

APPENDIX "B"

TERMS OF REFERENCE

Wai 2700 Mana Wahine Kaupapa Inquiry
Joint Research Committee

1. BACKGROUND

- 1.1 In 1993, the Māori Women's Claim, was filed within the Waitangi Tribunal. Twenty-five years later, in March 2018, a judicial conference was convened to discuss the potential of the Waitangi Tribunal convening a Kaupapa Inquiry into issues relating to mana wahine. Subsequently, around 166 additional claims were filed. The Mana Wahine Kaupapa Inquiry (the "Inquiry") was then initiated on 20 December 2018. Judge Sarah Reeves was appointed as the Presiding Officer, and, in August 2019, Dr Robyn Anderson, Dr Ruakere Hond, and Kim Ngarimu were appointed as members of the tribunal panel.
- 1.2 During the initial Judicial Conference in March 2018, submissions were made in relation to the research programme, and several counsel provided bibliographies of current research that is available. These submissions were to assist the Tribunal and claimants in establishing what research is currently available and what gaps exist in the research required in the Inquiry. Subsequently, claimant counsel has assessed these bibliographies and made further submissions about the research programme and the gaps that exist.
- 1.3 By memorandum-direction dated 17 February 2020, the Presiding Officer advised that Tribunal staff have commenced work on an exploratory scoping report. The purpose of the scoping report is to:
- 1.3.1 Assess the extent of existing evidence likely to be required for the evidential casebook for the Inquiry so that the Tribunal can investigate the claims before it.
 - 1.3.2 Identify major gaps in evidential coverage.
 - 1.3.3 Propose how these gaps might be addressed including any additional research reports; and
 - 1.3.4 Provide a brief bibliography of the main evidential sources.
- 1.4 The Tribunal released its scoping report on 31 July 2020.¹
- 1.5 The Crown has made available a \$400,000 fund for claimant research.
- 1.6 As there are several tasks before the claimants in relation to research including, but not limited to:

¹ Wai 2700, #6.2.1.

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- 1.6.1 Determining important areas of research;²
 - 1.6.2 Providing submissions on the Waitangi Tribunal casebook; and
 - 1.6.3 Establishing additional research projects that are not to be commissioned by the Waitangi Tribunal research unit; and
 - 1.6.4 Commissioning and managing the research projects that are to be funded by the Crown funding for claimant research,
- 1.7 It was proposed at the 27 May 2020 Judicial Conference that a committee be formed. This document is the terms of reference for the joint claimant research committee (the “Committee”).

2. JOINT RESEARCH COMMITTEE

- 2.1 The purpose of the joint research committee is to ensure that cogent submissions are made to the Tribunal in relation to the Inquiry’s research programme or casebook, and ensure the production of high quality, comprehensive research that is sufficient to cover all primary issues confronting Māori women today including those to support the claims in the Wai 2700 Māna Wāhine Inquiry (the “Inquiry”).
- 2.2 The Committee shall consist of a maximum of 13 members as follows:
- 2.2.1 1 member: Wai 381 Claimant counsel representative
 - 2.2.2 2 members: Claimant Counsel from the wider claimant community
 - 2.2.3 7 members: representatives with appropriate expertise from the claimant community³
 - 2.2.4 1 member: Waitangi Tribunal research staff: this member shall be a historian, or a researcher drawn from the Tribunal research unit.
 - 2.2.5 2 members: Crown: including one member being Crown Counsel and the second being a representative from the Joint Roopu.⁴
- 2.3 The parties to the Inquiry consist of claimants, claimant counsel, Crown counsel, the Crown, and the Waitangi Tribunal (“the parties”).
- 2.4 Appointees to the Committee will possess characteristics consistent with the kaupapa of the Mana Wahine Kaupapa Inquiry, and these are to include that those appointed will have an inherent understanding of and an ability to act in accordance with mana wahine.
- 2.5 The appointment process shall be as follows:

² This may include, inter alia, the issue of hegemonic masculinity and femininity.

³ If the claimants determine that a lesser number of claimant representatives are required at any given time, the number of claimant representatives may be less than 7.

⁴ The Joint Roopu consists of Crown officials from the Ministry of Women and Te Puni Kokori and was created to respond to the Inquiry (“Joint Roopu”).

- 2.5.1 The Wai 381 claimants will nominate 1 claimant counsel representative from the Wai 381 claimant counsel.
- 2.5.2 The claimants will, by a process of their own design, nominate 2 claimant counsel representatives and 7 claimant representatives.
- 2.5.3 The Waitangi Tribunal will nominate 1 representative from amongst its staff.
- 2.5.4 Crown Law will nominate 1 representative from amongst its staff, and the Joint Roopu will nominate its representative.
- 2.6 Once the parties agree to these terms of reference, a final version is to be circulated to all parties and filed with the Tribunal.
- 2.7 The funding of the committee members shall be as follows:
 - 2.7.1 The participation of the Wai 381 claimant counsel member, claimant counsel, Crown counsel and Tribunal staff will be funded by their usual funding stream, as this work is directly linked to their work as counsel in this inquiry. It is expected that claimant counsel members of the Committee would advise Legal Aid Services (“LAS”) of their appointment on the Committee and follow all relevant LAS policy to obtain funding for all relevant work and disbursements.
 - 2.7.2 Claimant representatives will receive an honorarium of \$75 for each meeting they attend, and any necessary travel and accommodation costs relating to their participation on the committee will be covered by the Crown up to a maximum of \$20,000 in total. If there is a shortfall of funding of claimant representatives, the Committee is to work together to resolve the funding shortfall quickly and effectively.
- 2.8 The Committee is to act in accordance with and be guided by tikanga Māori.
- 2.9 The Committee has the following objectives:
 - 2.9.1 To ensure that high-quality, comprehensive research is filed on the Record of Inquiry to support the claimants’ claims.
 - 2.9.2 To advocate for such research as is required to support the claims of the claimants.
 - 2.9.3 To ensure that the Crown funding is used in the best way possible to advance the interests of the claimants within the Inquiry.
 - 2.9.4 To oversee the production of claimant research for the Inquiry.
- 2.10 The Committee is to undertake the following tasks:
 - General Tasks*
 - 2.10.1 Prepare and manage a budget.
 - 2.10.2 Provide regular updates and be responsive to the feedback of the claimant community. It is envisaged that the updates would ensure

that the claimant community is apprised of the research being undertaken so that duplication of additional research being commissioned by the claimants is avoided.

- 2.10.3 Draft and confirm a protocol regarding the provision of sensitive evidence by claimants to researchers to ensure that the mana of the wahine claimants is protected.
- 2.10.4 Ensure that the protocol is followed.

Research Tasks

- 2.10.5 Coordinate a further literature review and bibliography.⁵
- 2.10.6 Identify priority areas for research. It is envisaged that the Committee will draw on all relevant documents and information⁶ and the views of the wider claimant community to assess the pathway forward for research in this inquiry.
- 2.10.7 Provide submissions to the Waitangi Tribunal on the required research in response to the scoping report.
- 2.10.8 Upon notification of what research, the Waitangi Tribunal will commission, draft project briefs for the remaining priority areas of research.
- 2.10.9 Identify, approach, and engage historians and/or researchers to undertake the required research.
- 2.10.10 Set dates, milestones and accountability mechanisms and ensure these are drafted into the contract and/or project brief.
- 2.10.11 Draft, send, finalise, and store the relevant contracts.
- 2.10.12 Manage the research project including payment upon completion of milestones.
- 2.10.13 Receive and consider the draft report and provide initial feedback if time is of essence, this step could be removed
- 2.10.14 Receive second draft report and distribute this report to all parties in the inquiry for feedback.
- 2.10.15 Convene research hui if necessary.

⁵ Including, but not limited to, audio visual compilations, public archives, private iwi recordings such as Te Puea ngā Taonga Sound & Vision, and other sources including He Poi Manu – Museum of New Zealand, Te Reo o Taranaki, Auckland University.

⁶ Including, but not limited to, Statements of Claim and Amended Statements of Claim, the Waitangi Tribunal's Casebook Review, any scoping documents that are prepared by claimant counsel, Crown Statement of Response, and Statement of Issues, the bibliographies of relevant research filed on the ROI to date including Wai 2700, 3.1.040(a), 3.1.060(a) and 3.1.221(c) and Letter from Wai 381 Claimants to Ministers Genter and Mahuta dated 14 May 2020, appendix A to Kahui Legal memorandum dated 5 June 2020, and letter from Minister Genter to the Wai 381 Claimants – Appendix B of the same memorandum.

- 2.10.16 Liaise with the researcher to finalise the report.
- 2.10.17 File report on the Record of Inquiry.
- 2.10.18 Assist the researcher in the preparation for the presentation of the evidence before the Waitangi Tribunal.
- 2.10.19 Assist the researcher in answering any post-hearing questions in writing.
- 2.10.20 Ensure that each project is completed.

3. PRINCIPLES OF CO-OPERATION

- 3.1 The members of the committee are to work together in a co-operative, constructive and inclusive manner.
- 3.2 All decisions made by the committee will be made in accordance with the following principles:
 - 3.2.1 All committee members are to hear and consider the views of all parties to the Inquiry on any matter affecting the committee.
 - 3.2.2 All committee members are to act in accordance with tikanga Māori, and with respect and courtesy towards other committee members and towards the claimant community; and
 - 3.2.3 All decisions of the committee are to be consensually derived, where possible.
 - 3.2.4 If, the committee members cannot agree, decision-making will be by way of a majority decision of the Committee where each member, including the Chairman, will have one vote to cast.
- 3.3 The committee will avoid disputes amongst themselves by continuing a dialogue about any issues that are contentious as amongst themselves until any such issues are adequately resolved to the satisfaction of the committee.
- 3.4 The committee members will share resources amongst themselves such as:
 - 3.4.1 precedents for project briefs;
 - 3.4.2 knowledge of relevant experts;
 - 3.4.3 hui venues;
 - 3.4.4 telecommunications and information technology;
 - 3.4.5 administrative skills;
 - 3.4.6 management and reporting skills; and

3.4.7 budgeting and project management skills.

4. MEETINGS, ROLES AND OTHER REQUIREMENTS

4.1 The Committee will meet regularly in the following way:

- 4.1.1 All parties are to receive sufficient notice for the convening of hui.
- 4.1.2 A quorum shall be at least 62.5 percent of the committee members or 8 of the 13 members.
- 4.1.3 Meetings are to be open for all parties to the Inquiry to observe and attend, those who attend may put questions to the Committee by way of the Claimant or Claimant Counsel representatives.
- 4.1.4 The Committee will have its first meeting within one month following the confirmation of the members if not before.
- 4.1.5 The first meeting should be conducted kanohi ki te kanohi, and subsequent meetings can be convened either in person, or via Zoom or preferred AVL method.
- 4.1.6 The Committee shall meet fortnightly to ensure that it progresses its objectives up until the commissioning of the research reports and work on the reports is underway.
- 4.1.7 Following this, the Committee will meet monthly or as required to monitor progress towards the completion of the objectives.

Chairperson

- 4.2 The Committee will appoint a Chairperson from among its number at the first meeting.
- 4.3 The Chairperson will be responsible for ensuring that each meeting is planned, and conducted effectively, and is to chair all meetings of the Committee.
- 4.4 The Chairperson is responsible for ensuring that the Terms of Reference are adhered to throughout the work of the Committee.

Treasurer

- 4.5 The Committee will appoint a Treasurer from among its number at the first meeting.
- 4.6 The Treasurer is to document the budget.

- 4.7 The Treasurer is responsible to agree a process or protocol with the Crown for the payment of invoices and expenses. The Treasurer will be responsible to fulfil the obligations of the committee in respect of any process or protocol that is agreed.
- 4.8 The Treasurer is responsible to agree a process or protocol with the Crown to ensure that any public spending accountability requirements are met. The Treasurer will be responsible to fulfil the obligations of the committee in respect of any process or protocol that is agreed.
- 4.9 The Treasurer is to provide a quarterly financial statement and present these to the Committee. A regular financial reporting is to be provided to the claimant community and the Waitangi Tribunal.
- 4.10 Any financial reporting requirements shall be carried out by the Treasurer, with oversight and final sign-off by the Chairperson.

Administration

- 4.11 The Committee is responsible to ensure that the following administrative tasks are undertaken:
 - 4.11.1 appointing the time and place for each meeting in consultation with the committee members;
 - 4.11.2 ensuring all committee members are duly notified of the meeting;
 - 4.11.3 preparing an agenda for the meeting;
 - 4.11.4 providing all necessary paperwork to committee members in advance of the meeting; and
 - 4.11.5 ensuring the minutes are taken and distributed to all members of the Committee of all meetings of the Committee;
 - 4.11.6 ensuring the minutes are available to all parties upon request, and to provide these where requested; and
 - 4.11.7 ensuring that all major decisions of the Committee are recorded in the minutes;
 - 4.11.8 ensuring that records of the minutes are kept for the standard record keeping period of seven years.

Consultation Requirements

- 4.12 The Committee must keep all parties in the Inquiry advised of all research, funding and other developments affecting the claims in the Inquiry.
- 4.13 The Committee must consult with the wider claimant community:
 - 4.13.1 To inform the identification of the priority themes or topics for research in the Inquiry.

- 4.13.2 To input directly into the proposed project briefs and to assist with finalising the project briefs. A draft project brief will be circulated to all parties in the inquiry for feedback.
 - 4.13.3 By providing copies of draft reports.
 - 4.13.4 By providing sufficient time to provide feedback on the draft research reports to the committee and the report writer before the report is finalised.
 - 4.13.5 Any other matter that the Committee considers relevant.
- 4.14 Consultation with the wider claimant community is to follow the following process:
- 4.14.1 The two claimant counsel representatives are designated to consult with the wider claimant community through a process agreed to by the Committee, this may be by direct feedback through claimant counsel consulting with their clients and provide input on behalf of their clients to the Committee members, or by regional committees, or another method. The two claimant counsel members may also consult with Māori wahine networks including but not limited to, Te Roopu Wahine Māori Toko i te Ora (Māori Women's Welfare League), the New Zealand Māori Council, Te Kaunihera O Nga Neehi Māori O Aotearoa (National Council Māori Nurses), and Te Rūnanga o Ngā Kaimahi o Aotearoa the New Zealand Council of Trade Unions and whānau, hapū and iwi communities. Where appropriate consultation with these groups will take place through their own claimant counsel. The two members are to provide:
 - 4.14.1.1 Adequate notice of the matters the Committee is considering; and
 - 4.14.1.2 Sufficient time to provide feedback to those matters;
 - 4.14.1.3 Present and advocate for the views of the claimant community within the meetings of the committee; and
 - 4.14.1.4 Report back to the claimant community of the decision of the Committee in respect of these matters;
 - 4.14.2 Where feedback provided by the wider claimant community does not feature in the resulting work of the Committee, the designated members are to provide reasons for this to the wider claimant community.
 - 4.14.3 Claimant counsel are to regularly keep the coordinating counsel up to date with the work and progress of the Committee.
- 4.15 The Committee is to provide pathways for claimant input to the report authors.