

IN THE WAITANGI TRIBUNAL

Wai 2575

CONCERNING

the Treaty of Waitangi Act 1975

AND

the Health Services and
Outcomes Kaupapa Inquiry

MEMORANDUM-DIRECTIONS OF THE PRESIDING OFFICER
FOLLOWING THE FIRST JUDICIAL CONFERENCE

26 May 2017

Overview

1. In this memorandum-directions, I:
 - (a) set out recent procedural background to the Health Services and Outcomes Kaupapa Inquiry (Wai 2575);
 - (b) set out next steps for the inquiry regarding scope, focus and priorities;
 - (c) discuss the need for public notice of this inquiry to occur;
 - (d) direct the Crown to file material to assist all parties including the Tribunal to better understand the health sector, Māori health policy and outcomes; and
 - (e) direct other parties to provide bibliographies of available research.

Introduction

2. On 11 and 12 May 2017, a judicial conference for the Health Services and Outcomes Kaupapa Inquiry (Wai 2575) was held at Pipitea Marae, Wellington.
3. In preparation for that judicial conference, on 21 December 2016 I directed that parties file written submissions on a number of matters relating to eligibility to participate, priority issues, research requirements, inquiry process and other matters (Wai 2575, #2.5.2).
4. These submissions were duly received, and Tribunal staff prepared and issued a pre-judicial conference discussion paper on 21 April 2017 (Wai 2575, #2.8.1).
5. In further memorandum-directions dated 2 May 2017 I asked counsel to focus their oral submissions at the judicial conference on four matters (Wai 2575, #2.5.7):
 - (a) Public notice of the inquiry;
 - (b) Cut off date(s) for filing new or amended statements of claim;
 - (c) Timetable and process for determining eligibility to participate; and
 - (d) Scope, focus and priorities for inquiry:
 - Hear and report on a thematic or on a claim by claim basis?
 - Contemporary or historical and contemporary focus?
 - Priority matters for early or expedited hearing or not?
6. During the judicial conference I noted the diverse claims, the potential scale of this inquiry, and the difficulties of designing a process for a kaupapa inquiry when there is little by way of previous such inquiries to draw on. Unsurprisingly counsel are also grappling with similar issues, and on some matters, particularly scope, focus and priorities for the inquiry, no clear consensus emerged.

Scope, focus and priorities for inquiry

7. It is clear that there are divergent views amongst claimant and Crown counsel regarding the scope, focus and priorities for this inquiry. As a result the Tribunal have not been able to form a clear view on these issues at this point. However, we set out our current thinking to assist the parties in developing a way forward.
8. We are yet to be convinced about the utility and practicality of early oral hearings. However, we are open to exploring the possibility of a phased approach to hearing and reporting on the health claims. Such an approach could accommodate priority issues (and early oral hearings if necessary to hear the infirm and elderly) and/or a contemporary focus, with historical claim issues heard and reported on last.
9. For practical reasons we support the hearing of the Ngāti Kāpo claim(s) in a single hearing at a location most suitable for them. We are open to grouping their claims with other claims about health services and outcomes for Māori living with disabilities.
10. We see utility in holding a final hearing that focuses on solutions and proposals for improvements to policies and services.
11. We recognise that the issue of funding for claimant participation is an important and as yet unresolved issue. We note that the issue of funding may make hearing claims on a thematic basis less viable than hearing claims in regional clusters. However, we favour a thematic approach to hearing evidence as this would enable the parties and the Tribunal to more effectively hear and test evidence and make connections between historical context, policy, practice and lived experience, and to possibly report in stages based on theme.
12. It was apparent at the judicial conference that there was a will amongst claimants, interested parties their counsel and Crown counsel to work together to address issues around inquiry scope, focus, priorities and inquiry process. In order for those issues to be explored we think all parties should have a three month period commencing on 1 June 2017 to hold roundtable discussions. Such discussions to be held on a without prejudice basis.
13. At the end of that time I direct that a memorandum is filed with the Tribunal by **12pm on Monday 4 September 2017** setting out what agreement has been reached on the following matters:
 - (a) An inquiry process including proposed timeframes for each step. The process should include discussions concerning a cut-off date for the filing of new and amended statements of claim and a process for dealing with eligibility issues.
 - (b) A list of the priority issues and explanation as to why they ought to be prioritised;
 - (c) A statement of scope;
 - (d) A proposed hearing programme.

It would also be helpful to the Tribunal if the parties indicate areas where there remains significant disagreement and an explanation as to why.

14. We leave it to counsel and the parties to address the question of practically how the roundtable discussions will occur and who will lead them. If in person meetings are required, subject to availability, the Tribunal office might be suitable for such discussions.
15. If an impasse is reached during the course of the roundtable discussions we ask that counsel are tasked to inform the Tribunal of that fact. In those circumstances the Tribunal may be able to assist the process to move forward by facilitating further discussions.

Public notice of the inquiry

16. To date there has been little in the way of public notice about the advent of this inquiry. It is important in the conduct of a Kaupapa Inquiry that the Tribunal ensures that public notice is made to ensure that potentially affected claimants are aware of the existence of this inquiry. Thus we agree with the submission made that there is a need for the Tribunal to provide information about this inquiry to as wide an audience as possible, and how potential claimants can participate in it. Counsel suggested that we utilise a number of different channels (such as newspapers, radio, iwi radio, television, Tribunal website and newsletter, and social media).
17. I direct the Tribunal staff to develop a media release to raise the public profile of the inquiry and to identify a range of appropriate media channels and health agencies and organisations to whom such publication might be distributed. Tribunal staff are also to explore the possible use of social media with the Ministry of Justice.

Information required from the Crown

18. Ms Walker (Kahui Legal) representing the Māori Medical Practitioners' Association (Wai 2499) highlighted a need amongst all participants in this inquiry for basic information about how the health sector works: its agencies; Crown boards; providers; non-government organisations and other bodies; their responsibilities, and funding. She submitted that her clients and others could arrange a one day workshop to provide this information for the Tribunal and inquiry parties.
19. We agree that the Tribunal and all parties to this inquiry would benefit from such an overview of the health sector. However, I consider that this need can initially be met by the filing of relevant information. Therefore I direct Crown counsel to file a document providing an overview of the health sector and all its component parts, including all publically funded agencies, organisations and bodies. This document should also note the responsibilities of each of the agencies, organisations or bodies, how they are funded and what their key relationships are with one another. Particular attention should be paid to the function of each in relation to their role in delivering health services and outcomes to Māori. Crown counsel is to file and serve this document by **12 pm on Monday 3 July 2017**.
20. Ms Downs (Tukau Law) representing Wai 49 and other claims submitted that a chronology showing the development of health services in New Zealand would assist counsel to understand the history of healthcare in New Zealand and in preparing evidence. We agree that such a chronology would assist all parties. I therefore direct Crown counsel to file a chronology of key events, policies and legislation relevant to the development of health services (with special attention to health services for Māori) in New Zealand from 1840 to 2017 by **12 pm on Monday 4 September 2017**.

21. In addition, it would assist the Tribunal and inquiry parties to have some basic information about current Maori health policy, and level of disparity of outcomes between Māori and Non-Māori. Therefore, I direct Crown counsel to file and serve the following by **12 pm on Monday 3 July 2017**:
- Any current Ministry for Health Māori Health Strategy document(s);
 - A list of all Ministry for Health reports on Māori Health outcomes and disparity in outcomes between Māori and non-Māori from 1992 to 2017. The Tribunal may then ask the Crown to file copies of some or all of these reports.

Bibliographies of available research

22. Until such time that the scope of this inquiry is more clearly defined, it is difficult to tell what research will be required. Having said that I noted in my memorandum-directions of 2 May 2017 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 (Wai 2575, #2.5.7, para 12).
23. During the judicial conference several counsel indicated that their clients had lists or bibliographies of research on Māori health that they would be willing to make available to the Tribunal and parties to this inquiry. In order to assist the Tribunal staff in the exercise they are carrying out, I direct claimant counsel to file a bibliography of relevant secondary sources with the Tribunal no later than **12 pm on Monday 3 July 2017**.

Filing procedure

24. Parties are reminded of the Tribunal's filing requirements as set out in our *Guide to Practice and Procedure*. All documents filed in Waitangi Tribunal proceedings are to be filed with the Registrar. The timetable for filing and service of documents, and any other directions setting filing and service timetables, must be adhered to. Failure to adhere to filing and service timetables may jeopardise a fair and efficient inquiry. Anyone seeking to deviate from a filing deadline must apply to the Tribunal with their reasons at the earliest opportunity, in writing through the Registrar. Unless otherwise directed, documents are to be filed in the Tribunal's registry by 12 noon on the day that they are due.
25. All submissions filed with the Tribunal must be signed. Counsel and claimants who are able must convert the signed submission to a pdf file and this signed pdf file must be emailed to the Registrar (wt.registrar@justice.govt.nz). For counsel and claimants who are unable to send electronic documents, they must send a signed hard copy to the Registrar by hand, post, courier, or fax, to arrive by the time and date set for the filing of submissions.

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 26th day of May 2017

A handwritten signature in black ink, appearing to be 'S R Clark', written over a faint rectangular stamp.

Judge S R Clark
Presiding Officer

WAITANGI TRIBUNAL

**Appendix 1: Filing timetable for the Health Services and Outcomes Kaupapa Inquiry
(Wai 2575)**

Issue/event	Who	Date
Current Ministry for Health Māori Health Strategy document(s)	Crown counsel	3 July 2017
List of all Ministry for Health reports on Māori Health outcomes and disparity in outcomes between Māori and non-Māori from 1992 to 2017	Crown counsel	3 July 2017
Bibliography of relevant secondary sources	Claimant Counsel	3 July 2017
Document providing an overview of the health sector and all its component parts	Crown counsel	3 July 2017
Chronology of key events, policies and legislation relevant to the development of health services (with special attention to health services for Māori) in New Zealand from 1840 to 2017	Crown counsel	4 September 2017
Memorandum on outcome of roundtable discussions	Crown and Claimant counsel	4 September 2017