

**IN THE WAITANGI TRIBUNAL**

Wai 2575

**CONCERNING**

the Treaty of Waitangi Act 1975

**AND**

the Health Services and  
Outcomes Kaupapa Inquiry

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**MEMORANDUM-DIRECTIONS OF THE PRESIDING OFFICER CONCERNING  
CHIEF HISTORIAN'S REVIEW OF RESEARCH AND A REQUEST BY THE  
CROWN FOR AN EARLY ASSESSMENT OF STATEMENTS OF CLAIM**

5 March 2020

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## **Introduction**

1. This memorandum-direction addresses:
  - a) the Chief Historian's review of research filed on the Wai 2575 Record of Inquiry relating to Māori with disabilities;
  - b) requests for project briefs; and
  - c) responds to the Crown's request for a prompt assessment of statements of claim to be aggregated in the disability part of stage two.

## **Chief Historian's Review**

2. The Chief Historian has recently undertaken a review of research filed. The reports reviewed relevant to the disability theme were:

### *Tribunal-commissioned Reports*

- King, Dr Paula, 'Māori with Lived Experience of Disability (Part 1)' (filed 28 June 2019, Wai 2575, #B22)
- Kaiwai, Hector and Dr Tanya Allport, 'Māori with Disabilities (Part Two)' (filed 28 June 2019, Wai 2575, #B23)

### *Crown Reports*

- Himona, Peter, et al, Māori Health Directorate, Ministry of Health, 'Māori Health Disability Statistical Report' (filed 12 August 2019, Wai 2575, #B24)

3. The Chief Historian has also noted additional information utilised and cited by Dr King which will further illuminate relevant disability issues. In that vein, the Chief Historian refers to:
  - Derek Dow's report on 'Māori Health and Government Policy, 1940-2000' (Wai 2575, #A5);
  - The Waitangi Tribunal's Napier Hospital and Health Services Report (2001); and
  - Cram, Dr Fiona et al, Katoa Ltd, for Ministry of Health, 'Oranga and Māori Health Inequities, 1769-1992' (filed 20 August 2019, Wai 2575, #B25), which touches upon disability issues as part of the general historical context.
4. The stage two casebook was geared to providing general overview reports on the three identified themes for stage two with one report providing historical context. The Crown reports provide additional relevant statistical data and general historical context. The reports were required to have a mainly contemporary focus on general Crown policy and practice.
5. The advice I have received is that the two-part report commissioned by the Tribunal addresses a recognised gap in the literature on Māori experiences of disability. The report responds to key topics identified for the Health Kaupapa Inquiry of disparities, responsiveness and effectiveness of services and outcomes for Māori.
6. The recommendation by the Chief Historian is that the two-part report, together with the additional Crown reports and data, are adequate to meet the requirement of a contemporary-focused, general overview for the Tribunal to begin disability hearings for stage two of this inquiry.

## **Requests for project briefs relating to disability claims**

7. Darrell Naden of Tamaki Legal and Tom Bennion of Bennion Law have filed memoranda requesting further research to be commissioned by the Tribunal on aspects of disability

(Wai 2575, #3.2.148, Wai 2575, #3.2.148(a), Wai 2575, #3.2.149 and Wai 2575, #3.2.149(a)).

8. In a memorandum-direction dated 6 December 2019 I indicated that, in relation to the requests for further research, I would await the outcome of the Tribunal's eligibility exercise and the completion of the Chief Historian's review before making any decision concerning those requests (Wai 2575, #2.6.19 [5]).
9. The advice from the Chief Historian is that there is some merit in the requests, particularly given the paucity of evidence in relation to Māori deaf claimants. The concern the Tribunal has however is the effect upon the forward planning for this inquiry if further research needs to be prepared at this stage.
10. The Tribunal is currently awaiting receipt of a memorandum/memoranda, from counsel for the claimants and the Crown outlining suggested interlocutory steps and a timetable for the hearing of the disability claims. That memorandum/memoranda are due to be filed with the Tribunal by **midday, Thursday 9 April 2020**.
11. Subject to Tribunal availability and the parties' readiness to proceed, we hope to start the hearing of disability claims in the latter part of the 2020 calendar year with a final evidential hearing occurring by say April 2021. Thereafter, at a time and date yet to be agreed, we would need to hear closing submissions.
12. We outline our current thinking because we note that Mr Naden suggests that ten months is required for the commissioning of further research. Mr Bennion has not provided any estimate as to the time required. We do have the following concerns if further research is commissioned:
  - a) There is currently heavy demand for research requests across the various district, kaupapa and urgency inquiries before the Tribunal. The demand is such, I am advised, that both financial and human resources available to the Tribunal are considerably stretched.
  - b) Given some of the difficulties experienced to date in commissioning stage two research we have real concerns about the availability of people who are willing, able and competent to begin and complete the research requested in the time required.
  - c) There is a real possibility that if any further research cannot be completed in a timely fashion it will impact upon the hearing timetable for the disability claimants.
  - d) To what extent, if any, is the possibility of preparing further research being considered in the discussions taking place between claimant and Crown counsel in the preparation for the filing of the memorandum/memoranda by 9 April 2020.
13. In summary, the advice received is that whilst the proposed additional research appears to have merit, there are some practical and resourcing concerns which the Tribunal has. What I now direct is that the Chief Historian undertake discussions with both Tamaki Legal and Bennion Law to seek further clarity about precisely what is sought by way of further research, whether that can be refined and focused to meet the timeframes set out above, whether a researcher or researchers have been identified, and when realistically that research might be available to be filed on the Record of Inquiry.
14. I will await making any final decision on the commissioning by the Tribunal of further research until such time that I have received further advice from the Chief Historian.

### **The Tribunal's Preliminary List of Claims to be Aggregated or Consolidated in the Disability Part of Stage Two**

15. On 4 March 2020, Crown counsel, Craig Linkhorn, filed a memorandum concerning the Tribunal's preliminary list of claims to be consolidated or aggregated (Wai 2575, #3.2.195).

16. The Crown have indicated that they will prioritise work on responding to the consolidated list of claims. They go on to raise a concern about the lack of particularity in some of the statements of claims which the Tribunal proposes to aggregate in the disability part of stage two. They seek a prompt release of the Tribunal's 'own assessment of the extent to which those claims raise allegations about the disability issues that the Tribunal considers should be inquired into in this part of the inquiry'.
17. It would be inappropriate to carry out the early assessment as requested by the Crown. The Crown should in the first instance respond to the allegations as pleaded. If, from the Crown perspective, a statement of claim lacks particularity about an event (acts, omissions, policies and practices) and legislative instruments said to breach Treaty principles and prejudice, then I would expect the Crown to identify and state their concern. Once the Tribunal has had an opportunity to review any such concerns, I will give an indication of what further action, if any, is required on the part of the claimants, the Crown and the Tribunal.
18. The Crown also seeks an opportunity to respond to claimant counsel submissions, due on 20 March 2020, concerning the consolidation and aggregation exercise. That request is granted. The Crown has until **midday, Friday 27 March 2020** to file any such submissions.
19. An updated list of forthcoming filing dates in this inquiry is **attached** as Appendix One.

The Registrar is to send this direction to all those on the notification list for Wai 2575, the Health Services and Outcomes Kaupapa Inquiry.

**DATED** at Hamilton this 5th day of March 2020



Judge S R Clark  
Presiding Officer

**WAITANGI TRIBUNAL**