

WAITANGI TRIBUNAL

Wai 2800

CONCERNING

the Treaty of Waitangi Act 1975

AND

the Inquiry into Remaining
Historical Claims: Southern
North Island and South Island
Claims

**MEMORANDUM-DIRECTIONS OF CHIEF JUDGE W W ISAAC CONCERNING
ELIGIBILITY**

11 December 2019

1. On 1 October 2018, I directed parties to respond to the preliminary lists of claims assessed by Tribunal staff as eligible or ineligible to participate in Wai 2800, the Inquiry into Remaining Historical Claims: Southern North Island and South Island Claims (Wai 2800, #2.5.2). The Tribunal received submissions from counsel for a number of parties seeking to participate in the inquiry and also from the Crown (Wai 2800, #3.1.3; #3.1.3(a)). The Crown agrees with some of the Tribunal's preliminary assessments but disputes others.
2. In my memorandum-directions of 12 June 2019, I determined that the aspects of the Wai 1623 claim that fall within the scope of Wai 2800 will be considered as part of this inquiry (Wai 2800, #2.5.4). I also sought further submissions from parties in relation to the participation of Wai 710, Wai 2228, Wai 158 and Wai 2163. In this memorandum-directions I consider the further submissions received and make determinations on the eligibility of claims seeking to participate in this inquiry.

Claims for which further submissions were directed regarding eligibility

Wai 158 and Wai 2163 – Claims relating to forestry

3. We have not received any submissions stating that the claimants for Wai 158 or Wai 2163 wish to participate in the inquiry, but we have received notices of instruction from Dr Bryan Gilling for these claims in relation to the Wai 2800 inquiry. I take this to indicate that the claimants do wish to participate.
4. The Crown has submitted that some elements of the Wai 158 and Wai 2163 claims would be best suited to be heard in the future economic development kaupapa inquiry because that would allow those matters to be dealt with by a panel with expertise on economic development and for the claims to be considered alongside other forestry claims. The Crown agreed that the aspects of the claims not related to forestry policy may be suitable for inclusion in the Wai 2800 inquiry.
5. In my memorandum-directions of 12 June 2019, I directed counsel for Wai 158 and Wai 2163 to file submissions in response to the Crown's proposal that some aspects of their claims be deferred to the economic development kaupapa inquiry by 10 July 2019 (Wai 2800, #2.5.4). However, no submissions have yet been received.
6. In my memorandum of 27 March 2019 concerning the kaupapa inquiry programme, I noted that not all claimants whose grievances relate to a kaupapa issue may wish to have them heard in a kaupapa inquiry, particularly where they arise from distinct local circumstances. I indicated that the Tribunal would provide alternative inquiry pathways for historical claims that remain to be heard outside of the district and inquiry hearing programme, including the present inquiry. At this point, the only indication the Tribunal has received from the claimants is that they wish for their claims to be heard as part of the present inquiry. Further, it is presently not known when the Tribunal will be able to convene the proposed future economic development kaupapa inquiry, which is currently ninth in the indicative order of kaupapa inquiries. Accordingly, unless the claimants file by **midday, 17 January 2020** seeking a different approach, these claims will be inquired into as part of the Wai 2800 inquiry.

Wai 710, the Waitaha (Ngāi Tahu Settlement) Claim

7. The Wai 710 claim was lodged on 7 April 1998 by Makere Harawira, on behalf of herself and the Ngāi Te Rākiamoa hapū of Waitaha. The claim concerns the repeal of the Runanga Iwi Act 1990, the enactment of Te Runanga o Ngai Tahu Act 1996 and the Ngāi Tahu Deed of Settlement.
8. This claim was assessed by Tribunal staff as not eligible to participate in the Wai 2800 because of the Ngāi Tahu Claims Settlement Act 1998. Counsel for the claimant submit that the claim is not settled by that Act and should be reassessed as eligible to participate. The Crown responded agreeing with the Tribunal's assessment (Wai 2800, #3.1.11).
9. The Ngāi Tahu Claims Settlement Act 1998 settles the historical claims of Ngāi Tahu, with two exceptions relating firstly to the Wai 158 claim and secondly claims that concern language and culture. The Act defines "Ngāi Tahu" and "Ngāi Tahu Whānui" as each meaning (Ngāi Tahu Claims Settlement Act 1998, s 9(1)):

the collective of individuals who descend from the primary hapu of Waitaha, Ngāti Mamoe, and Ngāi Tahu, namely Kāti Kuri, Kāti Irakehu, Kāti Huirapa, Ngāi Tuahuriri, and Kai Te Ruahikihiki.

10. In the preface to the *Ngai Tahu Report 1991*, that Tribunal described the relationship between Ngāi Tahu and Waitaha in the following way (at xiii):

The claim is brought by Rākiihia Tau and the Ngai Tahu Maori Trust Board. They are the claimants. But the claim is really from and about Ngai Tahu, an amalgam formed from three main lines of descent which flowed together to make the modern tribe. The earliest of the three tribes was described as Waitaha, this being also a collective name given to a number of ancient tribal groups which occupied Te Waka o Aoraki (South Island). The claimant Rākiihia Tau referred to the founding ancestor as Rakaihautu o te Uruao canoe.

Archaeological evidence indicates that Maori people were in the South Island about 1000 years ago. The second tribe, known as Ngati Mamoe came from the Heretaunga (Napier) area, moved to the South Island area about the sixteenth century and gradually filtered down through the South Island to intermarry with Waitaha and to assume control. The third tribe, known as Ngai Tahu, also migrated from the eastern region of the North Island. From the seventeenth century Ngati Mamoe and Ngai Tahu tribes gradually united.

11. This quote was endorsed by the Tribunal in *The Ngai Tahu Claim: Supplementary Report on Ngai Tahu Legal Personality* as a summary of the Tribunal's position on the Ngāi Tahu identity.
12. Accordingly, the historical aspects of the Wai 710 claim are fully settled. This claim is therefore not eligible for inclusion in the Wai 2800 inquiry.

Wai 2228, the Ngāti Awa of Taranaki (Moore and Taylor) Claim

13. Counsel for Wai 2228 filed submissions on 8 January 2018 seeking inclusion in the Wai 2800 inquiry. Counsel sought leave to file late because he had only recently been instructed. This claim appears to have been left off the initial list of claims in error. Because it was not a claim assessed as possibly eligible to participate, the Crown has not filed submissions on eligibility.

14. The Wai 2228 claim was originally lodged by Andrea Moore and Robert Taylor on behalf of themselves and Ngāti Awa of Taranaki. The claim concerns the Crown's failure to recognise Ngāti Awa's true iwi name, allowing taonga to be stolen from their ariki and failing to return this taonga. Further allegations were added in amendments received on 6 June 2014 and 21 May 2018, including extending the claim area to include Taranaki, Kāpiti Coast, Wellington, the South Island and the Chatham Islands.
15. The historical claims of Ngāti Awa/Te Ātiawa have been settled in relation to the Taranaki, Te Tau Ihu and Port Nicholson Block regions. The historical claims in relation to the Porirua ki Manawatū district are currently being inquired into by the Tribunal in Wai 2200, the Porirua ki Manawatū Inquiry. It is therefore unclear which aspects of the Wai 2228 might come within scope of the Wai 2800 inquiry. I directed the applicants to file submissions clarifying which allegations in the Wai 2228 claim they assert are not already settled by legislation and may come within scope of this inquiry by 10 July 2019. However, these submissions have not been received.
16. In their statements of claim, the claimants state that they are part of Ngāti Awa and that there is no such group as Te Ātiawa. However, the Tribunal has previously held, in the Te Tau Ihu inquiry, that (Wai 785, #2.736 at [30]):

... there is no distinction between Ngāti Awa and Te Ātiawa in terms of kin. We believe that, whatever its historical origins, the term 'Te Ātiawa' has come to be popularly and very extensively used by the descendants of Awanuiarangi in Taranaki, Wellington and the northern South Island.

17. Accordingly, I consider that the Te Ātiawa settlement Acts must also include the Wai 2228 claim. The interests of Te Ātiawa in Te Tau Ihu have been settled by the Ngāti Kōata, Ngāti Rārua, Ngāti Tama ki Te Tau Ihu and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014. The interests of Te Ātiawa in Taranaki have been settled by Te Ātiawa Claims Settlement Act 2016. The interests of Te Ātiawa in the Port Nicholson Block have been settled by the Port Nicholson Block (Taranaki Whānui o Te Upoko o Te Ika) Claims Settlement Act 2009. The Wai 2228 claim has been aggregated into the Porirua ki Manawatū inquiry, which is inquiring into the interests of Ngātiawa/Te Ātiawa in the Kāpiti Coast.
18. The only interests asserted by the claimants that may not be settled are those in the Chatham Islands and perhaps in the South Island, because the claimants do not specify what area of the South Island they are making claims to, and only the interests of Te Ātiawa in Te Tau Ihu appear to be settled. Unless the claimants file by **midday, 17 January 2020** clarifying this matter, this claim will not be included in the Wai 2800 inquiry.

Other claims for which eligibility is disputed

Wai 2236, the Descendants of Priscilla Muriwai Dennison Claim, brought by Awhina Muriwai Hill

19. The Wai 2236 claim was lodged on 26 August 2008 by Awhina Muriwai Hill on behalf of herself and the descendants of Priscilla Muriwai Dennison. The claim relates to succession law allowing non-Māori spouses to succeed to Māori land. Māori land owned by the claimant's grandmother, Priscilla Muriwai Dennison, passed into the sole ownership of her

husband, who left no provision in his will for the return of the Māori land to Priscilla Muriwai Dennison's descendants. The claimant says in her statement of claim that she is of Rangitāne iwi.

20. The Crown submits that Wai 2236 claim appears to be settled as far as Rangitāne is concerned by the Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014, but that further clarification may be required from the claimants to determine this (Wai 2800, #3.1.3). The Crown acknowledges that this claim relates to South Island Landless Natives Act 1906 land but submits that it is nevertheless settled.
21. Ngāti Apa ki te Rā Tō, Ngāti Kuia, and Rangitāne o Wairau Claims Settlement Act 2014 came into force on 23 April 2014. It settles the historical claims of Ngāti Apa ki te Rā Tō, Ngāti Kuia and Rangitāne o Wairau. Wai 2236 is not specifically listed in the Act.
22. In the Military Veterans Kaupapa Inquiry, I issued a number of memoranda-directions regarding the impact of settlement legislation on the Tribunal's jurisdiction to inquire into claims. I relevantly stated (Wai 2500, #2.5.15):

[69] The manner in which the legislation purports to settle historical claims is thus whakapapa-linked, customary rights-based and area-specific. The claims of the affected individuals arise from their membership of the settling group and link back to the whakapapa of its constituent iwi and hapū and to the area of interest in which it exercised customary rights at and after the signing of the Treaty.

[70] Settlements of historical claims have, in other words, been constructed in terms of the settlement of iwi and hapū claims. The majority of claims filed with the Tribunal on behalf of a group are made on behalf of the claimants' iwi or hapū, and on the basis of rights arising as a member of such. These are not, however, the only identities, whether individual or collective, that may define the status of claimants and their claims. There are also claims, including a number of those in this inquiry, where the claimants instead claim on behalf of a group of Māori defined not by their shared tipuna but by a different commonality – in this case, their shared experiences as members of the armed forces. These claims are not related to whakapapa or an iwi or hapū group, or to a specific area of interest or the customary rights of the iwi and hapū of the settling groups.

23. On my reading of the Wai 2236 claim, it is not brought on behalf of a particular hapū or iwi, nor it is based on rights arising from the claimant's membership in a particular hapū or iwi. The claim relates to the law of succession and its impact on the transfer of title to Māori land, which is a generic, national issue. It therefore does not appear to be a claim that is settled by the legislation settling the claims of Rangitāne o Wairau. Accordingly, this claim is eligible for inclusion in the Wai 2800 inquiry.

Wai 2324, the Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim, brought by Neil Jury

24. The Wai 2324 claim was lodged on 4 August 2008 by Neil Jury on behalf of the Geary whānau. The claim concerns grants issued under the Middle Island Half-castes Crown Grants Act 1877. The claimant alleges that Crown failed to grant land to his tūpuna, despite the tūpuna being listed in the Act as "half-castes" who should have received grants. The claimant notes in his statement of claim that he is of Ngā Mahanga descent.

25. The Crown considers the Wai 2324 claim to be fully settled by the Taranaki Iwi Claims Settlement Act 2016 (Wai 2800, #3.1.3 at [5]).
26. The Taranaki Iwi Claims Settlement Act 2016 came into force on 5 December 2016. The Act settles the historical claims of Taranaki Iwi. Wai 2324 is not specifically listed in the Act.
27. Similarly to the Wai 2236 claim discussed above, the Wai 2324 claim is not brought on behalf of any iwi or hapū, nor is it based on rights arising from the claimant's membership in a particular hapū or iwi. The claim is based on the applicant's descent from tūpuna who were identified generically as "half-castes" living in the South Island and promised allocations of land in legislation. There does not appear to be any connection between this and the claimant's whakapapa to Ngā Mahanga.
28. It therefore does not follow that the claim is settled by the legislation settling the claims of Taranaki Iwi and as such is eligible for inclusion in the Wai 2800 Inquiry.

Conclusion

29. Accordingly, the claims to be included in the Wai 2800 inquiry are:

- (a) Wai 158, the Southland Forests Claim
- (b) Wai 1623, the Ngāti Rangatahi kei Rangitīkei Claim
- (c) Wai 2163, the SILNA Estate Crown Forests Amendment Act 1992 (Te Aika) Claim
- (d) Wai 2236, the Descendants of Priscilla Muriwai Dennison Claim
- (e) Wai 2324, the Geary Whānau Middle Island Half-castes Crown Grants Act 1877 Lands Claim

30. Where there are multiple claims in an inquiry, the Tribunal's practice is to combine the record of inquiry for each claim into one common record of inquiry. The record of a claim will be consolidated into the common record of inquiry where it is expected that all the issues in that claim relate to and will be heard in the inquiry. The record will be aggregated where it is expected that only some of the issues in that claim will be heard.

31. Aspects of the Wai 1623 claim are being inquired into by the Tribunal for Wai 2200, the Porirua ki Manwatū inquiry. Therefore, the Registrar is directed to aggregate the Wai 1623 claim under Wai 2800 and to consolidate Wai 158, Wai 2163, Wai 2236 and Wai 2324.

An additional matter

32. The Tribunal has recently received submissions from counsel for Wai 113 asserting that the claimant group, Ngāti Huia, is a hapū of Ngāti Raukawa that has interests in Te Tau Ihu (Wai 2800, #3.1.12). I note, however, that the allegations concerning Te Tau Ihu are only included in a recently filed amended statement of claim which Deputy Chief Judge Fox has declined to register in the Wai 2200 inquiry because of ongoing named claimant issues. The allegations in the claim, as registered, appear to only extend as far south as Waikanae.

33. Accordingly, I cannot take this matter any further at this time. If the amended statement of claim is registered, I will consider this matter at that time.

The Registrar is to send this direction to all those on the notification list for Wai 2800, the Inquiry into Remaining Historical Claims: Southern North Island and South Island Claims.

DATED at Wellington this 11th day of December 2019

A handwritten signature in black ink, appearing to read 'W Isaac', written in a cursive style.

Chief Judge W W Isaac
Presiding Officer

WAITANGI TRIBUNAL