**WAITANGI TRIBUNAL**

**WAI 2575**
**WAI 2476**

**IN THE MATTER** of The Treaty of Waitangi Act 1975

**AND** the Health Services and Outcomes Kaupapa Inquiry

**AND** a Tohunga Suppression Act claim filed by Bryar Te Hira for and on behalf of her whānau, descendants of Nopera Panakareao, within the rohe of Hokianga, Waihou and Waima.

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**MEMORANDUM OF COUNSEL**
Dated 10 April 2017

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RECEIVED
Waitangi Tribunal
***11 Apr 2017***
Ministry of Justice
WELLINGTON

**MAY IT PLEASE THE TRIBUNAL:**

## Introduction

1. This memorandum of counsel is filed on behalf of Wai 2476 being a Tohunga Suppression Act claim filed by Bryar Te Hira for and on behalf of her whānau, descendants of Nopera Panakareao, within the rohe of Hokianga, Waihou and Waima.

2. This memorandum is filed in response to Memorandum-Directions ("the Directions") of the Presiding Officer dated 21 December 2016 (Wai 2575, #2.5.2) directing claimants wishing to participate in the inquiry to file written submissions addressing the matters set out in paragraphs 14-15 of the directions by 13 March 2017.

3. Counsel advise the Tribunal that instructions have only just been received to file this memorandum and therefore counsel respectfully seeks leave to file out of time, for these submissions to be considered by this panel and for this memorandum to be added to the Record of Inquiry.

4. Counsel advise the Tribunal that the Wai 2476 Claimants wish to have their claim heard in the Wai 2575, Health Services and Outcomes Kaupapa Inquiry.

## Eligibility[1]

5. Counsel confirm the Wai 2476 claim:

   (a) has not been heard by the Tribunal to date;

   (b) there is no settlement that prevents this claim from being heard in this Inquiry; and

   (c) there is no parallel Inquiry in which this claim could be heard.

[1] Wai 2575, #2.5.1 para 13

6. In Counsels submission, this claim is eligible to participate in the Health Services and Outcomes Kaupapa Inquiry.

**The Principle Issues[2]**

7. The claimants support the principal health concerns raised in the memorandum of counsel filed by Dr Gilling, Mr Johnston and Ms. Downs. In relation to the Wai 2476 claim specifically, the issues covered relate to the Crowns actions in respect of:

   (a) Tohunga Practices; and

   (b) Recognition of Te Reo me ōnā tikanga within the Health sector.

8. These issues will be set out more fully in an amended statement of claim[3]. Counsel is working with the claimants for Wai 2476 to finalise an amended statement of claim and will file this document with the Tribunal in the near future.

**What existing evidence is likely to be available and what additional evidence from the claimants, expert witnesses and technical research may be required[4]**

9. In Counsels submission, a full research program must be developed in order to progress this inquiry. While the Wai 2476 claimants, their whanau and hapū will be obtaining evidence from within their rohe in order to show the Crown breaches of Te Tiriti, the claimants believe it is paramount for the Tribunal to commission further research.

10. In that respect, Counsel support the submissions of Mr Johnston suggesting that a suitably qualified researcher be commissioned to prepare a scoping report which collates available data and/or available research and identifies any research gaps that may require further expert or technical research.

[2] Wai 2575, #2.5.2 para 14(b)
[3] Wai 2575, #2.5.2 para 11 and 12
[4] Wai 2575, #2.5.2 para 15(a)

11. It is for that reason, the claimants advise they are not in a position to proceed to hearing and believe that this research programme needs to be undertaken. They are, however, ready to participate in the interlocutory phase of this inquiry.

**What inquiry process the Tribunal should adopt in preparing the evidence, setting the issues, and hearing and reporting on the claims[5]**

12. Counsel support the process that was adopted in the Military Veterans Kaupapa Inquiry and submit that the same process would be beneficial for this inquiry.

Dated at Auckland this 10th day of April 2017

Alana Thomas
Counsel for Wai 2476

[5] Wai 2575, #2.5.2 para 15(b)