

Appendix A: Confirmed scope for the inquiry

KEY PRINCIPLES

1. The claimants have approached the issue of scope from the following set of principles:
 - (a) it is beneficial to have certainty/clarity around scope at an early stage;
 - (b) it is beneficial to have a fixed programme and an end point;
 - (c) it is beneficial to maintain a focus and distinguish between the cause/s evidencing breach and giving rise to the Inquiry, the impact/effect on Mana Wāhine and the relief being sought;
 - (d) it is beneficial to have clarity around when claims will be heard; and
 - (e) there should be sufficient flexibility built into the inquiry programme to allow for issue intersectionality and refinement as research is produced provided that is focused on establishing cause and effect.

GENERAL STATEMENT OF SCOPE

2. The intersection of race, gender, and class creates a context of interconnected disadvantage and discrimination for wāhine Māori.
3. At a broad level, the Wai 2700 Inquiry should examine:
 - (a) the inherent mana and iho of ngā wāhine Māori;
 - (b) the systemic discrimination, deprivation and inequities experienced by wāhine Māori; and
 - (c) the extent to which the Crown's conduct in this respect has been, and is, Treaty non-compliant.
4. This will require inquiry into both alleged historical and contemporary breaches of Te Tiriti o Waitangi.

HISTORICAL AND CONTEMPORARY FOCUS

5. The claimants do not wish to re-litigate the past or litigate matters which the Tribunal has already determined to have breached the Treaty.
6. However, it will be necessary to show the status of wāhine Māori pre-Treaty in order to demonstrate the full impact of Crown actions, inactions, processes and policies that are the determinants of inequities for wāhine Māori.
7. Further, while the Tribunal has traversed historical (19th and 20th Century) Crown breaches through its district and regional inquiry programme, these inquiries have very rarely (if ever) focused on issues from the perspective of mana wāhine Māori and their issues have been decontextualised and not substantively been examined or reported on by previous Tribunals. The claimants are aware that in some district inquiries mana wāhine issues were specifically deferred to the kaupapa inquiry programme.

8. The claimants have proposed commencing the Inquiry with a set of contextual or frame of reference hearings which provide a tūāpapa for the Inquiry and cover the tikanga of mana wāhine and the pre-colonial understanding of wāhine in te ao Māori, including:
 - (i) atua Māori;
 - (ii) relationality and balance (including te ira wāhine and the balance and complementarity of wāhine and tāne);
 - (iii) rangatiratanga, whenua, whānau, mātauranga and whakapapa; and
 - (iv) te mana o te wāhine in Māori society.
9. These hearings would form the baseline against which Crown breaches of Te Tiriti can be considered for the balance of the Inquiry. The proposed content and process for the tūāpapa hearings is explored in a separate paper.
10. Currently, the claims involved in the Wai 2700 Inquiry cover a broad range of historical and contemporary issues. Some claims are general in nature, while others are very specific.
11. The chronological approach that the claimants have previously proposed would assist in developing a full picture that connects the issues and demonstrates the impact over time. This will allow the complex historical and systemic connections to be made between “cause” and “effect”.
12. In the claimants’ view, the central question is the denial of the inherent mana and iho of wāhine Māori and the systemic discrimination, deprivation and inequities as a result. The claimants consider that themes or “pou” will likely emerge to frame the Inquiry and can be referred to when looking at both the historical and contemporary aspects of the claims. These include:
 - (a) rangatiratanga;
 - (b) whenua;
 - (c) whakapapa / whānau; and
 - (d) whai rawa.
13. From these pou flow a number of specific case examples that provide the context to the overarching kaupapa. We have reviewed the various memoranda and attempted to capture some of the specific themes that have arisen in the context of these pou.

Rangatiratanga

14. This theme captures the iho of ngā wāhine Māori and how the position of wāhine Māori has been excluded from decision-making, from the signing of Te Tiriti o Waitangi and includes:
 - (a) Erosion of the rangatiratanga of wāhine Māori caused by colonial laws and political, economic and social regulatory systems.

- (b) Exclusion and marginalisation of wāhine Māori in determinations and decisions over tenure over lands, forests, fisheries, waterways, language, identity and communication systems.
- (c) The Crown's actions and omissions in relation to decision-making, leadership and governance capability of wāhine Māori at local, regional and national government levels.
- (d) Exclusion and marginalisation of wāhine Māori from public health and economic policy.
- (e) Exclusion and marginalisation of wāhine Māori by the Crown in relation to policy development and leadership opportunities.
- (f) Erosion of the rangatiratanga of wāhine Māori in relation to the constitutional structure.
- (g) Exclusion and marginalisation of wāhine Māori by the Crown in relation to international agreements.
- (h) The failure of the Crown to ensure wāhine Māori participate in the Treaty of Waitangi negotiation and settlement policies and processes.
- (i) The marginalisation of wāhine Māori in professional bodies and associations.
- (j) The prevention of wāhine Māori acting as kaitiaki.

Whenua

15. This concerns the way that wāhine Māori have been treated in relation to the whenua and includes:
- (a) The Crown's actions and omissions relating to the alienation of wāhine Māori from collective and customary entitlements and ownership of lands, forests, fisheries, taonga and property.
 - (b) Erosion of rangatiratanga of wāhine Māori and exclusion of wāhine Māori in defining kaitiaki relationship between wāhine Māori and the environment, including the regulation of climate change.
 - (c) Exclusion and marginalisation of wāhine Māori in primary sector industries including agriculture and horticulture.

Whakapapa / Whānau

16. This is a broad theme but captures the oranga and intergenerational well-being of Māori women and their whānau. We have identified a number of sub-themes but note the interconnected nature of these.

Hauora

- (a) The Crown's actions and omissions in relation to health and well-being of wāhine Māori.
- (b) Systemic discrimination and lack of access within the public health system.

- (c) The Crown's actions and omissions in relation to alcohol, addictions, and mental health and wāhine Māori.

Manaaki tangata / whānau

- (a) The Crown's actions and omissions in relation to wāhine Māori and whānau and/or children, including, the actions and omissions of Oranga Tamariki and its predecessors, the Ministry of Social Development and the Ministry of Health.
- (b) The Crown's actions and omissions in relation to domestic and sexual violence towards wāhine Māori.
- (c) The Crown's actions and omissions in relation to wāhine criminal victimisation and/or wāhine Māori in the justice system.
- (d) Effect of NZ war service on whānau structure and wāhine leadership.
- (e) Crown's abortion law reform.
- (f) Human Rights Act and failure to protect rights of takataapui and Māori sex workers.
- (g) Failure of the Crown to ensure Birth, Deaths and Marriage process reflects tikanga Māori and mana wāhine.

Matauranga

- (a) The Crown's actions and omissions in relation to education and wāhine Māori.
- (b) The Crown's failures to protect mātauranga Māori for wāhine Māori, for example, moko kauae, traditional fine weaving, scientific methodologies and practices, mainstream media, and contemporary Māori art.
- (c) The invisibility of wāhine Māori in feminist literature.
- (d) The Crown's lack of available data or statistics in relation to wāhine Māori.

Whairawa

17. This concerns the way that wāhine Māori have been treated in relation to the economy and enterprise and includes:
 - (a) The Crown's actions and omissions in relation to social development, tax policy, and social benefits and wāhine Māori.
 - (b) The Crown's actions and omissions in relation to wāhine Māori in employment and equal pay.
 - (c) The Crown's actions and omissions in relation to wāhine Māori and housing.
18. It is important that the Wai 2700 Inquiry remains sufficiently broad to ensure that the recommendations or outcomes are able to achieve the desired result – meaningful

change to a Treaty-compliant system. If the Inquiry becomes solely a claim by claim inquiry it risks being side tracked by specific examples without considering the big picture.

19. The themes also should be considered in a holistic way. It is important for the Inquiry to highlight the connection and interrelatedness of these themes to the overall experience of wāhine Māori rather than treat each theme in isolation.

ELIGIBILITY

20. The Claimants consider that each claim should be heard by the Tribunal, if not otherwise disqualified. It is important that all claimants have the opportunity to put their claim issues and experiences to the Tribunal and the Crown. Such an approach lends itself to truth and reconciliation with the Crown.
21. The Tribunal should take a broad approach to eligibility, as it has in other kaupapa inquiries, acknowledging that settlements of historical claims have been constructed in terms of the settlement of iwi and hapū claims rather than claims that are 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 wāhine Māori. These claims are not related to whakapapa or an iwi or hapū group, or to a specific area of interest.