

IN THE WAITANGI TRIBUNAL

Wai 2575

CONCERNING

the Treaty of Waitangi Act 1975

AND

the Health Services and
Outcomes Kaupapa Inquiry

**MEMORANDUM-DIRECTIONS OF THE PRESIDING OFFICER CONCERNING
RECENT UPDATING MEMORANDA AND ASSOCIATED REQUESTS**

4 June 2020

Purpose

1. This memorandum-directions responds to recent submissions filed concerning the progression of the:
 - a) Tribunal's stage two inquiry into claims concerning Māori with lived experience of disability; and
 - b) work agreed to be undertaken between the Crown and stage one claimants towards implementing the interim recommendations contained in *Hauora – the Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry*.

Stage two inquiry into disability

2. On 1 May 2020, I issued a memorandum-directions agreeing to a proposal that parties continue their discussions concerning outstanding matters on the scope, eligibility and particularisation of claims seeking to participate in the Tribunal's forthcoming inquiry into Māori with lived experience of disability.¹ I indicated, as I had previously, the utility that parties reach agreement on these matters before the inquiry could be usefully progressed further. I accordingly instructed the Crown to update the Tribunal by 29 May 2020 on the outcome of the further discussions intended to be conducted in the intervening weeks.²
3. On 29 May 2020, the Tribunal received a memorandum from Crown counsel, Craig Linkhorn, Geoffrey Melvin, and Abbey Lawson, outlining the outcome of those further discussions.³ Counsel advise that a significant amount of work is underway to progress and bring shape to the Tribunal's forthcoming inquiry. While counsel submit that it is too early to say whether there remain scope and jurisdictional issues that will require a Tribunal ruling, it is clear the Crown and claimant counsel are making considerable efforts to prepare and advance the claims towards hearing.⁴
4. The Crown considers that ongoing collaborative work can usefully continue for a further four-to-six weeks, before the Tribunal is updated again and any remaining issues are brought before the Tribunal for determination. Counsel proposes that the Crown and claimant co-ordinating counsel file a joint updating memorandum to this effect by 10 July 2020.⁵
5. I confirm that a collaborative approach to the resolution of these matters remains this Tribunal's preference. I therefore agree to the further extension of time sought and direct the Crown and claimant co-ordinating counsel to file their further update by no later than **midday, Friday 10 July 2020**. As previously directed,⁶ it will be useful for counsel to outline in their submissions:
 - a) what has been agreed to;
 - b) what further pleadings (if any) the Tribunal can expect to be filed, and by when;
 - c) what issues remain outstanding and require determination by the Tribunal; and
 - d) a proposed timetable for the filing of submissions (if needed).
6. I note in their 29 May 2020 memorandum the Crown indicates that, should the Tribunal proceed to hearing by late 2020 (as was first intimated), the Crown would not have

¹ Wai 2575, #2.6.24 at [5].

² Wai 2575, #2.6.23 at [9] & Wai 2575, #2.6.24 at [5].

³ Wai 2575, #3.2.212.

⁴ Wai 2575, #3.2.212 at [9].

⁵ Wai 2575, #3.2.212 at [17].

⁶ Wai 2575, #2.6.24 at [6].

sufficient capacity to continue its work on all claims concerning disability, but would instead need to direct its attention to those claims that are to be heard first.⁷

7. While not wishing to predetermine this Tribunal's decision on how this phase of the inquiry may be progressed, I take this opportunity to remind counsel that the timeline to hearing will in part be informed by the need for any further steps required to settle outstanding pleadings, scope or jurisdictional matters.⁸ Among other considerations, the Tribunal will also want to ensure that there is sufficient lead-in time to accommodate the determination of eligibility, the Tribunal's statement of issues process, as well as the filing, perusal and analysis of evidence. That is irrespective of whether or not a staged approach to the hearing of the disability claims is ultimately settled upon.

Update on work arising from the stage one interim recommendations

8. On 1 May 2020, I directed the Crown and stage one claimants to file a joint memorandum by 2 June 2020 updating the Tribunal on the work agreed to be undertaken towards implementing the interim recommendations made in *Hauora – the Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry*.⁹ That memorandum was subsequently filed on 3 June 2020.¹⁰ I grant leave for that memorandum to be filed late.
9. Counsel advise that, since the filing of the Heads of Agreement on 15 April 2020, the Crown, the stage one claimants and their counsel have continued working together to agree to funding for the claimants to progress work on the stage one interim recommendations. Funding has now been agreed to 31 August 2020. Counsel indicate that contracts will be signed shortly, with funding to be distributed to the claimants in the next week or so.¹¹
10. With funding in place, the parties intend to progress the work outlined in the Heads of Agreement over the next three-month period. They propose to update the Tribunal on their progress by 31 August 2020.¹²
11. I agree to the proposal and direct that the Crown and stage one claimants file a further joint updating memorandum that outlines the progress made by no later than **midday, Monday 31 August 2020**.

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 4th day of June 2020



Judge S R Clark
Presiding Officer

WAITANGI TRIBUNAL

⁷ Wai 2575, #2.6.22 at [11] & Wai 2575, #3.2.212 at [10].

⁸ Wai 2575, #2.6.23 at [9].

⁹ Wai 2575, #2.6.24 at [8].

¹⁰ Wai 2575, #3.2.213.

¹¹ Wai 2575, #3.2.213 at [4].

¹² Wai 2575, #3.2.213 at [5] to [6].