

Wai 898

**IN THE WAITANGI TRIBUNAL**

**CONCERNING**

the Treaty of Waitangi Act 1975

**AND**

the Te Rohe Pōtae District Inquiry  
(Wai 898)

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**MEMORANDUM-DIRECTIONS OF JUDGE D J AMBLER**  
**CONCERNING LATE FILING AND THE JURISDICTION TEST REGARDING**  
**WAIKATO RAUPATU CLAIMS**  
**13 APRIL 2015**

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Tēnā koutou,

**1. Introduction**

1.1. This memorandum-directions addresses one final item of late filing and the jurisdiction test regarding Waikato raupatu claims.

**2. Late filing**

2.1. In my previous memorandum-directions dated 1 April 2015 (#2.7.4) I directed that any overdue submissions in reply must be filed by 4pm, 2 April 2015. Annette Sykes missed that deadline and filed her submissions in reply on behalf of Ngāti Paretekawa on 8 April 2015. By way of a memorandum filed on 2 April 2015, Ms Sykes explained the reasons why she could not meet the 2 April 2015 deadline.

2.2. As with many counsel before her, I do not regard Ms Sykes' other work commitments as providing a good justification for a breach of the Tribunal's timetable. Nevertheless, as I have also done for other counsel, I will extend Ms Sykes a final indulgence and allow her submissions in reply to be placed on the record of inquiry.

**3. The jurisdiction test regarding Waikato raupatu claims**

3.1. In my earlier memorandum-directions of 9 March 2015 (#2.7.3), I directed claimant counsel to respond to the Crown's submission (#3.4.313) regarding the Tribunal's jurisdiction in relation to Waikato raupatu claims. Several submissions have now been filed.

3.2. On Monday 16 March 2015, Dominic Wilson filed a joint memorandum of counsel (Wai 1112, 1113, 2351, 2014, 2068 & 800). Mr Wilson advised that counsel had responded to the Crown's submissions on behalf of Ngāti Maniapoto and Ngāti Paretekawa in their reply submissions dated 9 March 2015 (#3.4.318), and that counsel had responded on behalf of Ngāti Hikairo in their reply submissions dated 9 March 2015 (#3.4.349).

3.3. On Monday 16 March 2015, Tom Roa (Waikato-Tainui Te Kauhanganui Incorporated) filed a memorandum as an interested party and affirmed the position of Waikato-Tainui as set out previously to the Tribunal on 27 July 2007 (#3.1.130).

- 3.4. On Tuesday 17 March 2015, Mr Bennion and Ms Whiley filed a generic submission on the issue.
- 3.5. On Tuesday 24 March 2015, Mr Bennion and Ms Whiley (Wai 1469 & 2291) filed claimant-specific submissions on behalf of Ngāti Apakura which also addressed this issue.
- 3.6. On Tuesday 7 April 2015, Ms Sykes (Wai 440, 1100 & 1798) filed her submission on behalf of Ngāti Paretekawa.
- 3.7. As counsel will be aware, I gave the Crown and claimant counsel an opportunity to file further submissions on the raupatu jurisdiction issue as I (and some claimant counsel) were concerned that the Crown's closing submissions (#3.4.310(e) at paras 74 to 83) appeared to reframe the jurisdiction test that applied to the Waikato raupatu claims when that test had previously been settled.
- 3.8. My principal concerns were whether the Crown had in fact reframed the jurisdiction test and, if so, whether any procedural difficulties arose that needed to be cured.
- 3.9. Crown counsel have in their submissions dated 2 March 2015 (#3.4.313 at paras 69 to 73) clarified that their earlier closing submissions did not seek to reframe the jurisdiction test previously settled. That test remains as previously stated. Rather, the matters set out at paras 75 and 82.2 to 82.7 (#3.4.310(e)) "... do not relate to the question of jurisdiction but, assuming there is jurisdiction, relate to the question of whether the raupatu claim is well-founded and whether the Tribunal should make a recommendation in terms of section 6(3) of the Treaty of Waitangi Act 1975."
- 3.10. Claimant counsel in their various submissions acknowledge the Crown's clarification of its position and that the jurisdiction test remains unchanged. Nevertheless, counsel do not necessarily accept that the Crown's various criteria need to be satisfied in order to establish a "well-founded" Waikato raupatu claim. Some claimant counsel go on to address their particular claimants' position in relation to each of the criteria. Importantly, none of the claimant counsel argue that further hearing time is required in order to present evidence to address the Crown's criteria.
- 3.11. It is not necessary or appropriate for me to address at this juncture whether the Crown's criteria for establishing a well-founded Waikato raupatu claim are correct

and, if so, whether the claimants can satisfy those criteria. Those are matters the Tribunal will need to address in its report when it considers the substantive Waikato raupatu claims. My only concern at this stage is whether any procedural difficulties arise as a result of the Crown's submissions that need to be cured. In my view, no such difficulties arise.

3.12. The Crown has clarified that the jurisdiction test remains unchanged and that the additional matters it has raised are criteria that go to whether a claim is well-founded. I accept the Crown's distinction, though I express no view on whether the criteria are correct or not.

3.13. The important point is that in relation to any Treaty claims, claimants and the Crown are entitled to make closing submissions on the law and evidence the Tribunal should apply and consider when addressing the claims. As has now been clarified, that is all the Crown has done here. Claimant counsel have sensibly not advocated for more hearing time to present further evidence in relation to those criteria. And nor could they reasonably do so, as the time has passed for evidence to be presented, and the question of the approach to be taken to that evidence is a matter for the Tribunal to address.

3.14. The Tribunal will therefore consider the various submissions when it addresses the Waikato raupatu claims in its report. There is no need for an additional hearing.

The Registrar is to send this direction to all those on the notification list for Wai 898, the combined record of inquiry for Te Rohe Pōtae District Inquiry.

**DATED** at Whangarei on this 13<sup>th</sup> day of April 2015.



Judge D J Ambler  
Presiding Officer

**WAITANGI TRIBUNAL**