IN THE WAITANGI TRIBUNAL
OF NEW ZEALAND

WAI 2575

IN THE MATTER	of the Treaty of Waitangi Act 1975
A N D	
IN THE MATTER	of the Health Services and Outcome Inquiry (Wai 2575)
A N D	
IN THE MATTER	of a claim by Sir James Henare on behalf of members of Ngati Hine, Ngati Manu, Te Kapotai and Ngapuhi-nui-tonu concerning Te Awa Tapu o Taumarere and its confluence Te Moana o Pikopiko-i-Whiti (Wai 49), and Rewiti Paraone, Kevin Prime and Erima Henare on behalf of Te Runanga o Ngati Hine for and on behalf of descendants of Torongare and Hauhaua (Wai 682)
A N D	
IN THE MATTER	of a claim by Te Riwhi Whao Reti, Hau Tautari Hereora, Romana Tarau, Edward Cook and Karen Herbert on behalf of Te Kapotai (Wai 1464/1546)
A N D	
IN THE MATTER	of a claim by Ngatiwai claimants George Davies (Wai 1544) and Huhana Lyndon (Wai 1677)

MEMORANDUM OF COUNSEL

Dated this 14th day of March 2017

RECEIVED
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WELLINGTON

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MAY IT PLEASE THE TRIBUNAL:

Introduction

1. This memorandum of counsel responds to the Memorandum-Directions of Judge Clark dated 21 December 2016,[1] and is filed on behalf of the following:

   (a) Te Runanga o Ngati Hine (Wai 49/682);

   (b) Te Kapotai (Wai 1464/1546);

   (c) George Davies (Wai 1544); and

   (d) Huhana Lyndon (Wai 1677) ("the claimants").

2. The Tribunal has sought submissions on the following:[2]

   (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.

3. Accordingly, we set out the claimants' position on these matters below.

Which claimants wish to have their health grievances heard in the Tribunal inquiry, including any questions of eligibility?

4. The claimants have yet to have their contemporary health grievances heard by the Tribunal, and indicate that they will amend their claims

[1] Wai 2575, #2.5.2, *Memorandum-Directions of the Presiding Officer Regarding Next Steps in Inquiry* 21 December 2016.
[2] At [14].

in order to seek eligibility in the Wai 2575 Health Services and Outcomes Kaupapa Inquiry.

5. The Ngati Hine claimants have a significant contribution to make to the Inquiry given their knowledge and expertise in both traditional and contemporary health matters. In particular, the Ngati Hine Health Trust is currently the largest Maori health provider in Te Tai Tokerau, and Te Tai Tokerau is one of the regions that is most negatively represented in health statistics.

6. The Ngatiwai claimants have engaged with and worked in health services for a number of years. They have first-hand knowledge and experience with the deficiencies of health services and outcomes in Te Tai Tokerau.

What are the principal issues the claimants wish to bring?

7. The claimants support the principal health concerns raised in the memorandum of counsel filed by our learned friends, Dr Gilling and Miss Dawe.[3] The claimants add the following:

   (a) Whether Crown kawanatanga and Maori rangatiratanga are appropriately and fairly balanced in terms of the development and administration of health law and policy;

   (b) Whether Maori are able to exercise rangatiratanga over themselves in terms of health, within or outside of the current legislative and policy regimes for health; and

   (c) Whether the current legislative and policy regimes for health services are consistent with the wider principles of Te Tiriti o Waitangi.[4]

[3] Memorandum of counsel dated 13 March 2017 at 7 (a-s).

[4] An exploration into pre-1992 legislative and policy regimes would provide essential context to the consideration of this issue.

8. The issues for this Inquiry will be further clarified through the interlocutory phase of developing a preliminary statement of issues.

9. Parties can draw on how matters have evolved in the Wai 2500 Veterans Inquiry, where the Tribunal issued a Direction setting out the broad scope of the inquiry. From there, parties developed a statement of issues and made submissions on issues where matters could not be agreed. This helped to identify issues concerning the scope of the inquiry in the early planning phase.

Whether the claimants and the Crown are ready to proceed

10. A staged approach is suggested for this Inquiry, starting with the determination of eligibility and the scoping of a preliminary statement of issues. From there a research program could also be developed, including the preparation of a draft bibliography.

11. The claimants indicate that they are ready to proceed with this part of the interlocutory process.

Whether there are matters that should have priority

12. The determination of priority matters will depend on the claims seeking participation in the Inquiry and the development of the statement of issues. This can be progressed and co-ordinated through Counsel and confirmed by the Tribunal prior to the commencement of the substantive phase of the Inquiry.

Other matters

13. Given the generic nature of kaupapa inquiries, Counsel submit that a coordinated approach among counsel is necessary for the efficient design and development of the inquiry.

14. Counsel apologises for the late filing of this memorandum due to significant work commitments including the filling of an urgent application. Accordingly, Counsel seeks leave to file out of time.

DATED at Pakaraka this 14th day of March 2017

Season-Mary Downs/Heather Jamieson
Counsel for the Claimants