

IN THE WAITANGI TRIBUNAL

WAI 2575 - THE HEALTH INQUIRY

Under: The Treaty of Waitangi Act 1975

And in the matter of: A claim to the Waitangi Tribunal under the Treaty of Waitangi Act 1975 in relation to WAI 2575 - The Health Inquiry

by: David Ratu
Claimant

and: the Turehou Māori Wardens ki
Otara Charitable Trust

NOTICE OF CLAIM

Dated 13 February 2017

Dr Grant Hewison
Barrister
PO Box 47397, Ponsonby,
Auckland, 1011
Email: grant@granthewison.co.nz
Mobile: 021 577869

RECEIVED Waitangi Tribunal
13 Feb 2017
Ministry of Justice WELLINGTON

NOTICE OF CLAIM

TAKE NOTICE THAT David Ratu, Deputy Chair of the Turehou Māori Wardens ki Otara Charitable Trust (the *Trust*), has made a claim in relation to the Waitangi Tribunal kaupapa (thematic) inquiry into claims concerning health services and outcomes, WAI 2575 – The Health Inquiry.

SUMMARY

1. The Waitangi Tribunal (the '*Tribunal*') has commenced a Tribunal kaupapa (thematic) inquiry into claims concerning health services and outcomes.
2. David Ratu and the Trust claim that the sale, supply and consumption of alcohol in Aotearoa/New Zealand is resulting in ill-health amongst Māori, disparities in health outcomes for Māori, and is actively driving health inequalities between Māori and other New Zealanders (and that this is prejudicially affecting them and, indeed, all Māori).
3. David Ratu and the Trust claim that these prejudicial effects are being caused, at least in part, by omissions made by the Crown in its regulation of the sale, supply and consumption of alcohol, and particularly because:
 - a. the Crown has failed to enact and/or implement all of the policies and recommendations made by the Law Commission in its 2010 Report, *Alcohol In Our Lives: Curbing the Harm*; and because
 - b. the Sale and Supply of Alcohol Act 2012 is inconsistent with the principles of the Treaty of Waitangi.

BACKGROUND – WAI 2575 – THE HEALTH INQUIRY

4. The Waitangi Tribunal (the ‘*Tribunal*’) has commenced a Tribunal kaupapa (thematic) inquiry into claims concerning health services and outcomes.¹
5. The Tribunal’s kaupapa (thematic) inquiry programme is designed to provide a pathway for the hearing of nationally significant claims that affect Māori as a whole or a section of Māori in similar ways. Unlike a district inquiry, which embraces all claim issues that arise within its area of coverage, a kaupapa inquiry focuses on a single core issue of national scope. In this inquiry, the thematic focus is on health services and outcomes.
6. The ‘Health Services and Outcomes’ inquiry addresses a matter of national significance. The Tribunal concluded in its 2011 report *Ko Aotearoa Tenei* (Wai 262), page 642, that Māori were currently undergoing a serious health crisis:

In fact, contemporary Māori health status is so bad it would be wrong to describe it as anything other than a further calamity, even if it represents an undoubted improvement on a century earlier. Compared with non-Māori, Māori today have much higher rates of heart disease, stroke, heart failure, lung cancer, diabetes (see figure 7.4), asthma, chronic obstructive pulmonary disease (see figure 7.3), infant mortality, sudden infant death syndrome (cot death), meningococcal disease, schizophrenia, and other illnesses. Māori males have much higher rates of motor vehicle accident deaths and suicides (in the latter case, after having had much lower rates of suicide until the 1980s). Māori have much higher rates of interpersonal violence and unintentional injury. They are less likely to consult a doctor, with cost and the lack of access to a vehicle being more common reasons among Māori than among non-Māori.²⁴⁹ Māori also have worse oral health, and are less likely to visit a dentist. Māori have much higher rates of smoking, with 53 per cent of adult Māori women being smokers (see figure 7.5). Māori adults are much more likely to have potentially hazardous drinking patterns, and regular marijuana smoking is significantly more prevalent among Māori adults than non-Māori. Māori are also much more likely to be obese than non-Māori (see figure 7.6). Many of these illnesses and problems are practically at epidemic levels.²⁵⁰

¹ Memorandum-Directions of the Chairperson commencing a Kaupapa Inquiry into Health Services and Outcomes (30 November 2016).

7. The Wai 262 Tribunal considered that while some health issues were closely associated with poor housing and socioeconomic status, Māori health would not automatically improve with standards of living.
8. Claims already registered with the Tribunal, which refer to health services and outcomes, allege that the Crown has not fulfilled its Treaty responsibilities in the delivery of health services to Māori and that it has not addressed other factors that contribute to worse health outcomes for Māori than for non-Māori. The claims include grievances concerning, amongst others:
 - a. the national framework for primary health care;
 - b. the delivery of services to particular groups, such as the deaf, the blind and the mentally ill;
 - c. reducing particular causes of ill-health amongst Māori, such as smoking and HIV/AIDS;
 - d. the alleged disparity in the services provided to Māori and non-Māori;
 - e. the general accommodation of matauranga Māori and rongoa in health policy and the delivery of mainstream health services; and
 - f. the disparities in health outcomes for Māori and non-Māori.
9. Some historical health-related issues reach far back into the Māori experience of colonisation and settlement. Many of the claims focus on the last half-century or raise issues that are alive today. The inquiry will look to take a comprehensive approach to both historical and contemporary claim issues.

BACKGROUND - IMPACTS OF ALCOHOL ON MĀORI HEALTH

10. As noted above, the claims include grievances concerning particular causes of ill-health amongst Māori, such as smoking and HIV/AIDS and the disparities in health outcomes for Māori and non-Maori.
11. Although not specifically mentioned, the claimants say that alcohol, similarly, is a particular cause of harm to Māori and is leading to disparities in health outcomes for Māori and non-Māori.
12. In its 2010 Report, *Alcohol In Our Lives: Curbing the Harm*, the Law Commission noted that alcohol contributes to many of the broad health and social issues that Māori are concerned about.² The Law Commission noted in a section of its Report titled 'Alcohol, Māori and Inequalities' that:
 - a. there was evidence of alcohol misuse when looking at the high rates of Māori imprisonment, domestic violence cases, lack of educational achievement and the comparatively high rate of Māori youth suicide.
 - b. Māori were more likely to die of alcohol-related causes, more likely to be apprehended by police for an offence that involves alcohol, and more likely to experience harmful effects on areas such as financial position, work, study or employment, injuries and legal problems as a result of their drinking compared with other New Zealanders.
 - c. Māori women suffered more adverse effects as a result of other people's drinking in terms of effects on their friendships or social lives, home lives, financial problems, becoming victims of physical or sexual assault, and being involved in car accidents.
 - d. Māori had higher unmet needs for reducing alcohol consumption. It was also more difficult for Māori to regain control of the causes of alcohol-related harm to their whānau and community.

² Law Commission, *Alcohol In Our Lives: Curbing the Harm* (Report 114, 2010), pages 92-95.

- e. alcohol may not simply be reflecting existing inequalities between Māori and other New Zealanders, but it may be actively driving inequalities.

13. The Law Commission also noted in this section of its Report that:

The consensus from the Te Puni Kokiri hui was Māori need to gain greater control over alcohol and its impacts on individuals, hapū and iwi. This was summed up in a closing speech by Mr Otene Reweti:

Like an invading war party alcohol came like a thief in the night and now it is time for Māori to regain the palisades and take back control.

14. Despite the Law Commission's clear recognition that alcohol may not simply be reflecting existing inequalities between Māori and other New Zealanders in terms of health and other outcomes, but it may be actively driving inequalities, and that Māori need to gain greater control over alcohol, there is no mention in its Report of the relevance of this in terms of the Treaty of Waitangi or the principles of the Treaty.

15. Indeed the Treaty is not mentioned once in the Law Commission's Report.

16. It is remarkable that a body, such as the Law Commission (which includes as one of its functions, taking into account te ao Māori (the Māori dimension)) omitted any discussion of the relevance of the Treaty of Waitangi or the principles of the Treaty in its Report on a significant full review of the law regulating the sale, supply and consumption of alcohol in New Zealand.

THE CLAIMANTS

17. The claimant is David Ratu, in his capacity as Deputy Chair of the Turehou Maori Wardens ki Otara Charitable Trust (the *Trust*) and a Māori Warden. The Trust was founded in 1998 by Mereana Peka and Venus Matthews. The Trust was incorporated in 2004.
18. The kaupapa (objects) of the Trust are to assist in the social and economic advancement of the community, which it does across the wider Counties-Manukau and the Franklin District. The trust comes under the umbrella of the New Zealand Māori Council via the Tamaki ki te Tonga District Māori Council.
19. Each Māori Warden associated with the Trust is individually warranted under the Māori Community Development Act 1962 where they are empowered, among other things, to address and mitigate the detrimental effects of alcohol on Māori people. The history of the Māori Wardens extends back over 200 years to when alcohol (waipiro) was first introduced to Aotearoa/New Zealand, and continues to form the central basis for why Māori Wardens exist today.
20. With regard to section 6 of the Treaty of Waitangi Act 1975, the claimant, David Ratu is Māori (of Ngāti Te Ata o Waiohua descent) and claims that he and the Trust (a group of Māoris of which he is a member) are or are likely to be prejudicially affected by omissions made by the Crown in its regulation of the sale, supply and consumption of alcohol, and particularly that:
 - a. the Crown has failed to enact and/or implement all of the policies and recommendations made by the Law Commission in its Report 2010 Report, *Alcohol In Our Lives: Curbing the Harm*; and that
 - b. the Sale and Supply of Alcohol Act 2012 is inconsistent with the principles of the Treaty of Waitangi;

and that these omissions are resulting in ill-health amongst Maori, disparities in health outcomes for Māori, and is actively driving health inequalities between Māori and other New Zealanders.

THE CLAIM

21. As noted above, the claimant says that he and the Trust (and indeed all Māori) are or are likely to be prejudicially affected by omissions made by the Crown in its regulation of the sale, supply and consumption of alcohol, and particularly that:

- a. the Crown has failed to enact and/or implement all of the policies and recommendations made by the Law Commission in its 2010 Report, *Alcohol In Our Lives: Curbing the Harm*; and that
- b. the Sale and Supply of Alcohol Act 2012 is inconsistent with the principles of the Treaty of Waitangi;

and that these omissions are resulting, at least in part, in ill-health amongst Māori, disparities in health outcomes for Māori, and is actively driving health inequalities between Māori and other New Zealanders.

22. More particularly, but without prejudice to the breadth of the overall claim, the claimant says that:

- a. the Crown has failed to enact and/or implement all of the policies and recommendations made by the Law Commission, including:
 - i. the introduction of excise tax increases in order to reduce consumption;
 - ii. regulating promotions that encourage increased consumption or purchase of alcohol;
 - iii. moving, over time, to regulate alcohol advertising and sponsorship;
 - iv. increasing the purchase age for alcohol to 20 years;

- v. strengthening the responsibility of parents supplying alcohol to minors;
 - vi. increasing personal responsibility for unacceptable or harmful behaviours induced by alcohol; and
 - vii. substantially improving and reorganising the system for the treatment of people with alcohol problems.
- b. the Sale and Supply of Alcohol Act 2012 (the 'Act') does not include a section (a 'Treaty clause') that provides for how the Act will recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi.
- c. the provisions of the Act concerning local alcohol policies (Part 2, Subpart 2) do not provide for how those provisions will recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi.
- d. the provisions of the Act concerning licensing (Part 2, Subparts 3 and 4) do not provide for how those provisions will recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi.
- e. the provisions of the Act concerning licensing bodies (Part 2, Subpart 6) do not provide for how those provisions will recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi.
- f. the provisions of the Act concerning licensing trusts and community trusts (Part 3, Subparts 1 and 2) do not provide for how those provisions will recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi.

23. Overall, the claimant says that these matters are contrary to the principles of the Treaty of Waitangi.

24. Further, the claimant says that these claims are matters that fall within the ambit of the Tribunal's kaupapa (thematic) inquiry into claims concerning health services and outcomes – WAI 2575 - The Health Inquiry.

RELIEF

25. The claimant seeks from the Tribunal the following:

- a. a finding that the claimant, the Trust (and indeed, all Māori) are being or are likely to be prejudicially affected because the sale, supply and consumption of alcohol is resulting in ill-health amongst Māori, disparities in health outcomes for Māori, and is actively driving health inequalities between Māori and other New Zealanders

and that this is, at least in part, is being caused by:

- i. a failure of the Crown to enact and/or implement all of the policies and recommendations made by the Law Commission in its 2010 Report, *Alcohol In Our Lives: Curbing the Harm*; and
 - ii. the Sale and Supply of Alcohol Act 2012 being inconsistent with the principles of the Treaty of Waitangi.
- b. recommendations, so as to address, at least in part, some of the prejudicial effects of the sale, supply and consumption of alcohol on the health of Māori -
 - i. that Crown to enact and/or implement all of the policies and recommendations made by the Law Commission in its 2010 Report, *Alcohol In Our Lives: Curbing the Harm*, and
 - ii. that the Sale and Supply of Alcohol Act 2012 be amended to become more consistent with the principles of the Treaty of Waitangi and reduce the prejudicial effects on the claimant and the Trust, by (and not necessarily exclusively)-
 1. including a section (a 'Treaty clause') that provides for how the Act will recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi.

2. including, in the provisions of the Act concerning local alcohol policies (Part 2, Subpart 2), licensing (Part 2, Subparts 3 and 4), licensing bodies (Part 2, Subpart 6) and licensing trusts and community trusts (Part 3, Subparts 1 and 2) for how those provisions will recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi.
- c. any other findings or recommendations where the Tribunal believes the Crown is acting contrary to the principles of the Treaty of Waitangi.

FURTHER MATTERS

26. The claimant asks for permission to amend this claim, if necessary.

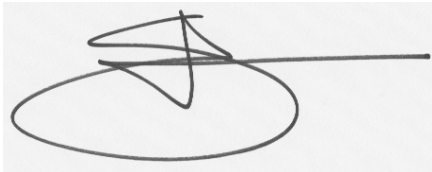
27. The Tribunal is advised that the claimant's legal representative is:

Dr Grant Hewison
Barrister
PO Box 47397, Ponsonby,
Auckland, 1011
Email: grant@granthewison.co.nz
Mobile: 021 577869

28. The claimant believes all those persons and organisations on the notification list for the WAI 2575 Health Inquiry should be notified of this claim.

29. The claimant and Trust can be contacted care of its legal representative.

DATED at Auckland this 21st day of February 2017.



Dr Grant Hewison
Legal representative for the claimant

TO: The Registrar, Waitangi Tribunal
WT.Registrar@justice.govt.nz
Tribunal Unit
Level 7
141 The Terrace
Fujitsu Tower
DX SX 11237 Wellington

Crown Law Office

Those persons and organisations on the notification list for the WAI 2575 Health Inquiry.