

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 CONCERNING
STAGE TWO**

10 July 2019

Introduction

1. This memorandum–directions:
 - a) Confirms filing dates for Tribunal and Crown-commissioned research for stage two of the Wai 2575, Health Services and Outcomes Kaupapa Inquiry;
 - b) Confirms the date for a judicial conference concerning planning for stage two; and
 - c) Addresses several miscellaneous matters.

Stage two research

2. In memorandum-directions dated 28 June 2018 I outlined an indicative timeline for the stage two inquiry.¹
3. In September and November 2018, researchers were commissioned to carry out research into the stage two priority matters.² It was anticipated that in relation to Tribunal-commissioned research, completed drafts would be available to parties by 30 April 2019 to be followed by a quality assurance and a final revision process, with final reports to be filed with the Tribunal by 28 June 2019.
4. As many of the participants in this inquiry are aware, due to several reasons beyond this Tribunal's direct control, those dates have had to be extended. The current situation is as follows:
 - a) A report by Dr Paula King entitled '*Māori with Lived Experience of Disability (Part 1)*' has been entered on the record of inquiry;³
 - b) A report by Hector Kaiwai entitled '*Māori with Disabilities (Part Two)*' has been entered on the record of inquiry;⁴
 - c) A report by Dr Tim Gassin concerning Māori mental health was distributed to parties on 5 July 2019. Feedback by parties is now due by Friday 19 July 2019. That report will need to undergo a quality assurance review. A final report is due to be filed with the Tribunal by **4pm, Friday 30 August 2019**; and
 - d) A report by Dr Barry Rigby concerning alcohol, tobacco and substance abuse was distributed to parties on 2 May 2019. That report is currently undergoing a quality assurance review. A final report is due to be filed with the Tribunal by **4pm, Friday 30 August 2019**.
5. The Crown were due to file their report '*Māori Disability Statistical Status Report*' by 30 June 2019. The Crown have signalled that they need to obtain and analyse further data and have sought a six-week extension. The Tribunal's Registrar previously confirmed by email that I had granted the extension sought. I now formally confirm that the Māori Disability Statistical Status Report is to be filed no later than **4pm, Monday 12 August 2019**.
6. I confirm that the Crown-commissioned report '*Historical Health Report 1840–1992*' is due to be filed by no later than **midday, Tuesday 20 August 2019**.
7. Regrettably there has been slippage in the finalisation of commissioned research, the result being that the indicative timetable has not been possible to achieve. Nevertheless, now that the stage one report has been released, we need to start the planning for stage two of this inquiry.

¹ Wai 2575, #2.5.29 at [20-23]

² Wai 2575, #2.3.1, #2.3.2, #2.3.3.

³ Wai 2575, #2.3.7 & #B22.

⁴ Wai 2575, #2.3.8 & #B23.

Planning for stage two

8. The Tribunal will hold a judicial conference to discuss planning for the stage two inquiry to be held at the **Waitangi Tribunal offices, 141 The Terrace, Wellington, starting at 10.00am on Wednesday 9 October 2019.**
9. There are several factors to consider in planning stage two of the inquiry. These include but are not necessarily limited to the following matters:
 - a) We have previously signalled an intention that stage two will focus on claims concerning mental health, alcohol and substance abuse (including tobacco) and Māori with lived experience of disabilities.⁵
 - b) When should any extant primary health-related claims be heard?⁶ In making that decision the Tribunal will undoubtedly consider the extent to which primary health related issues have been adequately covered during stage one;
 - c) Refinements made to the Kaupapa Inquiry process, as outlined by the Chairperson in a memorandum dated 27 March 2019. In that memorandum the Chairperson set out some of the current thinking about the Kaupapa Inquiry process. All claimants should familiarise themselves with that memorandum and note the following:
 - (i) That the purpose of a Kaupapa Inquiry is not to conduct a general exploration of all aspects of its thematic topic or the totality of the Māori experience of Crown actions and omissions. Rather, it is to investigate findings on the Treaty breaches and prejudice alleged by the claimants in respect of the kaupapa issues of national significance;⁷
 - (ii) That issues concerning current Crown policy and practice will be given priority where there is substantial claimant support and a readiness for early hearing and reporting;⁸
 - (iii) That there are resource constraints upon the Tribunal's ability to progress inquiries.⁹
 - d) What impact if any, has the release of *He Ara Oranga* – the Report of the Government Inquiry into Mental Health and Addiction and the government's recently announced policy responses to that report, had on the mental health claims currently before this Tribunal?
 - e) What is the impact on outstanding primary health related claims as a result of the release of the government's New Zealand Health and Disability System Review? Obviously at the date of this direction that report has yet to be released. It is the Tribunal's understanding that a draft report will be released in August 2019.
10. These are all considerations which the claimants, the Crown and the Tribunal will need to consider when planning for stage two. Another factor which may impact upon planning for stage two is that some recommendations have been made on an interim basis in our stage one report. The Crown and claimants are due to report back on progress by 20 January 2020 concerning the possibility of a stand-alone Māori health authority and underfunding

⁵ Memorandum 2.5.17, para [17]; memorandum-direction 2.5.17, para [17]; memorandum-direction 2.2.29, paras [2.2,11,18].

⁶ Wai 2575, #2.5.25 at para [85], #2.5.29 at para [11] and *Hauora; Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry – Pre-publication Version* page 162.

⁷ Memorandum of the chairperson concerning the Kaupapa inquiry programme 27 March 2019 at para [13].

⁸ Para [19].

⁹ Para [24] and [25].

issues. Dependent upon progress concerning those matters, it might be necessary to reconvene the stage one inquiry to finally hear and determine those issues.

Memoranda by counsel

11. I direct claimant counsel to file memoranda of counsel by no later than **midday, Wednesday 11 September 2019** outlining their suggestions for how to manage stage two of the inquiry. Counsel intending to attend the judicial conference in person should confirm so in their memorandum. In addition to the matters I have outlined in the previous section of this direction, counsel should also consider matters such as:
 - a) Should the Tribunal hear the three priority areas for stage two separately or attempt to hear them as a single inquiry?
 - b) If we are to hear the three areas separately, how do we prioritise the order?
 - c) When should a pleading/interlocutory process start? Should it start immediately or after we have identified the order in which we will hear the claims for stage two;
 - d) Other than filing updated statements of claim and a necessary eligibility, aggregation and consolidation exercise to be undertaken by the Tribunal, what other interlocutory steps should be included?
 - e) Any other relevant matters.
12. I direct Crown counsel to file a memorandum of counsel in response to the above by no later than **midday, Wednesday 25 September 2019**.
13. I understand that counsel must act in accordance with their instructions. Having said that, it would be very useful if claimant counsel and the Crown were able to look beyond their respective immediate instructions to provide the Tribunal with ideas as to how we best tackle this task. If that means counsel working proactively and co-operatively together, as you have done throughout this inquiry to date, that is encouraged.

Research

14. By the date of the judicial conference all commissioned research should be entered on the Wai 2575 Record of Inquiry.
15. Due to the scope and revised filing dates of the stage two research, I have been advised that it will not be possible for the completion of the Chief Historian's casebook review of the stage two research prior the judicial conference.
16. The purpose of that review is to assess the sufficiency of the completed casebook in terms of the range and coverage of evidence required for hearing the claims in this inquiry and to advise this Tribunal whether any additional research or evidence is required.
17. Nevertheless, to assist inquiry planning, I direct Tribunal staff to file a memorandum providing a relevant progress update on stage two research and advising the likely timeframe for the completion of the Chief Historian's casebook review by no later than **midday, Wednesday 2 October 2019**.

Miscellaneous matters

18. The pre-publication version of *Hauora – Report on Stage One of the Health Services and Outcomes Kauapa Inquiry* was released on 1 July 2019. The report is currently undergoing a final editing process. Inevitably, spelling and grammatical errors have been discovered. One matter that has been drawn to my attention is that in chapter 9 at page 169 recommendation (f), reference is made to section 7.4.4 of the Report. That reference is

incorrect and should read 'section 7.7'. I am anticipating that a final version of the Report will be released by early August 2019.

19. On 5 June 2019, a Ms Turner filed a lengthy letter concerning Australian models of indigenous healthcare. Previously, I had directed, via the Tribunal's Registrar, that the letter not form part of the Wai 2575 Record of Inquiry, as it was filed after stage one evidence had been completed and the panel were in preparation for finalising our report. I now reiterate and confirm that direction.
20. On 3 July 2019, the Crown filed a memorandum which has attached to it a cabinet paper concerning Te Puni Kōkiri's monitoring function. That memorandum has been entered on the record of inquiry as Wai 2575, #3.2.103. Whilst I directed that it be placed on the record of inquiry, it did play any part during our considerations for the stage one report, coming as it did after the release of the pre-publication report.
21. Finally, I request that the Crown update the Tribunal as to the progress concerning the government's New Zealand Health and Disability System Review in its memorandum due to be filed on 25 September 2019. Anticipating that a draft report has been released by that stage, it would be useful for the Tribunal to know when a final report is due for release. It would also be useful to know at that time whether the government have any other health related inquiries planned in the foreseeable future.

DATED at Hamilton this 10th day of July 2019



Judge S R Clark
Presiding Officer

WAITANGI TRIBUNAL