

Wai 1040

**IN THE WAITANGI TRIBUNAL**

**CONCERNING** the Treaty of Waitangi Act 1975

**AND** the Te Paparahi o Te Raki Inquiry

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**MEMORANDUM-DIRECTIONS OF JUDGE C T COXHEAD**

8 April 2019

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1. This memorandum-directions addresses requests for a remedies hearing for the Te Paparahi o Te Raki inquiry (Wai 1040).

### **Detailed specific remedies submissions on TSOI issue 1**

2. On 13 December 2018, Janet Mason filed a memorandum of counsel and accompanying affidavits on behalf of the claimants for Wai 179, 620, 1524, 1537, 1541, 1673, 1681, 1699, 1701, 1917, 1918, 1384 requesting timetabling for “remedies submissions” for Issue One of the Tribunal Statement of Issues (TSOI) for Wai 1040, the Te Paparahi o Te Raki Inquiry. The accompanying affidavits are from Titewhai Harawira and Louisa Collier (Wai 1040, #3.2.2789(a)-(d)).
3. On 12 February 2019, I directed Ms Mason to clarify what was meant by ‘remedies submissions’ (Wai 1040, #2.7.25). In a memorandum of counsel dated 25 February 2019, Ms Mason confirmed the claimants seek leave to file detailed submissions on the recommendations sought for Te Tino Rangatiratanga TSOI 1 issue. Counsel submits that many recommendations sought to date ‘are generic in nature, and are devoid of the sort of specificity that would be helpful in the current context’ (at [5]). Detailed recommendations are sought to help break the current Treaty settlement negotiations impasse with the Crown. Counsel advises the claimants are of the view that detailed recommendations may assist the Crown to see that there are ‘reasonable and palatable solutions to their Issue One’ problem (at [7]). Counsel, therefore, seeks:
  - i. leave to file detailed specific remedies submissions by 30 April 2019 to allow ‘an options paper’ to be finalised, associated hui, and feedback to be incorporated; and
  - ii. one to two days of hearing time in May 2019, to hear the specific remedies submissions *viva voce*, in either Wellington or Whangārei.
4. Also on 25 February 2019, Gerald Sharrock filed a memorandum of counsel on behalf of Wai 121, 230, 568, 884, 1313, 1460, 1896, 1941, 1970, 2179 observing that issues for a remedies hearing could include the following:
  - a) mechanisms and processes to address Stage 1 report findings such as recommendations on constitutional congress, referenda etc;
  - b) co-management arrangements covering certain Crown land including clear definition of the management, governance and decision-making structures;
  - c) specific remedies addressing the ‘very special nature of Tai Tokerau grievances as exhibited by the extreme relative deprivation in the region’; and
  - d) define potential remedies arising from ongoing compliance with Te Tiriti.
5. The Tribunal has already received a number of closing submissions that outline the remedies sought by claimants. The Treaty of Waitangi Act 1975 is prescriptive as to when the Tribunal can provide remedies and this case is not covered by the statute concerned. There will not be a hearing in May 2019. Before deciding on the request for leave to file further specific remedies submissions, the Tribunal seeks a response from the Crown on this matter by **12pm, Monday 6 May 2019**.

### **Request for early report on te reo Māori take.**

6. Mr Sharrock, also on 25 February 2019, filed an application on behalf of the Honourable Dover Samuels for a special report on school violence and Te Reo. Counsel referred to Mr Samuels evidence for the Matauri and Putataua Bays (Wai 230) claim, covered his treatment when using Te Reo at the Whakarara Native School at Matauri Bay in the late 1940s (Wai 1040 #S17, #S17(e)) and the detrimental impact of this treatment. Counsel advised that Mr Samuels requests the Tribunal to issue, in advance of its main report, ‘a

special and specific report on the matter of the application of violence to pupils for the speaking of te reo' (at [6]) and for the early report to include Tribunal findings and recommendations on these specific matters. Mr Samuels seeks an early report on the issue of educational violence while his health allows him to receive such a report. Counsel submits there would not be 'any specific prejudice to other claimants, and it is a very discrete and singular matter that can be shortly addressed and relates very much to people who are moving to the end of life' (at [6]).

7. I appreciate Mr Samuels position and note the Crown's concession concerning the TSOI issue 'Te Reo Māori, Wāhi Tapu, Taonga and Tikanga' (issue 14), made in its closing submissions dated 9 October 2017 (Wai 1040, #3.3.415, [2]):

The Crown concedes that it failed actively to protect te reo and encourage its use by iwi and Māori, which had a detrimental impact on te reo Māori in Northland, and this was a breach of the Treaty of Waitangi and its principles.

8. For other preliminary or interim report requests, I have previously indicated to parties that the urgency criteria in the *Guide to practice and procedure* (Wai 1040, #2.6.173, [5]-[11]) provides some guidance whether such requests can be accorded priority. In particular, at paragraph 7 in my memorandum-directions dated 26 February 2016, I outlined the considerations leading to the release of an interim/preliminary report as follows:

7. In any case, when a Tribunal releases an interim/preliminary report, the following considerations are usually outlined:

(a) If the conclusions are final (i.e. can parties rely on it as being the Tribunal's final recommendation);

(b) If it can be easily separated from the rest of the report and will not undermine what the Tribunal may say on related issues; and

(c) If the interim report will later be incorporated into the main report or will remain separate (as there may be cost implications).

9. Applying these considerations to Mr Samuels request the matter falls short of being one that requires an interim/preliminary report.
10. The request is declined.

The Registrar is to send this direction to all those on the notification list for Wai 1040, the Te Paparahi o Te Raki inquiry.

**DATED** at Rotorua this 8<sup>th</sup> day of April 2019



Judge C T Coxhead  
Presiding Officer

**WAITANGI TRIBUNAL**