

IN THE WAITANGI TRIBUNAL

Wai 2700

CONCERNING

the Treaty of Waitangi Act 1975

AND

Kaupapa inquiry into claims  
concerning Mana Wāhine

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MEMORANDUM-DIRECTIONS OF PRESIDING OFFICER CONCERNING  
JUDICIAL CONFERENCE AND OTHER MATTERS

4 May 2020

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## Introduction

1. This memorandum-directions:
  - (a) reconvenes a judicial conference for the Wai 2700 Mana Wāhine Kaupapa Inquiry;
  - (b) addresses submissions received in response to memorandum-directions dated 17 February 2020 (Wai 2700, #2.5.13) concerning the judicial conference;
  - (c) provides an updated list of claims seeking to participate in the inquiry; and
  - (d) places the Chairperson's decision regarding confidential claims on the Wai 2700 Record of Inquiry.

## Judicial conference

2. In memorandum-directions dated 17 February 2020 I formally convened a judicial conference to take place on 15 April 2020 (Wai 2700, #2.5.13).
3. In memorandum-directions dated 17 March 2020, I advised parties that given the COVID-19 situation I would be looking at audio-visual or telephone conferencing as a means to continue with the conference as scheduled (Wai 2700, #2.5.15). On 27 March 2020 I then confirmed that the judicial conference would be adjourned (Wai 2700, #2.5.16), in accordance with the Waitangi Tribunal COVID-19 Level 4 protocol issued by the Chairperson on 25 March 2020.
4. I now confirm that this judicial conference will take place on **Wednesday 27 May 2020**. This will likely be held remotely via video conferencing. An agenda for the judicial conference as well as details regarding arrangements will be issued via memorandum-directions to follow in due course. I will provide an update by Monday 11 May 2020 to give counsel and parties adequate notice.
5. All parties wishing to attend the judicial conference are to RSVP to the Waitangi Tribunal's Registrar via [WT.Registrar@justice.govt.nz](mailto:WT.Registrar@justice.govt.nz) by no later than **midday, Wednesday 20 May 2020**.

## Submissions to inform discussion at judicial conference

6. In memorandum-directions dated 17 February 2020, I directed claimant and Crown counsel to file submissions to inform discussion at the judicial conference (Wai 2700, #2.5.13). I then granted a number of extension requests for counsel to file these submissions (Wai 2700, #2.5.15; #2.5.15; #2.5.17).
7. All memoranda have now been received and I thank parties for their submissions.

### *Claim eligibility and jurisdictional issues*

8. A number of the submissions express a preference for this inquiry to commence with an exploration of the tikanga of mana wāhine and pre-colonial understandings of wāhine in Te Ao Māori (Wai 2700, #3.1.197; #3.1.188; #3.1.194; #3.1.205). Counsel submit that this is an essential contextual starting point for the inquiry and could then be followed by an exploration of the impact of historical issues.

9. The Crown supports this suggestion and agrees that it is important to have a contextual and historical underpinning for the issues to follow (Wai 2700, #3.1.206). Crown counsel submit however that such an approach may give rise to jurisdictional issues and note that the Tribunal has not yet ruled on its jurisdiction to inquire into claims seeking to participate in the inquiry.
10. The Crown submits that a process should be timetabled to rule on contested questions of eligibility and seeks leave to file claim by claim submissions on the Tribunal's jurisdiction, once the scope of the inquiry has been determined. Counsel note that confirmation of scope and eligibility is usually determined prior to research and the development of a statement of issues and that these steps have been omitted from the timetable included in the joint memorandum filed by Tukai Law (Wai 2700, #3.1.197).
11. In order for the Crown and Tribunal to properly consider and respond to jurisdictional issues, Crown counsel submit that it may be helpful for the claimants to file:
  - (a) confirmation of whether their statement of claim includes a historical Treaty claim; and
  - (b) if so, submissions on whether the Tribunal has jurisdiction to inquire into this historical claim, or whether the claim simply refers to historical issues as context to a contemporary claim.
12. I agree that this information would be of assistance to the Tribunal and will direct claimant counsel to file this information following the judicial conference.

*Wai 381 memorandum of understanding*

13. One of the matters I directed parties to address in their submissions was further detail of how the Wai 381 claim will work in practice (Wai 2700, #2.5.13).
14. On 18 March 2020, a joint memorandum was filed with support of the following Wai 381 claimants and their counsel (Wai 2700, #3.1.185):
  - (a) Dame Areta Koopu, Te Mata Law;
  - (b) Aroha Reriti-Crofts and the Māori Women's Welfare League, Dixon & Co Lawyers;
  - (c) Rīpeka Evans, Kāhui Legal;
  - (d) Mary-Jane Papaarangi Reid, Kāhui Legal; and
  - (e) Donna Awatere-Huata, Annette Sykes & Co.
15. Counsel advised that a memorandum of understanding between the parties was being developed which will outline agreed protocols and procedures for the progression of the Wai 381 claim in this inquiry. This was intended to be filed prior to the judicial conference.
16. I direct counsel to file this memorandum of understanding by **midday, Friday 15 May 2020**.

*Claimant funding*

17. The lack of claimant funding for research and concerns regarding reliance on Crown research were raised as issues at the judicial teleconference on 13 March 2020 and again in a number of the submissions (Wai 2700, #3.1.197; #3.1.188; #3.1.193). Counsel also raised funding

issues in relation to kaupapa inquiries generally and noted that the Crown had not yet consulted the claimants or claimant counsel regarding funding, despite an earlier update which stated a detailed proposal would be drafted with claimant consultation in the first quarter of 2020 (Wai 2700, #3.1.97). Counsel sought that these issues be addressed as a matter of priority.

18. While the memorandum filed by Kāhui Legal suggested that a portion of the \$6.2 million funding announced by the Minister for Women for progressing Crown engagement with this inquiry should be used to fund claimant-led research (Wai 2700, #3.1.188), the memorandum from Annette Sykes & Co proposes that a research committee be established including claimant representatives, Crown officials, Tribunal research staff, as well as claimant and Crown counsel (Wai 2700, #3.1.193).
19. The Crown addressed this issue in its memorandum and advised that 13% of the funding provided to the Ministry of Women to respond to this inquiry has been allocated for research and engagement, specifically to support collaborative discussions with the claimants and research funding of \$100,000 per annum (Wai 2700, #3.1.206). It also advised that it has developed a proposal in relation to claimant-led research and a possible joint research agenda, which it would like to discuss with the claimants.
20. I direct the Crown to file this proposal upon finalisation and to update the Tribunal at the judicial conference as to how it intends to progress this issue with the claimants.

#### **List of claims seeking to participate**

21. In memorandum-directions dated 17 February 2020, I appended a list of claims that had confirmed their intention to participate in the inquiry (Wai 2700, #2.5.13(a)). I asked parties to include in their submissions any proposed updates, amendments or omissions to this list.
22. Attached as **Appendix A** is an updated version of this list. I note however, that there are still a number of parties who are yet to confirm their intention to participate in the inquiry, despite having filed statements of claim. Conversely, there are also a number of parties included in the list who are yet to file statements of claim for inclusion in this inquiry, despite having previously signalled an intention to participate.
23. I direct parties to file memoranda advising any further amendments to the list, including any requests to be removed, by **midday, Friday 15 May 2020**. The Tribunal will only consider and assess the eligibility of claims to participate if they have provided both a statement of claim or an amended statement of claim and a memorandum seeking to participate in this inquiry.

#### **Decision regarding confidential claims**

24. On 8 November 2019, Janet Mason filed 14 statements of claim, along with accompanying affidavits and a joint memorandum of counsel on behalf of the claimants. Ms Mason sought leave for this material to be granted blanket confidentiality in order to protect sensitive information belonging to the claimants.
25. The Chairperson declined this request in memorandum-directions dated 17 April 2020. Instead, the Chairperson directed Ms Mason to file two versions of the statement of claim and associated memoranda, one in full and the other redacted or anonymised, by 24 April 2020. I

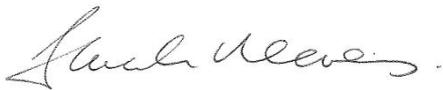
now direct the Registrar to add the Chairperson's decision to the Wai 2700 Record of Inquiry (Wai 2700, #2.5.18).

26. On 24 April 2020, Ms Mason filed the redacted and anonymised versions of the statements of claim as directed.

27. Parties who wish to make submissions on this matter should do so by **midday, Friday 15 May 2020**.

The Registrar is directed to send a copy of this direction to counsel for the claimants, Crown counsel and all those on the distribution list for Wai 2700, the Kaupapa Inquiry into claims concerning Mana Wāhine.

DATED at Wellington on this 4<sup>th</sup> day of May 2020

A handwritten signature in cursive script, appearing to read 'S F Reeves'.

Judge S F Reeves  
Presiding Officer  
WAITANGI TRIBUNAL