

WAITANGI TRIBUNAL

Wai 1040

CONCERNING

the Treaty of Waitangi Act 1975

AND

the Te Paparahi o Te Raki
Inquiry

MEMORANDUM-DIRECTIONS OF JUDGE C T COXHEAD

7 February 2020

Request for the aggregation of claims

1. This memorandum-directions concerns a number of requests for claims to be changed from consolidated to aggregated in Wai 1040, the Te Paparahi o Te Raki Inquiry. Such requests have been received from counsel for the following claims:
 - (a) Wai 1341, the Ngāti Rehia Hapū Claim;
 - (b) Wai 1464, the Te Kapotai and Ngāti Pare Hapū Claim;
 - (c) Wai 1531, the Land Alienation and Wards of the State (Harris) Claim;
 - (d) Wai 1544, the Descendants of Hairama Pita Kino Claim;
 - (e) Wai 1546, the Waikare Inlet Claim;
 - (f) Wai 1677, the Orokawa 3B Block Claim;
 - (g) Wai 2003, the Ngāti Korokoro, Ngāti Wharara and Te Pouka (Turner and Others) Resource Management Claim;
 - (h) Wai 2179, the Ngā Uri o Tama, Tauke Te Awa and Other Lands (Dargaville) Claim;
and
 - (i) Wai 2206, the Ngā Wahapu o Mahurangi – Ngāti Whātua/Ngāpuhi Claim.

The nature of aggregation and consolidation

2. In 2011, at the beginning of the aggregation and consolidation process for Wai 1040, I outlined the nature of consolidation and aggregation to parties (Wai 1040, #2.5.87):

Where there are multiple claims in an inquiry, the Tribunal's practice is to combine the record of inquiry of each claim into one common record of inquiry. In doing so, the record of each individual claim is either consolidated or aggregated within the combined record.

If a claim is consolidated, it means that all allegations in the claim fall within the Te Paparahi o Te Raki inquiry boundaries. The entire claim will be heard as part of our inquiry. If a claim is aggregated, it means that some allegations in the claim fall within the Te Paparahi o Te Raki inquiry boundaries, and some allegations fall within the boundaries of other inquiries. Only those aspects of the claim that fall within the Te Paparahi o Te Raki inquiry boundaries will be heard in our inquiry.

3. I released the Tribunal's assessment of which claims should be aggregated or consolidated within the Wai 1040 record of inquiry, and invited parties to file any response (Wai 1040, #2.5.87 at [6]). As objections were not received at that time, I consolidated each of the above claims into the Wai 1040 inquiry on 22 December 2011 (Wai 1040, #2.5.106).
4. Since that time, the Tribunal has commenced its kaupapa inquiry programme. The Chairperson, in his memorandum concerning the kaupapa inquiry programme (at [15(a)]), and as Presiding Officer of the first kaupapa inquiry, Wai 2500, the Military Veterans

Kaupapa Inquiry (Wai 2500, #2.5.8 at [21]), has emphasised that claims or parts of claims cannot be inquired into twice.

5. Similar requests for aggregation of claims consolidated into Wai 1040 have arisen before in relation to the Military Veterans inquiry. On that occasion, I decided to specifically exclude military veterans' issues from the Wai 1040 inquiry and consequently aggregated the claims raising military veterans' allegations.

The current requests

6. I have decided it is appropriate for each of the nine claims that have requested it to be reclassified as aggregated into the Wai 1040 inquiry. This is because, in examining the claims as they currently are and taking into account the additional allegations the claimants have indicated they intend to add to their claims, it is apparent that the Wai 1040 inquiry will not fully inquire into and report on those claims.
7. However, this does not mean that the claimants are necessarily eligible for inclusion in the kaupapa inquiries they wish to participate in. There is substantial overlap between some of the kaupapa inquiry topics and the evidence and submissions that have been heard by the Wai 1040 tribunal. We are currently in the process of writing our report on what we have heard. Although it is ultimately up to the kaupapa inquiry Tribunal panels to determine which claims will be included in their inquiries, I have indicated below where I consider eligibility issues are likely to arise because of the allegations claimants have pursued before this Tribunal.
8. For four claims, a change in status from consolidated to aggregated is sought so that the claimants can:
 - (a) add allegations concerning military veterans' issues, which I have specifically excluded from the Wai 1040 inquiry; and/or
 - (b) pursue allegations relating to kaupapa topics that are included in the Wai 1040 inquiry (such as health or housing issues) but that those claimants have not previously pursued in the Wai 1040 inquiry.
9. These claims are Wai 1544, Wai 1677, Wai 2179 and Wai 2206. There is no difficulty in changing the status of these claims so that additional allegations can be pursued in other inquiries. I will examine each of the remaining five claims in turn.

Wai 1341

10. Counsel for Wai 1341 requests that the claim be aggregated so that it can be included in:
 - (a) Wai 2575, the Health Services and Outcomes Kaupapa Inquiry;
 - (b) Wai 2660, the Marine and Coastal Area Kaupapa Inquiry; and
 - (c) other inquiries not specified.
11. The Wai 1341 claim, as pursued in the Wai 1040 inquiry, does not include health-related allegations and, although the claim includes allegations concerning takutai moana, it does

not specifically concern the Marine and Coastal Area (Takutai Moana) Act 2011, the subject of the Wai 2660 inquiry. There therefore appears to be no difficulty in aggregating the Wai 1341 to the extent that the claimants wish to pursue allegations relating to health or the Marine and Coastal Area (Takutai Moana) Act 2011.

12. I do note, however, that the claimant has pursued allegations relating to housing issues in the Wai 1040 inquiry. If the other, non-specified, inquiries that the claimant wishes to participate in include Wai 2750, the Housing Policy and Services Kaupapa Inquiry, then this will present an issue because the housing-related matters in Wai 1341 have already been inquired into by the Wai 1040 Tribunal and therefore remain within the scope of those issues that are aggregated into the Wai 1040 inquiry.

Wai 1464 and Wai 1546

13. Counsel for Wai 1464 and Wai 1546 request that the claims be aggregated so that they can be included in:

- (a) Wai 2575, the Health Services and Outcomes Kaupapa Inquiry;
- (b) Wai 2700, the Mana Wāhine Kaupapa Inquiry; and
- (c) Wai 2750, the Housing Policy and Services Kaupapa Inquiry.

14. The Wai 1464 and Wai 1546 claims, as pursued in the Wai 1040 inquiry, do not contain allegations concerning mana wāhine issues, and there is therefore no issue with aggregating these claims so that they can pursue mana wāhine-related allegations in the Wai 2700 inquiry.

15. However, the Wai 1464 and Wai 1546 claims, as pursued in the Wai 1040 inquiry, include health-related and housing-related matters, which have been inquired into by the Wai 1040 Tribunal. This will present a difficulty if the claimants seek to have their claims included in the Wai 2575 and Wai 2750 inquiries, because the allegations relating to health and housing issues remain within the scope of those issues in the Wai 1464 and Wai 1546 claims that are aggregated into the Wai 1040 inquiry.

Wai 1531

16. Counsel for Wai 1531 request that the claim be aggregated so that it can be included in Wai 2500, the Military Veterans Kaupapa Inquiry, and other inquiries not specified. I note that the Wai 1531 claimants have filed an amended statement of claim containing mana wāhine issues.

17. The Wai 1531 claim, as pursued in the Wai 1040 inquiry, does not contain allegations relating to military veterans or mana wāhine. There therefore appears to be no difficulty in aggregating the claim so that those issues can be pursued before other Tribunal panels.

18. However, I have already declined leave for the mental health-related allegations in the Wai 1531 claim to be withdrawn from the Wai 1040 inquiry (Wai 1040, #2.6.266, confirmed in Wai 1040, #2.6.281). This remains my determination. Even though the claim is to be aggregated, the health-related allegations remain within the scope of those issues in Wai 1531 that are aggregated into the Wai 1040 inquiry.

Wai 2003

19. Counsel for Wai 2003 request that the claim be aggregated so that it can be included in Wai 2575, the Health Services and Outcomes Kaupapa Inquiry, and other inquiries not specified. I note that counsel have filed an amended statement of claim containing issues related to Wai 2660, the Marine and Coastal Area (Takutai Moana) Act Inquiry.
20. The Wai 2003 claim, as pursued in the Wai 1040 inquiry, includes allegations concerning takutai moana but it does not specifically concern the Marine and Coastal Area (Takutai Moana) Act 2011, the subject of the Wai 2660 inquiry. There therefore appears to be no difficulty in aggregating the Wai 2003 claim so that those allegations can be pursued in the Wai 2660 inquiry.
21. However, the Wai 2003 claim, as pursued in the Wai 1040 inquiry, contains health-related allegations that have been inquired into by this Tribunal and are currently in the process of being reported on. Allegations concerning alcohol and tobacco use and the Crown's provision of health services in Hokianga were put forward in the claim's opening (Wai 1040, #3.3.93) and closing submissions (Wai 1040, #3.3.272(b)), as well as the following evidence brought in support of the claim:
 - (a) Wai 1040, #L2: Brief of evidence of Cheryl Louise Turner (24 March 2014).
 - (b) Wai 1040, #L10: Brief of evidence of Warren Jeremiah Moetara (25 March 2014).
 - (c) Wai 1040, #L11: Joint brief of evidence of Hikurangi Cherrington and John Wigglesworth, on behalf of Hokianga Health Enterprise Trust (27 March 2014).
22. Similarly to Wai 1531, the Wai 1040 Tribunal has already inquired into the Wai 2003 claim's health-related issues. Those issues therefore remain within the scope of those issues in Wai 2003 that are aggregated into the Wai 1040 inquiry.

Directions

23. I direct the Registrar to remove the following claims from the list of consolidated claims in Wai 1040, the Te Paparahi o Te Raki inquiry, and add those claims to the list of aggregated claims:
 - (a) Wai 1341, the Ngāti Rehia Hapū Claim;
 - (b) Wai 1464, the Te Kapotai and Ngāti Pare Hapū Claim;
 - (c) Wai 1531, the Land Alienation and Wards of the State (Harris) Claim;
 - (d) Wai 1544, the Descendants of Hairama Pita Kino Claim;
 - (e) Wai 1546, the Waikare Inlet Claim;
 - (f) Wai 1677, the Orokawa 3B Block Claim;
 - (g) Wai 2003, the Ngāti Korokoro, Ngāti Wharara and Te Pouka (Turner and Others) Resource Management Claim;

- (h) Wai 2179, the Ngā Uri o Tama, Tauke Te Awa and Other Lands (Dargaville) Claim;
and
- (i) Wai 2206, the Ngā Wahapu o Mahurangi – Ngāti Whātua/Ngāpuhi Claim.

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 7th day of February 2020



Judge C T Coxhead
Presiding Officer

WAITANGI TRIBUNAL