori representation on district health boards as championed by the Wai 507 claimant, Mr Owen Lloyd.

14 (c) Whether the claimants and the Crown are ready to proceed;

20. As indicated below, we consider that some form of research compilation and analysis will be required. Following this, any gap-filling research tasks can be undertaken. Otherwise, the Claimants are ready to proceed.

14(d) Whether there are matters that should have priority; and

21. The Wai 1261 claimants consider that suicide, particularly youth suicide, is an urgent issue at present.

14(e) Whether any other organisations wish to participate as interested parties and on what basis.

22. Not applicable.

15 (a) What existing evidence is likely to be available and what additional evidence from the claimants, expert witnesses and technical research may be required; and

Existing Evidence

Wai 1775

23. Research into the health effects of war and raupatu on Ngāti Patumoana. This includes the research of Dr Ranginui Walker, Brian Easton and Dr Bryan Gilling.

24. Ministry of Health and District Health Board statistics.

Wai 1261

25. NZ Police research on treatment variations across DHB boundaries;

26. Ministry of Health and District Health Board statistics.

27. Recent initiatives such as *He Kimihia te Hauora Hinengaro*.[7]

Wai 507

28. Ministry of Health and District Health Board statistics.

Additional Evidence Required

29. Health statistics will be essential. We consider the compilation of these statistics and the assessment of any gaps in these statistics an important task. This will require a review of the historic and contemporary sources of statistics publically available in both government agencies and any private agencies on Māori access to health services and Māori health outcomes and a commitment to undertake any further research required as indicated by these initial assessments.

15 (b) What inquiry process the Tribunal should adopt in preparing the evidence, setting the issues, and hearing and reporting on the claims.

30. Some form of research compilation and analysis will be required as well as the development of the statement of issues. Following this, any gap-filling research tasks can be undertaken and substantive hearings may commence.

Dated at Wellington this 13th day of March 2017

Tom Bennion / Lisa Black / Emma Whiley
Counsel for the Claimants

[7] http://www.stuff.co.nz/auckland/local-news/western-leader/89479835/mental-health-research-for-maori-begins