

IN THE WAITANGI TRIBUNAL

Wai 2575

CONCERNING

the Treaty of Waitangi Act 1975

AND

the Health Services and  
Outcomes Kaupapa Inquiry

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MEMORANDUM-DIRECTIONS OF JUDGE S R CLARK REGARDING PRE-  
CASEBOOK REVIEW AND OTHER MATTERS RAISED

19 January 2018

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## **Introduction**

1. This memorandum-directions provides updated information pertaining to the pre-casebook review. I also respond to recent memoranda received from Te Ohu Rata o Aotearoa – Māori Medical Practitioners Association (Te ORA).

## **Pre-casebook review update**

### *Background*

2. On 8 December 2017, I issued a memorandum-directions confirming:
  - a) the Tribunal would shortly receive a preliminary bibliography of health-related source material compiled by Tribunal staff as part of the pre-casebook review;
  - b) my intention to release the preliminary bibliography following my review;
  - c) my expectation that the main pre-casebook review paper would be completed and distributed to parties on 31 January 2018; and
  - d) an opportunity would be available for parties to file any submissions in response by 30 March 2018, prior to the judicial conference scheduled for April or May 2018 (Wai 2575, #2.5.17, para 24).
3. On 18 December 2017, I released via a memorandum-directions the preliminary bibliography (in PDF and Excel formats), along with a short introduction prepared by Tribunal Advisor Richard Moorsom (Wai 2575, #2.5.18, Wai 2575, #6.2.1, Wai 2575, 6.2.1(a) & Wai 2575, #6.2.1(b)). In those directions, I confirmed that the preliminary bibliography would not be the subject of submissions, and again reiterated that parties would have the opportunity to respond following receipt of the main pre-casebook review, and prior to the judicial conference indicated above (Wai 2575, #2.5.18, para 4).

### *Update*

4. I have been advised by the Director of the Waitangi Tribunal Unit that due to unforeseen circumstances and the pressure of other commitments, Mr Moorsom has had to cease leadership of the pre-casebook discussion paper at the point of completing and distributing the health bibliography. I have been advised that senior Waitangi Tribunal Unit staff have taken over preparation of the discussion paper and it will now be completed in two parts to reflect the staged approach adopted for this inquiry.
5. The Māori Public Health Organisation (PHO) and Providers (Wai 1315) and the National Hauora Coalition (Mason and Royal) (Wai 2687) claimants have advised that stage one of these proceedings does not require further evidence to be commissioned (Wai 2575, #3.1.85 & Wai 2575, #3.1.97). The change in lead author for the pre-casebook discussion paper will also not affect the hearing timetable for stage one which is proposed for late 2018.
6. The first part of the pre-casebook discussion paper will now address the evidential base required to hear the matters proposed for stage two of this inquiry. It will cover the three proposed priority issues of mental health (including suicide and self-harm), Māori with disabilities, and alcohol and substance abuse. The pre-casebook discussion paper will

also take into account any feedback provided from the national hui proposed to be held for inquiry planning purposes in February or March 2018, which is due to be filed jointly by parties by 30 March 2018 (Wai 2575, #2.5.17, para 20). I confirm the pre-casebook discussion paper will be filed and distributed to parties for their consideration and submission by no later than **midday, Monday 30 April 2018**.

7. To give time for parties to respond, the judicial conference proposed for late April or early May 2018 will now need to be held in early June 2018 at a specific date and time to be confirmed. Parties should now file any submissions in response to part one of the pre-casebook discussion paper by no later than **midday, Friday 18 May 2018**.
8. The second part of the pre-casebook discussion paper will address remaining claim issues, taking into account feedback received from the proposed national hui, and any submissions filed prior to the forthcoming judicial conference. I further confirm that part two of the pre-casebook review will be filed and distributed to parties no later than **midday, Tuesday 31 July 2018**, with an opportunity for parties to respond thereafter.

#### **Matters raised by Te Ohu Rata o Aotearoa – Māori Medical Practitioners Association (Te ORA)**

##### *Participation in stage one inquiry and related matters*

9. On 22 December 2017, the Tribunal received a memorandum from counsel for Te ORA (Wai 2499), seeking a direction from the Tribunal that Wai 2499 be added to the claims to be heard during stage one of this inquiry.
10. In summary, counsel submits that:
  - a) The Wai 2499 claim concerns Māori health outcomes across the New Zealand health system, including primary care (if at a broad level);
  - b) Te ORA has special insight into the operation and function of the primary health care system, and access to existing research and other relevant evidence;
  - c) The Wai 2499 claimants are ready to proceed, and are prepared to work with the Crown and the Wai 1315 and Wai 2687 claimants in progressing a draft agreed inquiry programme; and
  - d) Te ORA consider there may be further priority themes that demonstrate system issues (in addition to primary care) that could be included by way of stage one.
11. I am not persuaded at this stage that Wai 2499 should be added to the claims to be heard by way of these stage one proceedings. The claims selected for stage one have been chosen on the basis that they (Wai 2575, #2.5.17, paras 9 & 11):
  - a) Are of a significantly discrete nature;
  - b) Raise concerns that exemplify ‘system issues’;
  - c) Are brought by claimants who have stated they are ready to proceed; and
  - d) Would allow for expeditious reporting whilst also providing an effective pathway forward to a broader inquiry at stage two.

12. I further note that Wai 2499 does not particularise any substantive claim issues relating to primary care and that the claim is of a relatively generic nature (Wai 2499, #1.1.1). Counsels' request for inclusion also does not align with the joint memorandum dated 7 September 2017, in which Te ORA are noted to have reserved their position in respect of a proposed initial inquiry into primary care (Wai 2575, #3.1.85, para 29).
13. Having said that I acknowledge that Te ORA has critical expertise with which to assist this Tribunal. In the first instance, if they haven't already, counsel for Te Ora should liaise directly with Crown counsel, and counsel for the Wai 1315 and Wai 2687 claimants, to see if and/or how Te ORA's expertise could be meaningfully drawn upon during the stage one inquiry. Counsel should include this information by way of parties' agreed hearing programme which is due to be filed by 9 February 2018 (Wai 2575, #2.5.17, para 12).

*Further evidence to be filed*

14. On 22 December 2017, the Tribunal received a further memorandum from counsel for Te ORA filing as directed the brief of evidence of Dr Rawiri Jansen, and a presentation prepared by Dr Rhys Jones (Wai 2575, #3.1.108, #Wai 2575, #A2 & Wai 2575, #A2(a)). This information constitutes the further information requested by the Tribunal concerning aspects of New Zealand's health system not already identified in Crown evidence (Wai 2575, #2.5.14 & Wai 2575, #A1).
15. On 8 December 2017, I issued a memorandum-directions requesting that Te ORA, in addition to this material, file diagrams setting out Māori perspectives of New Zealand's health system, and the ways in which Māori encounter the health system in the context of both primary and secondary care (Wai 2575, #2.5.17, para 33).
16. In their memorandum dated 22 December 2017, counsel states that they have been unable to obtain this further information in the time provided. Counsel attributes this delay to difficulties of availability and offer instead to provide this information in early 2018, should that meet with the Tribunal's approval (Wai 2575, #3.1.108, para 5).
17. I thank counsel for the material filed thus far and confirm that the Tribunal wishes to receive the further information requested.
18. Counsel should now file the additional materials or diagrams setting out Māori perspectives of New Zealand's health system, and the ways in which Māori encounter the health system in the context of both primary and secondary care, by no later than **midday, Friday 9 February 2018**.

**Other matters**

19. For clarity, I note the above documentation from Te ORA was filed on 22 December 2017 but, owing to the shutdown of the Tribunal's offices over the Christmas and New Year period, was not able to be brought to my attention until 8 January 2018.
20. To assist the parties, an updated list of the forthcoming filing dates in this inquiry is attached as **Appendix 1**.

The Registrar is directed to send a copy of this direction to all those on the notification list for Wai 2575, the Health Services and Outcomes Kaupapa Inquiry.

DATED at Hamilton this 19<sup>th</sup> day of January 2018



Judge S R Clark  
Presiding Officer  
WAITANGI TRIBUNAL

## **Appendix 1: Forthcoming inquiry filing dates**

<b>Filing</b>	<b>Party</b>	<b>Date</b>
Additional materials or diagrams setting out Māori perspectives of New Zealand's health system, and the ways in which Māori encounter the health system in the context of both primary and secondary care	Counsel for Te Ohu Rata o Aotearoa – Māori Medical Practitioners Association (Te ORA)	<b>Midday, Friday 9 February 2018</b>
Further supplementary evidence on the functioning of the current New Zealand health system, and additional information requested by the Tribunal	Crown counsel	<b>Midday, Friday 9 February 2018</b>
Agreed stage one inquiry programme	Crown counsel, counsel for the Māori PHO Providers (Wai 1315), the National Hauora Coalition (Mason and Royal) (Wai 2687)	<b>Midday, Friday 9 February 2018</b>
Joint memorandum advising outcome of forthcoming national hui and associated planning matters	All parties	<b>Midday, Friday 30 March 2018</b>
Part one of the pre-casebook discussion paper	Tribunal staff	<b>Midday, Monday 30 April 2018</b>
Any submissions in response to part one of the pre-casebook discussion paper	All parties	<b>Midday, Friday 18 May 2018</b>
Judicial conference	All parties	<b>Early June (date and time TBC)</b>
Part two of the pre-casebook discussion paper	Tribunal staff	<b>Midday, Tuesday 31 July 2018</b>