

OFFICIAL

**WAI 2575: HEALTH SERVICES AND OUTCOMES KAUPAPA
INQUIRY**

**PRE-JUDICIAL CONFERENCE DISCUSSION PAPER ON
MATTERS OF PARTICIPATION, PROCESS AND EVIDENTIAL BASIS
FOR THIS INQUIRY**

21 APRIL 2017

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1. INTRODUCTION

1.1 PURPOSE

The purpose of this discussion paper is to summarise claimant and Crown submissions on matters of participation, process and evidential basis raised by the presiding officer of the Health Services and Outcomes Kaupapa Inquiry (Wai 2575) in his memorandum-directions of 21 December 2016 (#2.5.2). These were:

- 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;
- e. Whether any other organisations wish to participate as interested parties and on what basis;
- f. What existing evidence is likely to be available and what additional evidence from the claimants, expert witnesses and technical research may be required; and
- g. What inquiry process the Tribunal should adopt in preparing the evidence, setting the issues, and hearing and reporting on the claims.

This paper summarises the submissions received and highlights issues for further discussion at the upcoming judicial conference to be held in Wellington on 11 and 12 May 2017.

1.2 PANEL

The Presiding Officer for the Health Services and Outcomes kaupapa inquiry is Judge Stephen Clark. The panel members are Professor Tom Roa, Dr Angela Ballara, Ms Miriama Evans and Ms Tania Simpson.

1.3 STAFF

The staff currently servicing the Health Services and Outcomes inquiry are:

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2. PARTIES SEEKING TO PARTICIPATE

2.1 CLAIMANTS WISHING TO BE HEARD

A list of all claims seeking to be heard in the inquiry as at 21 April 2017 is attached to this discussion paper as **Appendix 1**. That table also lists counsel representing each claim, and whether an Amended Statement of Claim or Statement of Claim (in the case of new claims) has been filed or is pending. **Appendix 2** provides a list of counsel showing all of the Wai claims they currently represent in this inquiry. All efforts have been made to ensure these lists are accurate, but if there are any errors counsel should notify the inquiry facilitator, Leanne Boulton.

In summary, we currently have 140 claims seeking to participate in the inquiry. Of these:

- 19 are claims that were included on the preliminary list of 100 claims attached to the December 2016 memorandum-directions;
- 82 are registered claims that seek to or have already amended their statement of claim to include health issues; and
- 39 are new claims containing allegations about contemporary health issues (those that arise from Crown action/inaction after 21 September 1992). Statements of claim for some of these new claims have yet to be filed.

2.2 OTHER ORGANISATIONS SEEKING TO PARTICIPATE AS INTERESTED PARTIES

Two parties are seeking to participate as interested parties: Hāpai Te Hauora (a Māori public health organisation based in Auckland) and the Raukawa Settlement Trust.

Crown counsel submitted that Crown entities, such as District Health Boards and the Health Quality and Safety Commission, may wish to be involved in the inquiry in some form. The Crown noted that a public notice should be given ‘so as to ensure, as far as is reasonably possible, all health-related organisations and interest groups are aware of the inquiry, its subject matter and broad timeframes and have the opportunity to consider whether they wish to be involved.’¹

¹ Wai 2575, 3.1.54, paragraphs 27-30

3. CLAIM ISSUES

A preliminary claims issues analysis has been carried out by Tribunal staff. Claim issues were documented for the 19 claims originally included on the initial claim list, and those for which Statements of Claim and Amended Statements of Claim received to date. In all this amounted to 72 of the 140 claims (51.4% of those seeking to participate). It should be noted that at this early stage in the inquiry this analysis can only be indicative because we have yet to receive all outstanding statements of claim and amended statements of claim; it is likely there are claimants who have yet to indicate they wish to participate; the eligibility of claims to participate has yet to be determined; and we have yet to define the scope of the issues for inquiry.

3.1 KEY TOPICS EMERGING

At this stage of the inquiry the issues raised in the claims cover a wide timeframe and scope. However, the bulk of the claims relate to nine broad sets of issues:

1) Core themes: nineteenth century/early twentieth

The topics here include:

- Control of epidemic diseases/depopulation
- Provision of adequate health services
- Consultation over hospital sites and/health services
- Accessibility of health services (including distance, cost and other barriers)
- Cultural appropriateness of health services
- Funding of Māori Councils for health purposes

2) Policy, consultation and representation

The topics here include:

- Health policy formation generally
- Involvement/consultation over needs, policies and services
- Cultural competency of policy-makers & senior managers
- Representation and governance
- Participation in the health workforce

3) Core themes: twentieth century onwards

The topics here include:

- Provision of adequate health services

- Provision of adequate health services in rural areas
- Quality of health services/equity of health services
- Accessibility of health services (including distance, cost and other barriers)/equity of access
- Cultural appropriateness of health services
- Institutional and inter-personal racism/discrimination
- Funding of Māori health in mainstream
- Prevention and education programmes

4) Māori health providers/approaches

The topics here include:

- Support and funding for Māori health providers/initiatives
- Contracts/compliance for Māori health providers
- Support for Māori spiritual health
- Support for rongoā services

5) Traditional healing knowledge and practices

The topics here include:

- Access to/protection of rongoā species
- Access to/protection of healing waters (including geothermal springs)
- Traditional healing knowledge and practices/right to choose both worlds
- Birthing and breastfeeding knowledge and practices
- Tohunga Suppression Act 1907

6) Specific health risks

The topics here include:

- Obesity
- Smoking
- Alcohol
- Gambling
- Illegal drugs/addiction and dependency
- Desecration of wāhi tapu – impact on health
- Exposure to mercury from mining
- Housing/living conditions/socio-economic status – impact on health

7) *Specific health conditions/diseases*

The topics here include:

- Cancer
- Diabetes
- Gout
- Heart Disease
- HIV/AIDS
- Meningococcal and Meningitis
- Suicide and self-harm

8) *Specific areas of healthcare*

The topics here include:

- Disability services
- Mental health services
- Midwifery and maternity services
- Oral and dental health
- Health of children and youth

9) *Health outcomes*

The topics here include:

- Poor Māori health outcomes
- Disparity of health outcomes

3.2 SINGULAR ISSUES

Inevitably there are a number of issues that do not fall neatly into these main categories these include allegations about:

- The siting of hospitals on wāhi tapu
- Medical experiments on Māori
- Sterilisation of Māori as a racial or eugenic policy/practice
- Trade agreements – potential effects on Māori health
- Colonial practices and policies (including those of undertakers)
- Child, Youth and Family policy/practices (including removal of children from whānau)

3.3 INTERCONNECTION OF ISSUES AND ‘HOT’ ISSUES

Of the 72 claims whose issues can be analysed at this time, the majority (42 or 58.6%) are general claims about health services and poor outcomes/disparity of outcomes with a strong focus on the core themes (see 3 above) in the nineteenth and twentieth century with a few claims also making allegations about policy and consultation or about traditional knowledge and practices. Because the claims are yet to be particularised there is a lack of specifics about particular health policies or what time period the alleged Crown action/inaction took place.

The rest of the claims that can be analysed mention, or focus substantially on, particular health risks diseases/conditions or types of healthcare. However, in the majority of cases these allegations are also expressed in terms of the core themes identified, often raising concerns about policy, representation and consultation, and about poor outcomes/disparity of outcomes.

Ranked in terms of the number of times claims mention issues within these nine topics the most frequent topics covered in the claims are the core themes, policy/consultation and representation and poor outcomes/disparity of outcomes. This is shown in the table below:

Table 1: Key topics ranked by number of times mentioned in claims

Topics	Number of mentions in claims
Core themes - 20th century onwards	164
Core themes 19th and early 20th centuries	59
Policy, consultation & representation	55
Poor outcomes/disparity of outcomes	53
Maori health providers/approaches	40
Specific health risks	33
Specific health conditions/diseases	30
Specific areas of healthcare	23
Traditional healing knowledge and practices	13

Within each of these nine broad topics there are ‘hot’ issue emerging. Of particular note is the emergence of three interconnected concerns: mental health, suicide/self harm and illegal drugs/addiction and dependence, all of which have a strong contemporary focus. In their submission, counsel for Wai 1261 considered that suicide, particularly youth suicide, is an urgent issue at present.² The ‘hot’ issues within each of the nine broad topics include:

² Wai 2575, #3.1.38 paragraph 21

- Core themes: 19th/early 20th century – Epidemic diseases/depopulation followed by adequacy and accessibility of services
- Core themes: 20th century onwards – Adequacy and accessibility of services followed by cultural appropriateness of services
- Policy: Involvement and consultation followed by policy formation and representation/governance
- Outcomes: disparity followed by poor outcomes (although these are very closely linked)
- Māori health providers: Support/funding followed by contracts & compliance
- Specific health risks: Illegal drugs, followed by alcohol, smoking and gambling (all of which share elements of addiction and dependency)
- Specific diseases/conditions: Suicide/self harm followed by cancers and diabetes
- Specific areas of healthcare: Mental health followed by oral and dental health and then disabled health/maternal and infant health
- Traditional healing knowledge and practices: The general topic and the Tohunga Suppression Act 1907 followed by access to/protection of healing waters

3.4 SCOPE AND FOCUS OF THE INQUIRY

On the whole submissions from claimant counsel favour a broad inquiry into a wide range of historical and contemporary claim issues relating to health services and outcomes with the scope and weight of the issues to be determined after a review of existing evidence, further research and an interlocutory process to define the issues.

However, counsel for Wai 1315 submitted that while some historical background would be required to help the Tribunal understand the current situation, the focus of the inquiry ought to be on evidence of the current Māori health status, legislation, policy and practice. This approach would then allow the Tribunal to provide ‘constructive, practical and positive recommendations to the Crown for changes to the current legislation, policy and practice which the Crown can implement as a matter of urgency to improve Māori health status.’ They argue that ‘while there have been past Treaty breaches in terms of health services and outcomes, these have in many cases been canvassed to a greater or lesser degree in previous historical Tribunal inquiries and historical Treaty settlements’ and therefore do not need to be investigated in detail.³

³ Braithwaite & Smail MOC, 4 April 2017, paragraphs 8.1-8.3

Crown counsel additionally submitted that ‘the inquiry should focus predominantly on current issues rather than take a predominantly historical focus’, although the Crown accepts that ‘some historical matters will form appropriate context for current issues’.⁴

Crown counsel queried whether a number of issues claimants seek to have heard are properly within the scope of this inquiry. A copy of the Crown’s table of issues is attached to this discussion paper as **Appendix 3**.⁵

3.5 ISSUES FOR FURTHER DISCUSSION

- Is it possible or desirable at this point to decide in favour of a largely contemporary focus for the inquiry? If not, what steps should be taken to define the scope and focus of the inquiry?
- To what extent should the inquiry and the evidence produced for it focus on factors such as land loss, colonisation, poor housing and living conditions, as contributors to poor Māori health outcomes?
- Which claim issues, if any, lie outside the health services/outcomes kaupapa of the inquiry (such as those involving Child, Youth and Family, coronial policies and practices, prison health issues, and other issues outlined by the Crown and attached in **Appendix 3**)
- Are claim issues relating to maternal health, maternal services, and maternal wellbeing, including traditional practices and knowledge around childbirth, better heard in this inquiry or in the mana wahine kaupapa inquiry?

⁴ Wai 2575, 3.1.54 paragraph 26

⁵ Wai 2575, 3.1.54 paragraph 21

4. ELIGIBILITY OF CLAIMS

As the Crown noted in paragraph 12 of its submission,

General limitations include factors such as the Tribunal's requirement to inquire into claims about acts or omissions of the Crown or bodies acting on behalf of the Crown. Specific limits flow from comprehensive settlements of claims given legal effect by Parliament.⁶

Claims that do not relate to acts or omissions of the Crown (or bodies acting on behalf of the Crown) and claims that have been settled comprehensively by settlement legislation are therefore outside of the Tribunal's jurisdiction and are not eligible to participate in this inquiry.

4.1 PROCESS FOR DETERMINING ELIGIBILITY OF CLAIMS

Tribunal staff are currently in the process of registering all the statements of claim and the amended statements of claim submitted for this inquiry to date. Once this is complete, the presiding officer will determine eligibility to participate using the criteria set out at paragraphs 5 – 10 of the memorandum-directions of 21 December 2016 (#2.5.2). The information provided in submissions by counsel on eligibility will be taken into account in the process of determining eligibility. Tribunal staff may seek clarification or further details from counsel. Those claims determined to be eligible claims will then be aggregated and consolidated onto the record of inquiry for Wai 2575.

4.2 ISSUES FOR FURTHER DISCUSSION

- What claims are eligible, with supporting reasons from counsel?

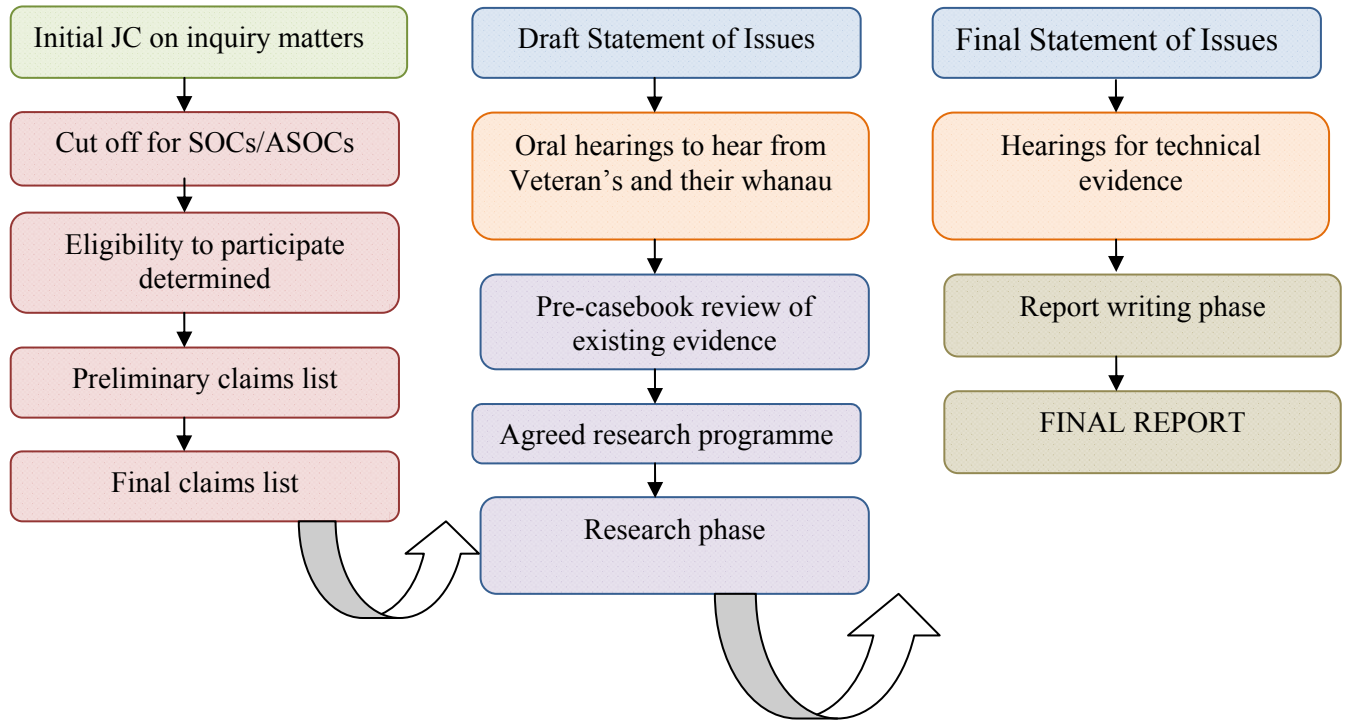
⁶ Wai 2575, 3.1.54 paragraph 12

5. WHAT INQUIRY PROCESS SHOULD BE FOLLOWED?

5.1 THE PROCESS

Claimant and Crown counsel indicated strong support for this inquiry to follow the inquiry process set down by the Wai 2500 Māori Military Veterans Kaupapa Inquiry (‘the Veterans Kaupapa Inquiry’).⁷ The Veterans Inquiry process is shown in **Figure 1** below.⁸

Figure 1: Veterans Kaupapa Inquiry process



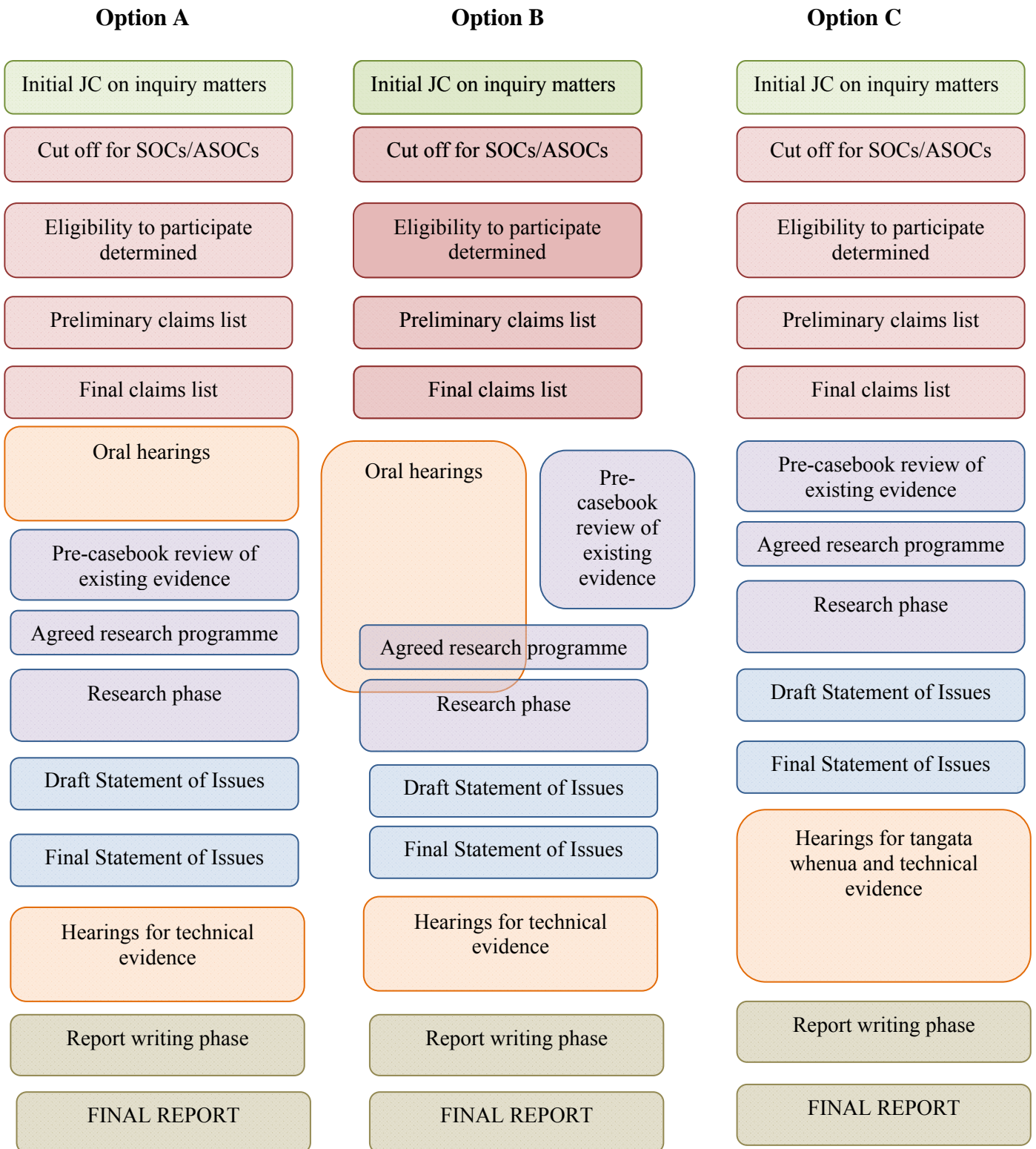
Three options of inquiry processes for the Health Services and Outcomes Kaupapa Inquiry are shown in **Figure 2**. As in the Veterans Kaupapa Inquiry process, all options propose an initial judicial conference (JC) on inquiry matters, followed by a cut-off date for statements of claim (SOCs) and amended statements of claim (ASOCs). Eligibility to participate would then be determined (see **4.1**) and a preliminary claims list would be produced and finalised. We note claimant counsel’s suggestion that ‘a reasonable deadline’ for a final list of claims ‘be set early in the process, accompanied by appropriate public notice.’⁹

⁷ See, for example: Wai 2575, 3.1.2 paragraphs 26-27; Wai 2575, 3.1.7 paragraph 12; Wai 2575, 3.1.17 paragraph 17; Wai 2575, 3.1.28 paragraph 15; Wai 2575, 3.1.37 paragraphs 5-9; Wai 2575, 3.1.49 paragraph 10; Wai 2575, 3.1.54 paragraphs 37-38

⁸ This initial inquiry process was set out in a post-JC memorandum-directions, Wai 2500, #2.5.6

⁹ Wai 2575, 3.1.1 paragraphs 31-35

Figure 2: Three possible inquiry processes for the Health Services and Outcomes Kaupapa Inquiry



Option A then proposes oral hearings, followed by a pre-casebook review of existing evidence, agreed research programme and the research phase. Option B proposes that oral hearings run concurrently to the pre-casebook review, agreement of research programme and beginning of the research phase, while Option C excludes oral hearings and proceeds directly to the pre-casebook review. We outline key submissions on oral hearings, developing a research casebook, the interlocutory phase (including developing a Statement of Issues) and full hearings below.

5.2 EARLY ORAL HEARINGS

Submissions indicate support from counsel and claimants that many of the claims issues are time sensitive. There are differing views about the usefulness of holding a separate series of oral hearings before full hearings.

Those in favour of holding oral hearings argued that time sensitive issues should be heard as soon as possible. Counsel submitted that:

- priority should particularly be directed to claimants that have a need to have their evidence heard urgently;¹⁰
- evidence that may be lost due to the poor health of claimants or will be of great assistance to technical researchers (tikanga with regard to health, tohunga, rongoā and customary healthcare) can be presented to the Waitangi Tribunal in an oral hearing/Ngā Kōrero Tuku Iho;¹¹
- [the Veterans Kaupapa Inquiry] focussed 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;¹²
- it may be that some claimants wish to be heard first, in much the same fashion as the Wai 2500 Inquiry, due to age or health issues. The preparation of research should continue while this is underway if that approach is adopted.¹³

¹⁰ Wai 2575, 3.1.2 paragraph 20

¹¹ Wai 2575, 3.1.2 paragraphs 26-27

¹² Wai 2575, 3.1.37 paragraphs 5-9

¹³ Wai 2575, 3.1.1 paragraphs 31-35

Counsel who opposed early oral hearings did so on the grounds that:

- the health inequalities for Māori are well documented;
- the fact that prejudice exists and data and statistics of prejudice may be able to be agreed with the Crown at an early stage, meaning hearing time will not be required to establish this;
- oral evidence during the course of hearing can be targeted to demonstrating how the Crown's current legislation, policy and practice create that prejudice, which will be of use to the Tribunal in formulating recommendations for change; and
- it is more important that the Inquiry proceed at a pace that allows a report to issue without undue delay than all kōrero is recorded for posterity.¹⁴

Should the Tribunal hold early oral hearings, claimant counsel submitted that the Nga Korero Tuku Iho approach (that is, an approach that does not entail the filing of briefs of evidence, exhibits, speaking notes, Power Point displays or the opening submissions of counsel), which was initiated by His Honour Judge Ambler in the Te Rohe Pōtae inquiry and adopted by Judge Harvey in the Taihape inquiry, is preferred.¹⁵

5.3 THE EVIDENTIAL CASEBOOK

Crown and claimant counsel generally agreed that the following process be followed for developing a casebook programme and commissioning research:

- Identify and agree on key issues for inquiry (insofar as they can be identified and agreed upon before all research has been done);
- Determine which claim issues are outside the scope of the inquiry;
- Develop a research programme based on key issues;
- Identify existing research (for instance a process similar to the pre-casebook research discussion paper commissioned by the Tribunal in the Veterans Kaupapa Inquiry);
- Commission agreed research projects and feedback on project briefs;
- Review evidential casebook and identify any necessary gap-filling research.¹⁶

Counsel requested that this programme commence as soon as is practicable.¹⁷

¹⁴ Braithwaite/Smail MOC, 5 Apr 2017

¹⁵ Wai 2575, 3.1.41 paragraphs 29-30

¹⁶ Wai 2575, 3.1.54 paragraphs 37-38; Wai 2575, 3.1.10 paragraphs 10-11; Wai 2575, 3.1.2 paragraphs 26-27

¹⁷ Wai 2575, 3.1.36 paragraph 11

5.4 INTERLOCUTORY PHASE (INCLUDING STATEMENT OF ISSUES)

In all three options given in **Figure 2**, the interlocutory phase, including developing and finalising a Statement of Issues, occurs after the research phase. In other inquiries, the formulation of a Statement of Issues has been known to take upwards of three months to develop and confirm with all parties, depending on the size of the inquiry.

Submissions indicated consensus on the need for a Statement of Issues, and a number suggested when to begin drafting the Statement of Issues. These include:

- the drafting of the Statement of Issues ought to be commenced by claimant counsel concurrently with the initial research;¹⁸
- the parties and Tribunal engage on forming a draft Statement of Issues once the initial inquiry issues, parties, and research parameters are determined;¹⁹
- a Statement of Issues should be developed after the final research casebook is completed;²⁰
- a Statement of Issues should be finalised after the final amendment and particularisation of claims;²¹
- a pre-hearing mediation be convened by the Tribunal so that all interested claimants and the Crown might meet with a mediator to set the issues for the Inquiry and adopt timetabling for preparation of evidence, the hearing and reporting on the claims;²²
- the steps leading up to hearings are likely to take approximately 18 months to two years to complete and some steps could take place concurrently.²³

There was also agreement that claimant counsel and the Crown could draft a preliminary Statement of Issues that could then be finalised by the Waitangi Tribunal, and to allow time for amended statements of claim to be filed.²⁴ Some counsel raised concerns about claimants' ability to amend their claims in the past and wished to raise this issue at the outset of this inquiry.²⁵

¹⁸ Wai 2575, 3.1.36 paragraph 11

¹⁹ Wai 2575, 3.1.49 paragraph 10

²⁰ Wai 2575, 3.1.10 paragraphs 10-11; Wai 2575, 3.1.2 paragraphs 26-27; Wai 2575, 3.1.38 paragraph 30 (Counsel noted that this has been the approach taken in all district inquiries to date, and would allow the Statement of Issues to be formulated on a more informed basis: Wai 2575, 3.1.41 paragraphs 29-30)

²¹ Wai 2575, 3.1.54 paragraphs 37-38

²² Wai 2575, 3.1.46 paragraph 10

²³ Wai 2575, 3.1.54 paragraphs 37-38

²⁴ Wai 2575, 3.1.2 paragraphs 26-27; Wai 2575, 3.1.10 paragraphs 10-11; Wai 2575, 3.1.2 paragraphs 26-27; Wai 2575, 3.1.10 paragraphs 10-11

²⁵ Wai 2575, 3.1.1 paragraph 8

5.5 THE HEARING PROCESS

Submissions supported:

- Hearings and judicial conferences held as much as possible on marae in accordance with tikanga;²⁶
- holding hearings in the districts throughout the country rather than in a central location;²⁷
- full hearing weeks running 6-8 weeks apart and taking into account other Tribunal inquiries so as to avoid overlap.²⁸
- more time for hearing in this inquiry than was permitted in the Veterans Kaupapa Inquiry due to the wider scope of the inquiry.²⁹
- tangata whenua Briefs of Evidence to be filed two weeks before the hearing in which they are presented, and technical tangata whenua Briefs of Evidence to be filed four weeks before the hearing in which they are presented.³⁰

5.6 ISSUES FOR FURTHER DISCUSSION

There was general agreement on the need for a pre-casebook review, evidential casebook and Statement of Issues. Some claimant evidence is likely to be time sensitive. Remaining issues to be discussed include:

- Whether early oral hearings are necessary, and if so:
 - whether the undocumented Nga Korero Tuku Iho approach should be adopted;
 - what criteria should be set on who oral hearings would be for, and whose testimony should wait for full hearings; and
 - how any such criteria would be enforced.
- Whether a draft statement of issues provided by counsel is required before research begins;
- How soon the details of a hearing timetable can be confirmed.

²⁶ Wai 2575, 3.1.2 paragraphs 26-27

²⁷ Wai 2575, 3.1.10 paragraphs 10-11; Wai 2575, 3.1.1 paragraphs 31-35; Wai 2575, 3.1.37 paragraphs 5-9

²⁸ Wai 2575, 3.1.10 paragraphs 10-11

²⁹ Wai 2575, 3.1.37 paragraphs 5-9

³⁰ Wai 2575, 3.1.2 paragraphs 26-27

6. SPECIFIC REQUESTS REGARDING HEARINGS OR OTHER MATTERS

6.1 REQUEST FOR INCLUSIVE PRACTICES

Counsel for Wai 2109 requested that the Tribunal adopts specific practices which take into account the needs of Ngāti Kāpo claimants, who are blind or vision-impaired, and often have other impairments. The practices requested include:

- **Preparing evidence:** extra time allowed for briefing witnesses and obtaining instructions; all documents provided in a format that can be converted into braille and other accessible formats; documents produced in plain language for ease of understanding;
- **Hearing venue:** consideration given to the needs of claimants with vision and hearing impairment and other disabilities (e.g. access ramps, wide corridors, space between tables and seats, bathroom facilities for the disabled and any accompanying guide dogs); allowances made for longer breaks to give the claimants, as well as their dogs, time to use the restroom; adequate amount of disabled car parking available;
- **Reading evidence:** option of someone reading the evidence on behalf of Ngāti Kāpo claimants should they choose; key people in the room introduce themselves and their location in the room at the beginning of the hearing and after any breaks so that Kāpo Māori witnesses know who is in the room and where to direct their speech;
- **Hearing others' evidence:** documents filed made available to Kāpo Māori claimants in Word or Word-like digital PDFs for those using adaptive technology to read documents; images and graphics replaced with a written description; alternatives to tables used to present information; appropriate lighting; speakers say their names before speaking if a hearing loop is used;
- **Offer to assist:** Ngāti Kāpo claimants' representatives offer to meet with Tribunal staff to discuss inclusive solutions to ensure full engagement and participation in the hearing process; and
- **Reporting:** communications and documents produced in Word or Word-like digital PDFs that Kāpo Māori can independently access and navigate.³¹

³¹ Wai 2575, 3.1.45 paragraphs 30-44

6.2 OPTIONS FOR SENSITIVE ISSUES OR CLAIMS REGARDING INDIVIDUALS

Claimant counsel suggested that the Tribunal consider making provision for closed hearings or the protection of identities due to the sensitive nature of some of the evidence. Counsel noted that this issue can be addressed as the inquiry progresses.³²

The Crown submitted that, in regard to claims concerning individuals' experiences with the health service, 'the Crown understands that it would be more appropriate for those not selected to be heard by the standing panel for remaining historical claims, or in a future contemporary claims process.'³³

6.3 ISSUES FOR FURTHER DISCUSSION

- What processes might be required for health-impaired claimants to participate in the inquiry?
- What process would be required for sensitive health information?

7. RELEVANT EXISTING EVIDENTIAL MATERIAL

7.1 ON TRIBUNAL RECORDS OF INQUIRY

Claimant counsel identified research material on Waitangi Tribunal records of inquiry which may be of relevance to this inquiry. A preliminary list of relevant existing research is attached as **Appendix 4**.

In addition:

- claimant counsel were aware of health-related research completed for the East Coast, Taihape, Urewera, Whanganui, Te Rohe Potae and for the Te Paparahi o Te Raki inquiries.³⁴
- Previous Tribunal findings on health were listed in a joint memorandum as part of the Rohe Pōtae Inquiry (Wai 898 #3.1.526(j)).³⁵
- Counsel also referred to the Napier Hospital Services inquiry report (Wai 692) and the Ko Aoteroa Tenei inquiry report (Wai 262) for previous health related Tribunal findings.³⁶

³² Wai 2575, 3.1.1 paragraph 34

³³ Wai 2575, 3.1.54 paragraph 22

³⁴ Wai 2575, 3.1.41 paragraph 18

³⁵ Wai 2575, 3.1.1 paragraphs 27-28

³⁶ Wai 2575, 3.1.41 paragraph 18

7.2 PRIMARY AND SECONDARY SOURCES

Claimant and Crown counsel submitted that:

- a number of publically available primary and secondary sources should be considered by the Tribunal and placed on the Wai 2575 record of inquiry. A preliminary list is attached as **Appendix 4**;
- a timetable be set for the parties to produce a list of publications for consideration by the Tribunal;³⁷
- the Tribunal conduct a review of available evidence, such as that undertaken by Ms. Marr for the Wai 2500 Inquiry;³⁸
- publications to consider include reports from the Ministry of Health, District Health Boards, the World Health Organisation, Medical Journals, academic research, commentaries by health experts and research centres, reviews from Select committees, government departments' evaluations and research (such as NZ Police research on treatment variations across DHB boundaries), initiatives such as *He Kimihia te Hauora Hinengaro*, and research from other health-related non-governmental organisations (such as the Cancer Society).³⁹

8. EVIDENTIAL RESEARCH NEEDS?

8.1 PREPARATION OF EVIDENCE

Claimant counsel submitted:

- that the research needs for claimants participating in a kaupapa inquiry differ from the needs of claimants participating in a historical claims inquiry, and that 'an overview research approach alone is inappropriate' given the predominance of individual or whānau claims;
- that individual research be completed for most, if not all claimants, but noted that 'it is obvious that the cost of conducting research on this scale is prohibitive';
- that the onus falls on counsel to assist the claimants with their legal research and evidential needs;
- that the Waitangi Tribunal could commission the preparation of a research tool and associated advice to guide counsel and claimants in accessing Crown records;

³⁷ Wai 2575, 3.1.54 paragraphs 31-32

³⁸ Wai 2575, 3.1.1 paragraph 23; Wai 2575, 3.1.7 paragraph 11

³⁹ Wai 2575, 3.1.37 paragraph 10; Wai 2575, 3.1.2 paragraph 24; Wai 2575, 3.1.16 paragraph 9; Wai 2575, 3.1.41 paragraph 19; Wai 2575, 3.1.38 paragraphs 23-27

- that, should the Tribunal not be in a position to commission research for claimants, the Tribunal ‘set its position out in writing so that other potential funding sources can be approached.’⁴⁰

Crown counsel submitted:

- that a qualified researcher should be commissioned to identify what relevant research already exists, recommend what further research ought to be undertaken and propose a detailed research programme. The parties should then make comments on these proposals before the Tribunal makes a final decision on the research programme.
- that, in the Veterans Kaupapa Inquiry, the Crown held a conference with Crown agencies holding relevant records following the completion of the pre-casebook research discussion paper. The Crown will consider convening a similar conference with Crown agencies once this stage is reached in this inquiry.
- that the evidence the Crown will produce will depend on an assessment of the existing evidence, development of a research programme, and discussions with claimants, as well as the ultimate scope of the issues to be heard within the inquiry. The Crown is not able to say at this preliminary stage what the nature and detail of any such evidence will be. A clearly defined and limited statement of issues will assist in commissioning targeted and timely research, for both the claimants and the Crown.
- that this stage, the Crown's preference is to present evidence after the evidence of the claimants and any third parties (as it has in other inquiries). This will enable the Crown to consider all the claimant evidence presented and prepare appropriate evidence in response.⁴¹

8.2 RESEARCH NEEDS ASSESSMENT

There was general consensus from claimant counsel around the need for a pre-casebook review of available evidence, following which further technical evidence could be identified and commissioned.⁴² Claimant counsel suggested that initial assessments of health statistics from both historic and contemporary sources on Māori access to health services and Māori health outcomes be

⁴⁰ Wai 2575, 3.1.41 paragraphs 20-28

⁴¹ Wai 2575, 3.1.54 paragraphs 33-36

⁴² Wai 2575, 3.1.1 paragraph 23; Wai 2575, 3.1.16 paragraph 9; Wai 2575, 3.1.7 paragraph 11

undertaken to inform research needed.⁴³ Scoping exercises for specific research topics were also suggested.⁴⁴

Counsel agreed that ‘there is a general lack of specific research into Māori health and that the claimants in this inquiry would benefit immensely from specific research and reports being committed to address the same.’⁴⁵ Claimant counsel noted that specific research topics that may need further research include:

- the history of Māori health care;⁴⁶
- Māori mental health;⁴⁷
- disparities in relation to funding and compliance;⁴⁸
- Māori with disabilities (including Kāpo Māori).⁴⁹

8.3 SUGGESTED RESEARCHERS/TECHNICAL EXPERTS

Claimant counsel suggested that an academic from within the healthcare system could assist with a pre-casebook review of existing relevant research,⁵⁰ while Crown counsel submitted that a qualified researcher should be commissioned to identify what relevant research already exists, recommend what further research ought to be undertaken and propose a detailed research programme.⁵¹

Some claimant counsel recommended specific researchers, such as TE HA Leadership Group.⁵²

Hāpai Te Hauora, who is seeking to become an interested party, noted that it has produced, and has access to, a substantial research base which can be produced as evidence in the inquiry.⁵³

⁴³ Wai 2575, 3.1.38 paragraph 29

⁴⁴ Wai 2575, 3.1.45 paragraphs 24-29

⁴⁵ Wai 2575 3.1.17 paragraph 16

⁴⁶ Wai 2575, 3.1.1 paragraph 23

⁴⁷ Wai 2575, 3.1.13 paragraph 21

⁴⁸ Wai 2575, 3.1.8 paragraph 7

⁴⁹ Wai 2575, 3.1.45 paragraphs 24-29

⁵⁰ Wai 2575, 3.1.1 paragraph 23

⁵¹ Wai 2575, 3.1.54 paragraph 33

⁵² Wai 2575, 3.1.10 paragraphs 8-9

⁵³ Wai 2575, 3.1.47 paragraph 10

9. OTHER QUESTIONS

9.1 FUNDING FOR CLAIMANT PARTICIPATION

Crown Forestry Rental Trust funding was not available for the Māori Military Veterans Kaupapa Inquiry and will not be available for the Health Services and Outcomes Kaupapa Inquiry. Claimant counsel noted logistical issues such as travel and associated costs must be minimised and claimants should be able to present their issues within their rohe, rather than a central location to reduce costs.⁵⁴ Other avenues of funding must be considered to enable claimant participation in the inquiry process:

- Could the Crown fund claimant participation in the Health Services and Outcomes Inquiry?
- What other avenues are available to claimants to fund their participation?

9.2 LEGAL AID

Legal Aid staff plan to be present at the upcoming judicial conference to consider how Legal Aid funding should work in a kaupapa inquiry. Legal Aid issues may be raised by counsel at the judicial conference.

9.3 ANALYSIS OF WHAT CLAIMANTS ARE SEEKING FROM THE CROWN

An analysis of redress claimants are seeking from the Crown and findings claimants are seeking from the Tribunal will require Tribunal staff resourcing in order to analyse all statements of claim. We recommend this be carried out after the claims list has been finalised.

⁵⁴ Wai 2575, 3.1.1 paragraphs 31-35; Wai 2575, 3.1.37 paragraphs 5-9

**APPENDIX 1: LIST OF CLAIMS SEEKING TO BE HEARD IN THE HEALTH SERVICES AND OUTCOMES KAUPAPA
INQUIRY (WAI 2575) AS AT 21 APRIL 2017**

Wai No.	Claim title	Counsel	Firm	Claim status	Submission
49	Taumarere River and Te Moana O Pikopiko-I-Whiti claim	Season-Mary Downs/Chelsea Terei/Heather Jamieson/Keith Hopkins	Tukau Law and Consultancy (Kaikohe)	ASOC needed	#3.1.39
58	Whangaroa Lands and Fisheries claim	Unrepresented [Nuki Aldridge]	Unrepresented	ASOC received	
87	Whakatohea Raupatu claim	Charl Hirschfeld/Tony Sinclair/Barney Tūpara	Ranfurly Chambers (Auck)	ASOC pending	#3.1.19
88	Kapiti Island claim	Moana Sinclair/Chris Beaumont	Te Haa Legal (Otaki)	ASOC needed	#3.1.13
89	Whitireia Block claim	Moana Sinclair/Chris Beaumont	Te Haa Legal (Otaki)	ASOC needed	#3.1.13
121	Ngati Whatua Lands and Fisheries claim	Gerald Sharrock	RightLaw (Auck)	ASOC pending	#3.1.11
144	Ruapani Lands claim	Robyn Zwaan/N Scully	Zwaan Legal (Wgt)	ASOC received	
179	Maori Affairs Act and Burials and Cremations Act claim	Janet Mason	Phoenix Law Ltd (Wgt)	ASOC pending	#3.1.36
246	Puhipuhi State Forest claim	Bryan Gilling/S Dawe	Morrison Kent (Wgt & Auck)	ASOC pending	#3.1.9
421	Puketotara Block claim	Bryce Lyall	Lyall & Thornton (Auck)	ASOC received	#3.1.1
433	Te Whanau O He Putea Atawhai claim	Darrell Naden/Eoin Lawless	Tamaki Legal (Manukau)	Registered	#3.1.41
507	Mangatu Block claim	Tom Bennion/Lisa Black/Emma Whiley	Bennion Law (Wgt)	ASOC pending	#3.1.38
558	Ngati Ira O Waioeka Rohe claim	Annette Sykes/Jordan Bartlett	Annette Sykes & Co (Rotorua)	ASOC received	#3.1.21
593	Taraire 1E2 Block claim	Bryce Lyall	Lyall & Thornton (Auck)	ASOC received	#3.1.1

Wai No.	Claim title	Counsel	Firm	Claim status	Submission
605	Te Waimimiti Block claim	Bryan Gilling/S Dawe	Morrison Kent (Wgt & Auck)	ASOC pending	#3.1.9
619	Ngati Kahu o Torongare/Te Parawhau Hapu claim	Tavake Afeaki/Rebekah Jordan/Siaosi Tofi	Afeaki Chambers (Auck)	ASOC needed	#3.1.49
662	Mangaohane No 1 Block claim	Annette Sykes/Jordan Bartlett	Annette Sykes & Co (Rotorua)	ASOC received	
682	Ngati Hine Lands, Forests and Resources claim	Season-Mary Downs/Chelsea Terei/Heather Jamieson/Keith Hopkins	Tukau Law and Consultancy (Kaikohe)	ASOC needed	#3.1.39
745	Patuharakeke Hapu Lands and Resources claim	Kelly Dixon/Alisha Castle	Dixon & Co (Auck)	ASOC pending	#3.1.18
774	Waitangi Lands and Resources claim	Tavake Afeaki/Rebekah Jordan/Siaosi Tofi	Afeaki Chambers (Auck)	ASOC needed	#3.1.49
861	Tai Tokerau District Maori Council claim	Charl Hirschfeld/Tony Sinclair/Barney Tūpara	Ranfury Chambers (Auck)	ASOC pending	#3.1.19
864	Moutohora Quarry claim	Annette Sykes/Jordan Bartlett	Annette Sykes & Co (Rotorua)	ASOC received	#3.1.21
869	Inland Kerikeri claim	Bryce Lyall	Lyall & Thornton (Auck)	ASOC received	#3.1.1
874	Mangatu Block claim	Bryce Lyall	Lyall & Thornton (Auck)	ASOC received	#3.1.1
884	Te Pa O Tahuu (Mt Richmond, Auckland)	Gerald Sharrock	RightLaw (Auck)	ASOC received	#3.1.11
914	Te Atatu Lands (Auckland) claim	Charl Hirschfeld/Tony Sinclair/Barney Tūpara	Ranfury Chambers (Auck)	ASOC pending	#3.1.19
966	Ngapuhi Ti Tiriti o Waitangi claim	Moana Sinclair/Chris Beaumont	Te Haa Legal (Otaki)	ASOC needed	#3.1.13
972	Ngati Kauwhata ki te Tonga surplus lands claim	Bryan Gilling/S Dawe	Morrison Kent (Wgt & Auck)	ASOC pending	#3.1.9

Wai No.	Claim title	Counsel	Firm	Claim status	Submission
996	Ngati Rangitahi Inland and Coastal Land Blocks claim	Janet Mason	Phoenix Law Ltd (Wgt)	ASOC received	#3.1.36
1028	Ngati Hineoneone Te Tuhi Block claim	Tavake Afeaki/Rebekah Jordan/Siaosi Tofi	Afeaki Chambers (Auck)	ASOC needed	#3.1.49
1072	Ngati Ruakopiri Waimarino Block Alienation claim	Mark McGhie	Mark McGhie, Barrister & Solicitor (Te Puke)	ASOC received	#3.1.12
1247	Kororipo Lands and Resources claim	Bryce Lyall	Lyall & Thornton (Auck)	ASOC received	#3.1.1
1261	Ngati Tara Lands claim	Tom Bennion/Lisa Black/Emma Whiley	Bennion Law (Wgt)	ASOC pending	#3.1.38
1308	Patuharakeke Hapuu ki Takahiwai claim	Kelly Dixon/Alisha Castle	Dixon & Co (Auck)	ASOC pending	#3.1.18
1315	Primary Health Organisations claim	RN Smail/Peter Andrew	Braithwaite and Smail Ltd (Auck)	ASOC pending	NYR
1341	Ngati Rehia Hapu claim	Bryan Gilling/S Dawe	Morrison Kent (Wgt & Auck)	ASOC pending	#3.1.9
1383	Kauwhata, Rangi and Wharetotara claim	Bryce Lyall	Lyall & Thornton (Auck)	ASOC received	#3.1.1
1460	Tauhinu ki Mahurangi Claim	Gerald Sharrock	RightLaw (Auck)	ASOC received	#3.1.11
1464	Te Kapotai and Ngati Pare hapu claim	Season-Mary Downs/Chelsea Terei/Heather Jamieson/Keith Hopkins	Tukau Law and Consultancy (Kaikohe)	ASOC needed	#3.1.39
1479	Hapu of Te Parawhau (Moera Wairoro Hilton) Claim	Tavake Afeaki/Rebekah Jordan/Siaosi Tofi	Afeaki Chambers (Auck)	ASOC needed	#3.1.49
1524	Pomare Kingi Claim	Janet Mason	Phoenix Law Ltd (Wgt)	ASOC pending	#3.1.36
1531	Land Alienation and Wards of the State (Harris) Claim	Darrell Naden/Eoin Lawless	Tamaki Legal (Manukau)	ASOC pending	#3.1.41

Wai No.	Claim title	Counsel	Firm	Claim status	Submission
1536	Descendants of Te Kemara uri o Maikuku raua ko Hua Claim	Tavake Afeaki/Rebekah Jordan/Siaosi Tofi	Afeaki Chambers (Auck)	ASOC pending	#3.1.32
1541	Descendants of Hinewhare claim	Janet Mason	Phoenix Law Ltd (Wgt)	ASOC pending	#3.1.36
1544	Descendants of Hairama Pita Kino claim	Season-Mary Downs/Chelsea Terei/Heather Jamieson/Keith Hopkins	Tukau Law and Consultancy (Kaikohe)	ASOC needed	#3.1.39
1546	Waikare Inlet claim	Season-Mary Downs/Chelsea Terei/Heather Jamieson/Keith Hopkins	Tukau Law and Consultancy (Kaikohe)	ASOC needed	#3.1.39
1589	Descendants of Turongo (Native Lands Act) claim	Aidan Warren/Jerome Burgess	McCaw Lewis (Hamilton)	ASOC pending	#3.1.16
1622	Ngati Toa and Muaupoko (Taueki) Claim	David Stone/Gene Bagsic	Te Mata Law (Auck)	Registered	#3.1.37 & #3.1.42
1629	Muaupoko (the descendants of Taueki) Claim	Charl Hirschfeld/Tony Sinclair/Barney Tūpara	Ranfurlly Chambers (Auck)	ASOC pending	#3.1.19
1666	Ngati Hine, Ngati Kawau, Ngati Kawhiti and Ngā Uri o Te Pona (Taniwha) Claim	Bryce Lyall	Lyall & Thornton (Auck)	ASOC needed	#3.1.1
1670	Descendants of Te Uri o Ratima Claim	Bryan Gilling/S Dawe	Morrison Kent (Wgt & Auck)	ASOC pending	#3.1.9
1673	Ngati Kawau (Collier and Dargaville) Claim	Janet Mason	Phoenix Law Ltd (Wgt)	ASOC pending	#3.1.36
1677	Orokawa 3B Block Claim	Season-Mary Downs/Chelsea Terei/Heather Jamieson/Keith Hopkins	Tukau Law and Consultancy (Kaikohe)	ASOC needed	#3.1.39
1681	Pukenui Blocks Claim	Janet Mason	Phoenix Law Ltd (Wgt)	ASOC pending	#3.1.36

Wai No.	Claim title	Counsel	Firm	Claim status	Submission
1712	Descendants of Toi Te Hua Tahī and Te Maawe Claim	David Stone/Brooke Loader	Te Mata Law (Auck)	ASOC received	
1758	Upokorehe Hapu Ngati Raumoā Roimata Marae Trust Claim	Robyn Zwaan	Zwaan Legal (Wgt)	Registered	#3.1.7
1775	Ngati Patumoana (Hata) Claim	Tom Bennion/Lisa Black/Emma Whiley	Bennion Law (Wgt)	ASOC received	#3.1.38
1787	Rongopopoia Hapu Claim	Robyn Zwaan	Zwaan Legal (Wgt)	ASOC needed	#3.1.7
1794	Turangapikitoi Hapu Claim	Charl Hirschfeld/Tony Sinclair/Barney Tūpara	Ranfurly Chambers (Auck)	ASOC pending	#3.1.19
1804	Descendants of Tokotahi Moke Claim	David Stone/Brooke Loader/Catherine Leauga	Te Mata Law (Auck)	ASOC received	#3.1.37
1813	Maori Health and Social Development (Wolfgramm) Claim	Te Kani Williams/Coral Linstead-Panoho/Chloe Manga	Wackrow William and Davies Ltd (Auck)	Registered	#3.1.10
1821	Kirikiriōra Marae Claim	Unrepresented [Wikuku Kingi]	Unrepresented	Registered	#3.1.28
1835	Ngati Paki and Ngati Hinemanu (Winiata, Lomax, Cross and Teariki) Claim	Annette Sykes/Jordan Bartlett	Annette Sykes & Co (Rotorua)	ASOC received	#3.1.17
1841	Ngati Manu (Victor Campbell) Claim	Gerald Sharrock	RightLaw (Auck)	Registered	#3.1.11
1843	Te Aeto Hapu Claim	Bryan Gilling/S Dawe	Morrison Kent (Wgt & Auck)	ASOC pending	#3.1.9
1864	Coroners Act Claim	David Stone/Brooke Loader/Catherine Leauga	Te Mata Law (Auck)	ASOC needed	#3.1.37
1868	Oruamatua Kaimanawa Block (Hoet) Claim	Annette Sykes/Jordan Bartlett	Annette Sykes & Co (Rotorua)	ASOC received	
1877	Vietnam Veterans (Moffitt and	Charl Hirschfeld/Tony Sinclair/Barney Tūpara	Ranfurly Chambers (Auck)	ASOC pending	#3.1.19

Wai No.	Claim title	Counsel	Firm	Claim status	Submission
	McCallion) Claim				
1890	Te Whiu and Kin Hapu Claim	Bryce Lyall	Lyall & Thornton (Auck)	ASOC received	#3.1.1
1918	Native Rock Oyster (Lyndon and Collier) Claim	Janet Mason	Phoenix Law Ltd (Wgt)	ASOC pending	#3.1.36
1940	Waitaha (Te Korako & Harawira) Claim	Bryan Gilling/S Dawe	Morrison Kent (Wgt & Auck)	ASOC pending	#3.1.9
1957	Maunga Kawakawa Block Claim	Darrell Naden/Eoin Lawless	Tamaki Legal (Manukau)	ASOC pending	#3.1.41
1968	Tutamoe Pa Claim	Darrell Naden/Eoin Lawless	Tamaki Legal (Manukau)	ASOC pending	#3.1.41
1998	Tikapa (Kiwara) Lands Claim	Darrell Naden/Eoin Lawless	Tamaki Legal (Manukau)	Registered	#3.1.41
2003	Ngati Korokoro, Ngati Wharara and Te Pouka (Turner and Others) Resource Management Claim	Kelly Dixon/Alisha Castle	Dixon & Co (Auck)	ASOC pending	#3.1.18
2006	Upokorehe and Whakatoia Hapu Claim	Charl Hirschfeld/Tony Sinclair/Barney Tūpara	Ranfurlly Chambers (Auck)	Registered	#3.1.19
2008	Pakowhai Hapu and Whakatohea Māori Trust Claim	Darrell Naden/Eoin Lawless	Tamaki Legal (Manukau)	Registered	#3.1.41
2049	Hatu Lands and Resource Claim	Darrell Naden/Eoin Lawless	Tamaki Legal (Manukau)	Registered	#3.1.41
2051	Kenrick Whanau Mental Health Claim	David Stone/Brooke Loader/Catherine Leauga	Te Mata Law (Auck)	Registered	#3.1.37 & #3.1.42
2053	Muaupoko Health (Kupa and Ferris) Claim	David Stone/Gene Bagsic	Te Mata Law (Auck)	Registered	#3.1.37 & #3.1.42
2059	Puketaua and Utukura Blocks	Tavake Afeaki/Rebekah Jordan/Siaosi Tofi	Afeaki Chambers (Auck)	ASOC needed	#3.1.49

Wai No.	Claim title	Counsel	Firm	Claim status	Submission
	Claim				
2060	Apetera Whanau and Te Parawhau Whanau Claim	Cameron Hockley	Bennion Law (Wgt)	ASOC received	#3.1.6 & #3.1.43
2066	Ngati Ruatakana Lands and Resources (Papuni) Claim	Darrell Naden/Eoin Lawless	Tamaki Legal (Manukau)	Registered	#3.1.41
2072	Te Ihutai Lands (Robinson and Others) Claim	Charl Hirschfeld/Tony Sinclair/Barney Tūpara	Ranfurlly Chambers (Auck)	ASOC pending	#3.1.19
2097	Whakatane Lands (Hillman) Claim	Darrell Naden/Eoin Lawless	Tamaki Legal (Manukau)	Registered	#3.1.41
2108	Children, Young Persons and Their Families Act 1989 (Epiha, Armstrong and Stead) Claim	Gerald Sharrock	RightLaw (Auck)	Registered	#3.1.11
2109	Ngati Kapo (Tibble) Claim	Peter Johnston	Rainey Collins (Wgt)	Registered	#3.1.45
2145	INA Health Issues (Mack and Others) Claim	David Stone/Brooke Loader/Catherine Leauga	Te Mata Law (Auck)	Registered	#3.1.37
2165	Te Taura Here O Ngati Porou ki Tamaki Makaurau Lands (Naden) Claim	Darrell Naden/Eoin Lawless	Tamaki Legal (Manukau)	Registered	#3.1.41
2173	Muaupoko Health (Murray) Claim	David Stone/Gene Bagsic	Te Mata Law (Auck)	Registered	#3.1.37 & #3.1.42
2179	Nga Uri o Tama, Tauke Te Awa and Others Lands (Dargaville) Claim	Gerald Sharrock	RightLaw (Auck)	ASOC pending	#3.1.11
2183	Ngati Hikairo, Ngati Patupo and Ngati Te	David Stone/Brooke Loader/Catherine Leauga	Te Mata Law (Auck)	ASOC received	#3.1.37

Wai No.	Claim title	Counsel	Firm	Claim status	Submission
	Wehi Lands (Mahara) Claim				
2237	Maori Health Disparities (MacDonald) Claim	Unrepresented [L MacDonald]	Unrepresented	Registered	#3.1.51
2244	Descendants of Ngatau Tangihia (Dargaville) Claim	Charl Hirschfeld/Tony Sinclair/Barney Tūpara	Ranfurly Chambers (Auck)	ASOC pending	#3.1.19
2257	Te Whanau Apanui Mana Wahine (Stirling) Claim	Moana Sinclair/Chris Beaumont	Te Haa Legal (Otaki)	ASOC needed	#3.1.13
2306	Arawhata Stream and Lake Horowhenua Urgency Claim	Charl Hirschfeld/Tony Sinclair/Barney Tūpara	Ranfurly Chambers (Auck)	ASOC pending	#3.1.19
2380	The Te Whānau a Taupara Trust Empowering Act 2003 and Kokoariki Marae (Terekia) Claim	Charl Hirschfeld/Tony Sinclair/Barney Tūpara	Ranfurly Chambers (Auck)	ASOC pending	#3.1.19
2382	The Tahawai (Aldridge) Claim	Darrell Naden/Eoin Lawless	Tamaki Legal (Manukau)	ASOC pending	#3.1.41
2476	Tohunga Suppression Act (Te Hira) claim	Alana Thomas	Wackrow William and Davies Ltd (Auck)	ASOC pending	#3.1.53
2494	Racism Against Māori claim	Annette Sykes/Jordan Bartlett	Annette Sykes & Co (Rotorua)	ASOC received	#3.1.20
2499	Māori Health Disparities (Jansen, Laking and Moke) claim	P T Walker/K J Tarawhiti	Kahui Legal (Wgt)	Registered	#3.1.25

Wai No.	Claim title	Counsel	Firm	Claim status	Submission
NYR	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.	David Stone/Brooke Loader/Catherine Leauga	Te Mata Law (Auck)	SOC received	#3.1.37
NYR	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.	David Stone/Brooke Loader/Catherine Leauga	Te Mata Law (Auck)	SOC received	#3.1.37
NYR	A claim by Leanne Te Karu (awaiting registration) and how institutional and interpersonal racism actively prejudices Maori in respect of gout.	David Stone/Brooke Loader/Catherine Leauga	Te Mata Law (Auck)	SOC received	#3.1.37
NYR	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.	David Stone/Brooke Loader/Catherine Leauga	Te Mata Law (Auck)	SOC received	#3.1.37
NYR	A claim by Pauline Kopu (awaiting registration) and the prejudice suffered by Maori in respect of oral ill-health.	David Stone/Brooke Loader/Catherine Leauga	Te Mata Law (Auck)	SOC received	#3.1.37
NYR	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.	David Stone/Brooke Loader/Catherine Leauga	Te Mata Law (Auck)	SOC received	#3.1.37

Wai No.	Claim title	Counsel	Firm	Claim status	Submission
NYR	Sir Edward Taihakurei Durie - On behalf of himself and the New Zealand Maori Council	Donna Hall/Jordan Hamel	Woodward Law (Wgt)	SOC received	#3.1.8
NYR	Wanda Brljevic - On behalf of herself and Ngati Huarere ki Whangapoua	Donna Hall/Jordan Hamel	Woodward Law (Wgt)	SOC received	#3.1.14
NYR	Taipari Munro - On behalf of himself and the Whatitiri Maori Reserves Trust	Donna Hall/Jordan Hamel	Woodward Law (Wgt)	SOC received	#3.1.15
NYR	Mereti Taipana - Tahuriwakanui Hapu of Ngati Kauwhata	Donna Hall/Jordan Hamel	Woodward Law (Wgt)	SOC received	#3.1.31
NYR	Ngaio Te Ua	Donna Hall/Jordan Hamel	Woodward Law (Wgt)	SOC received	#3.1.33
NYR	Edward Taihakurei Durie - Raukawa District Maori Council	Donna Hall/Jordan Hamel	Woodward Law (Wgt)	SOC received	#3.1.34
NYR	Hamuera Hodge	Donna Hall/Jordan Hamel	Woodward Law (Wgt)	SOC received	#3.1.35
NYR	An amended claim by Tina Latimer and James Eruera, on behalf of ourselves and Pamapurua Maori and Maori of Kaitaia generally [SOC submitted 13 Mar 2017]	Donna Hall/Jordan Hamel	Woodward Law (Wgt)	SOC (amended) received	#3.1.24
NYR	Claim by Ranganana Noke Wade, chairperson of Ngati Wahiao Maori Committee	Donna Hall/Jordan Hamel	Woodward Law (Wgt)	SOC received	#3.1.22
NYR	Claim by Kereama Pene, Apotoro of Ratana Church, Auckland	Donna Hall/Jordan Hamel	Woodward Law (Wgt)	SOC received	#3.1.23
NYR	Claim by Tina Latimer, James Eruera and Ricky Houghton, on behalf of ourselves and Pamapurua Maori and Maori of Kaitaia generally	Donna Hall/Jordan Hamel	Woodward Law (Wgt)	SOC received	#3.1.24

Wai No.	Claim title	Counsel	Firm	Claim status	Submission
NYR	Claim by John Hooker on behalf of myself and as a tribal member of Ngaruahine	Donna Hall/Jordan Hamel	Woodward Law (Wgt)	SOC received	#3.1.26
NYR	Claim by Rangimahuta Easthope, a Co-Chair of the Ngati Rangiteaorere Maori Committee	Donna Hall/Jordan Hamel	Woodward Law (Wgt)	SOC received	#3.1.27
NYR	Claim by Harvey Ruru, Archdeacon of Nelson and Chairperson of Te Tau Ihu District Maori Council	Donna Hall/Jordan Hamel	Woodward Law (Wgt)	SOC received	#3.1.29
NYR	Claim by Dennis Emery, an Iwi Health Adviser at Arohanui Hospice, Palmerston North and elected Chairperson of Nga Kaitiaki o Ngati Kauwhata Incorporated in Feilding	Donna Hall/Jordan Hamel	Woodward Law (Wgt)	SOC received	#3.1.30
NYR	A claim by Eru Peter Loach and Maori and the health effects of gambling	Unrepresented [Eru Peter Loach]	Unrepresented	SOC received	#3.1.50
NYR	A claim by Rex Timu (awaiting registration) concerning methamphetamine	David Stone/Brooke Loader/Catherine Leauga	Te Mata Law (Auck)	SOC received	#3.1.37
NYR?	Bruce Wright (contemporary claim)	Charl Hirschfeld/Tony Sinclair/Barney Tūpara	Ranfurly Chambers (Auck)	SOC received?	#3.1.19
NYR?	Richard Takuira (contemporary claim)	Charl Hirschfeld/Tony Sinclair/Barney Tūpara	Ranfurly Chambers (Auck)	SOC received?	#3.1.19
NYR?	Pauline Haapu (contemporary claim)	Charl Hirschfeld/Tony Sinclair/Barney Tūpara	Ranfurly Chambers (Auck)	SOC received?	#3.1.19
NYR?	Stephen Henare (contemporary claim)	Charl Hirschfeld/Tony Sinclair/Barney Tūpara	Ranfurly Chambers (Auck)	SOC received?	#3.1.19
NYR?	Te Rarua Kui McClutchie-Morrell (contemporary claim)	Charl Hirschfeld/Tony Sinclair/Barney Tūpara	Ranfurly Chambers (Auck)	SOC received?	#3.1.19
NYR?	Lorraine Akuata (contemporary claim)	Charl Hirschfeld/Tony Sinclair/Barney Tūpara	Ranfurly Chambers (Auck)	SOC received?	#3.1.19
NYR	Claim by David Ratu and the Turehou Māori Wardens ki Otago Charitable Trust	Grant Hewison, Barrister	Grant Hewison (Auck)	SOC received	#3.1.46

Wai No.	Claim title	Counsel	Firm	Claim status	Submission
NYR	Claim by Rosaria Hotere & Jane Hotere	Eve Rongo	Oranganui Legal (Paraparaumu)	SOC received	#3.1.2
NYR	Claim by Wiremu Baylis on behalf of himself and his whanau	Eve Rongo	Oranganui Legal (Paraparaumu)	SOC received	#3.1.3
NYR	Claim by Teresa Goza on behalf of herself and her whanau	Eve Rongo	Oranganui Legal (Paraparaumu)	SOC received	#3.1.4
NYR	Claim by Maraea Katene on behalf of herself and her whanau	Eve Rongo	Oranganui Legal (Paraparaumu)	SOC received	#3.1.5
NBR	Hickey claim	Bryan Gilling/S Dawe	Morrison Kent (Wgt & Auck)	SOC received	#3.1.9
NBR	Claim by Jack Rifle on behalf of Ngati Te Wehi	Aidan Warren/Jerome Burgess	McCaw Lewis (Hamilton)	SOC pending	#3.1.16
NBR	District Maori Council claimants - (1) Cletus Maanu Paul, Co-Chairperson of the New Zealand Maori Council (“NZMC”), and Chairperson of Mataatua District Maori Council (2) Desma Kemp Ratima, Chairperson of Takitimu DMC, for and on behalf of himself and the Takitimu DMC (3) Rihari Richard Takuira Dargaville, Chairperson of Tai Tokerau DMC, for and on behalf of himself and the Tai Tokerau DMC (4) Titewhai Harawira, Chairperson of Tamaki Makaurau DMC, for and on behalf of herself and Tamaki Makaurau DMC (5) Willie Jackson, Chairperson of Tamaki ki te Tonga DMC, for and on behalf of himself and Tamaki ki te Tonga DMC (6)	Janet Mason	Phoenix Law Ltd (Wgt)	SOC received	#3.1.36

Wai No.	Claim title	Counsel	Firm	Claim status	Submission
NBR	Urban claimants - John Tamihere, for and on behalf of Te Whānau o Waiparera, the Manukau Urban Maori Authority (“MUMA”), the National Urban Maori Authority (“NUMA”), Te Roopu Awhina ki Porirua, and Kirikiriroa Marae	Janet Mason	Phoenix Law Ltd (Wgt)	SOC pending	#3.1.36
NBR	A claim concerning contemporary issues the deficiencies in health legislation, lack of consultation and support for Maori health care providers, and failure to incorporate tikanga Maori into National Health system	Mark McGhie	Mark McGhie, Barrister & Solicitor (Te Puke)	SOC received	#3.1.12
NYR	A claim by Mark West and Tuta Ngarimu concerning Tairāwhiti DHB funding and the failure to provide drug and methamphetamine rehabilitation facilities to the Tairāwhiti region	David Stone	Te Mata Law (Auck)	SOC received	

APPENDIX 2: LIST OF COUNSEL SEEKING TO PARTICIPATE IN THE IN THE HEALTH SERVICES AND OUTCOMES

KAUPAPA INQUIRY (WAI 2575) AND THE CLAIMS THEY REPRESENT AS AT 21 APRIL 2017

Firm	Counsel	Wai claims represented
Afeaki Chambers (Auck)	Tavake Afeaki/Rebekah Jordan/Siaosi Tofi	619, 774, 1028, 1479, 1536, 2059
Annette Sykes & Co (Rotorua)	Annette Sykes/Jordan Bartlett	558, 662, 864, 1835, 1868, 2494
Bennion Law (Wgt)	Tom Bennion/Lisa Black/Cameron Hockley/Emma Whiley	507, 1261, 1775, 2060
Braithwaite and Smail Ltd (Auck)	RN Smail/Peter Andrew	1315
Dixon & Co (Auck)	Kelly Dixon/Alisha Castle	745, 1308, 2003
Kahui Legal (Wgt)	P T Walker/K J Tarawhiti	2499
Lyall & Thornton (Auck)	Bryce Lyall/Linda Thornton	421, 593, 869, 874, 1247, 1383, 1666, 1890
Mark McGhie, Barrister & Solicitor (Te Puke)	Mark McGhie	1072, new SOC pending
McCaw Lewis (Hamilton)	Aidan Warren/Jerome Burgess	1589, new SOC pending [Rifle]
Morrison Kent (Wgt & Auck)	Bryan Gilling/S Dawe	246, 605, 972, 1341, 1670, 1843, 1940, new SOC pending [Hickey]
Oranganui Legal (Paraparaumu)	Eve Rongo	new SOC's received [Hotere], [Baylis], [Goza], [Katene]
Phoenix Law Ltd (Wgt)	Janet Mason	179, 996, 1524, 1541, 1673, 1681, 1918, new SOC's pending [District Maori Council claimants], [Urban claimants]
Rainey Collins (Wgt)	Peter Johnston	2109
Ranfurlly Chambers (Auck)	Charl Hirschfeld/Tony Sinclair/Barney Tūpara	87, 861, 914, 1629, 1794, 1877, 2006, 2072, 2244, 2306, 2380, new SOC's pending [Wright], [Takuira], [Henare], [McClutchie-Morrell], [Akuata]
RightLaw (Auck)	Gerald Sharrock	121, 884, 1460, 1841, 2108, 2179
Tamaki Legal (Manukau)	Darrell Naden/Eoin Lawless	433, 1531, 1957, 1968, 1998, 2008, 2049, 2066, 2097, 2165, 2382

Firm	Counsel	Wai claims represented
Te Mata Law (Auck)	David Stone/Brooke Loader/Catherine Leauga/Gene Bagsic	1622, 1712, 1804, 1864, 2051, 2053, 2145, 2173, 2183, new SOC received [Stone], [Lawson Te Aho], [Te Karu], [McKenna], [Kopu], [Wilkie], [Timu], [West & Ngarimu]
Tukau Law and Consultancy (Kaikohe)	Season-Mary Downs/Chelsea Terei/Heather Jamieson/Keith Hopkins	49, 682, 1464, 1544, 1546, 1677
Wackrow William and Davies Ltd (Auck)	Te Kani Williams/Coral Linstead-Panoho/Chloe Manga/Alana Thomas	1813, 2476
Woodward Law (Wgt)	Donna Hall/Jordan Hamel	New SOC received [Durie NZMC], [Brljevich], [Munro], [Taipana], [Te Ua], [Durie Raukawa MC], [Hodge], [Latimer & Eruera], [Wade], [Pene], [Hooker], [Easthope], [Ruru], [Emery]
Zwaan Legal (Wgt)	Robyn Zwaan/N Scully	144, 1758, 1787
Te Haa Legal	Moana Sinclair/Chris Beaumont	88, 89, 966, 2257
Unrepresented	Unrepresented [Nuki Aldridge]	58
Unrepresented	Unrepresented [Wikuku Kingi]	1821
Unrepresented	Unrepresented [L MacDonald]	2237
Unrepresented	Unrepresented [Eru Peter Loach]	New SOC received [Loach]

APPENDIX 3: CROWN'S LIST OF 'ISSUES THAT APPEAR TO BE OUTSIDE SCOPE OF THE WAI 2575 INQUIRY',⁵⁵

Claim	Issues that appear to be outside scope of Wai 2575 inquiry	Relevant kaupapa inquiries (if applicable) ¹
Wai 874	assimilation policies; state housing, housing overcrowding, and the provision of papakainga housing; poverty; alienation from lands; entry into trade agreements and other obligations; and flooding	identity and culture; social services, social development and housing; and natural resources and environmental management.
Wai 421, 593, 869, 1383 and 1890	assimilation policies; the forced removal of children; state housing, housing overcrowding, and the provision of papakainga housing; poverty; alienation from lands; entry into trade agreements and other obligations; and flooding	identity and culture; social services, social development and housing; and natural resources and environmental management.
Wai 1247	retention of the organs of deceased children and the handling of the deceased	identity and culture, including coronial law and practices
Dr Huhana Hickey, Wai 1341, 1670, 605, 246, 972, 1940, and 1843	abuse of Maori in institutions such as residential care facilities; prisons; and special education schools; and poverty	social services, social development and housing; education services and outcomes; and the justice system.
Wai 1813	social development	social services, social development and housing
Wai 121, 1450 and 2108, Wai 884 and 1841, and Wai 2179	the abuse of Maori in institutions such as residential care facilities; prisons; and special education schools; poverty; and housing	social services, social development and housing; education services and outcomes; and the justice system.
Wai 1072	taking and desecration of wahi tapu	identity and culture
Wai 88 and 89, Wai 966, and Wai 2257	housing	social services, social development and housing
Wai 87, 861, 914, 1794, 2244, 2306, 1877, 2072, 2006, 1629, 2380	poverty and housing	social services, social development and housing
Wai 1821	social policies	social services, social development and housing
Wai 1536	to access to resources; and the recognition of kaumatua and kuia as taonga; education and understanding of Maori culture and tikanga	natural resources and environmental management; and identity and culture; education services and outcomes
Marion Wilkie and Mike Pehi	coronial practices	identity and culture, including coronial law and practices
Wai 2109	socio-economic factors and institutionalism ¹⁴	social services, social development and housing; economic development; and identity and culture.
Wai 619, 2059, 1479, 774, and 1028	socio-economic factors	social services, social development and housing
Wai 2060	Puhipuhi mines	

The Crown accepts that issues relating to housing, alcoholism, poverty and some other matters may well have areas of overlap with the health services and outcomes kaupapa inquiry.

⁵⁵ Wai 2575, 3.1.54 Appendix A

APPENDIX 4: PRELIMINARY LIST OF RESEARCH SOURCES AS AT 21 APRIL 2017

Claimant counsel identified the following research material on Waitangi Tribunal records of inquiry⁵⁶:

- R Lange, *The Provision of Health Services to East Coast Māori* (CFRT, 2009) Wai 900 #A25;
- H Robinson, *Te Taha Tinana: Māori Health and the Crown in Te Rohe Pōtae district inquiry, 1840 – 1990* (Waitangi Tribunal, 2011) Wai 898 #A31;
- G Berghan, *A review of the administrative and procurement processes of the public health group* (Whariki Research Group, 2015) Wai 1040 #P7(d);
- Indexed Document Bank on Access to Education, Health Services, and Housing Assistance in the Whanganui Inquiry District c.1880-1930 Wai 903 #A165;
- T. Hearn, *Social and Economic Change in Northland c.1900 – c.1945: The Role of the Crown and the Place of Māori* (CFRT, 2006) Wai 1040 #A3;
- T Walzl, *Twentieth Century Overview Part II, 1935 – 2006*, (Walghan Partners, 2009) Wai 1040, #A38;
- P Christoffel, *Education, Health and Housing in the Taihape Inquiry District, 1880 – 2013* (Waitangi Tribunal, 2016) Wai 2180, #A41.

Claimant counsel identified the following secondary sources:

- R. Lange, *May the People Live, A History of Māori Health Development 1900-1920* (Auckland University Press, 1999);
- D. Dow, *Māori Health and Government Policy 1840-1940* (Victoria University Press, 1999);
- B. Borell and A. Gregory, *The Politics of Privilege Scoping Project* (Ngā Pae o te Māramatanga, 2007); and

⁵⁶ Wai 2575, 3.1.1 paragraphs 27-28; Wai 2575, 3.1.13 paragraph 18; Wai 2575, 3.1.7 paragraph 11; Wai 2575 3.1.17 paragraph 15

- Dr. L Russell, K. Smiler and H. Stace, *Improving Māori Health and Reducing Inequalities Between Māori and Non-Māori: Has the Primary Health Care Strategy Worked for Māori? An Evaluation of the Period 2003-2010* (Ministry of Health, 2013).⁵⁷

Crown counsel identified the following secondary sources:

- District Health Board Maori Health Plans, Profiles, and Summaries;
- Tautau Kahukura. Maori Health Chart Book 2015;
- Annual Update of Key Results 2015/ 16. New Zealand Health Survey;
- Te Ohonga Ake. The Determinants of Health for Maori Children and Young People in New Zealand- Series Two (April 2016); and
- The LILACS NZ research programme.⁵⁸

Claimant counsel submitted that primary sources could include Ministry of Health and District Health Board statistics.⁵⁹

⁵⁷ Wai 2575, 3.1.1 paragraph 26

⁵⁸ Wai 2575, 3.1.54 paragraphs 31-32

⁵⁹ Wai 2575, 3.1.38 paragraph 28