

IN THE WAITANGI TRIBUNAL

Wai 2575

CONCERNING

the Treaty of Waitangi Act 1975

AND

the Health Services and
Outcomes Kaupapa Inquiry

SECOND MEMORANDUM-DIRECTIONS OF THE PRESIDING OFFICER
REGARDING THE FIRST JUDICIAL CONFERENCE

2 May 2017

Introduction

1. By memorandum-directions dated 13 April 2017 (Wai 2575, #2.5.6), I confirmed the dates and venue for the first judicial conference for Wai 2575, the Health Services and Outcomes Kaupapa Inquiry.

Timetable

2. Attached as Appendix "1" is the timetable for the conference.

Participants

3. Attached as Appendix "2" is a list of claimant counsel, unrepresented claimants and Crown counsel who have either filed submissions and/or sought to be heard. In the direction dated 13 April 2017 the Tribunal sought an indication from counsel and unrepresented claimants of those who sought speaking time, such details to be provided by 18 April 2017. Relatively few counsel and unrepresented claimants responded to that direction. Therefore the Tribunal will hear from claimant counsel, unrepresented claimants and Crown counsel in alphabetical order, as set out in Appendix "2".

The first judicial conference

4. In a memorandum-directions dated 21 December 2016 (Wai 2575, #2.5.2) at paragraph 14 I set out issues which the Tribunal wished to be informed about. Both claimant and Crown counsel have usefully responded by way of written submissions filed in March and April respectively. Simultaneously various new and amended statements of claim have also been filed.
5. Tribunal staff have also prepared a pre-judicial conference discussion paper which was released to the parties on 21 April 2017 (Wai 2575, #2.8.1). That paper raises a number of issues. In the time available to us at the forthcoming judicial conference it is unlikely that every issue will be able to be discussed.
6. There are numerous claimants involved in this inquiry and to date a broad range of claims have been filed. The Tribunal also anticipates the addition of further claimants and claims. What the Tribunal would find useful at this early stage of the inquiry is assistance from counsel and the parties in developing a process and approach to this inquiry. Therefore it would be useful for counsel to focus on a number of broad issues as set out below. In doing so counsel should assume that the Tribunal panel has read their submissions already filed on the Record of Inquiry.

Notice

7. I am concerned that notice of this inquiry might not yet have reached all parties who wish to participate. At paragraph 28 of the memorandum dated 13 April 2017 (Wai 2575, #3.1.54), Crown counsel suggest that the Tribunal give consideration to giving notice, utilising a "broader range of fora" other than the standard newspaper notices.
8. The Tribunal is interested in hearing from all parties as to whether or not there is some utility in a broader range of public notice being employed to ensure that all claimants and potential interest groups are aware of this inquiry.

The claims

9. A number of new statements of claim have recently been filed. A number of parties have also indicated that they will file amended statements of claim. Consideration will need to be given to a date by which claimants intending to participate in this inquiry are expected to file new or amended statements of claim.

Eligibility

10. Questions of eligibility can only properly be assessed by the Tribunal once the claims have been fully articulated. In the majority of submissions filed thus far claimant counsel have indicated that there are no eligibility issues. I note that the Crown has raised eligibility as an issue in respect of some claims. If we are able to agree upon a cut off date for the filing of new or amended statements of claim, is it possible to agree upon a timetable or process for the filing of submissions concerning eligibility? I note that a similar process was undertaken in Wai 2500, the Military Veterans Kaupapa Inquiry (Wai 2500, #2.5.6 at paras 2 and 3).

The scope of the Inquiry

11. Some of the questions which might usefully be discussed at the forthcoming judicial conference are:
 - (a) Should the Tribunal hear every claim, that is not otherwise disqualified, on a claim by claim basis?
 - (b) Should the Tribunal identify, hear and report on broad themes, rather than proceed on a claim by claim basis?
 - (c) Should the Tribunal focus on current Māori health status, current issues, legislation, policy and practice as suggested by counsel for Wai 1315 (Wai 2575, #3.1.52) and the Crown (Wai 2575, #3.1.54)?
 - (d) Are there any priority matters which warrant an early or expedited hearing process? If so, what are they?

Research

12. Final decisions on the scope of the inquiry will determine what research is needed. Having said that, Tribunal staff are currently working on compiling a bibliography of secondary sources relating to Māori and health and identifying health-related research filed on Tribunal records of inquiry.
13. Both claimant and Crown counsel have suggested that certain publicly available reports could be placed on the Record of Inquiry. It would be useful to set a date by which parties produce a list of suggested publications for consideration by the Tribunal for placing on the Record of Inquiry.
14. Thereafter I anticipate that a pre-casebook research discussion paper is produced by the Tribunal. The extent to which further evidence is needed and what it will cover will be very much dependent upon the scope of the Inquiry and the statement of issues that is eventually produced.

Other matters

15. Any other matters, for example the situation concerning legal aid funding.

The Registrar is to send this direction to all those on the notification list for Wai 2575, the Health services and Outcomes Kaupapa Inquiry.

DATED at Hamilton this 2nd day of May 2017

A handwritten signature in black ink, appearing to be 'S R Clark', written in a cursive style.

Judge S R Clark
Presiding Officer
WAITANGI TRIBUNAL