IN THE WAITANGI TRIBUNAL

Wai 2700

CONCERNING the Treaty of Waitangi Act 1975

AND the Mana Wāhine Kaupapa Inquiry

MEMORANDUM-DIRECTIONS OF THE PRESIDING OFFICER CONCERNING TŪĀPAPA HEARINGS AND CONFLICT OF INTEREST PROTOCOLS

16 December 2020

Purpose

1. This memorandum-directions:

   (a) addresses the memorandum filed by claimant counsel regarding proposed witnesses for the presentation of oral evidence at the tūāpapa hearings; and

   (b) confirms an extension request in relation to the conflict of interest protocol for the joint research committee.

Tūāpapa hearings

2. On 7 December 2020, I directed claimant counsel to file confirmation of proposed witnesses for the presentation of oral evidence at the tūāpapa hearings by 11 December 2020 (Wai 2700, #2.5.36).

3. On 11 December 2020, Natalie Coates, Tara Hauraki and Paranihia Walker filed a memorandum seeking the following extensions (Wai 2700, #3.1.317):

   (a) Coordinating counsel to file a list of proposed witnesses for tūāpapa hearing one by 5pm, Monday 14 December 2020.

   (b) Coordinating counsel to file proposed witnesses for all remaining tūāpapa hearings by 5pm, Thursday 24 December 2020.

4. These extensions were granted via an email from the Tribunal's Registrar on 11 December 2020.

5. On 14 December 2020, Mses Coates, Hauraki and Walker filed a memorandum, accompanied by a table of proposed witnesses for the presentation of oral evidence at tūāpapa hearing one (Wai 2700, #3.1.319; #3.1.319(a)).

6. Claimant counsel have provided coordinating counsel with an initial indication of which tūāpapa hearing their clients intend to present evidence at. The current numbers are as follows:

   (a) Tūāpapa hearing one (Kerikeri): 31 claims, 68 witnesses.

   (b) Tūāpapa hearing two (Ngāruawāhia): 29 claims, 56 witnesses.

   (c) Tūāpapa hearing three/four (lower North Island and/or South Island): 17 claims, 42 witnesses.

7. Coordinating counsel are concerned with the available hearing time at tūāpapa hearings one and two and indicate that additional hearing time in the upper North Island appears to be necessary. Counsel advise that they intend to meet this week to discuss the issue of timetabling, following which they will provide an update to the Tribunal.

Decision

8. I acknowledge the concern of claimant counsel regarding the available hearing time at tūāpapa hearings one and two and agree that it appears that an additional hearing in the upper North Island is required.

9. I therefore wish to indicate that tūāpapa hearing three will occur at a location in the upper or central North Island in July 2021. I note that a hearing at a Tauranga Moana marae has been proposed by the parties. Another possibility would be to convene a hearing at a marae in Auckland.

10. It is also apparent from the indications above that hearings are not needed in both the lower North Island and the South Island. I wish to indicate that tūāpapa hearing four will occur at a location in either the lower North Island or the South Island, likely in November 2021. Suggestions made thus far include Te Wānanga o Raukawa in Ōtaki, Hongoeka in Plimmerton, Tuahiwi Marae in Kaiapoi and Rehua Marae in Christchurch.

11. I provide these indications now to assist with the timetabling of tūāpapa hearing one and two. Claimant counsel are to include an update on these matters in their memorandum confirming proposed witnesses for the remaining tūāpapa hearings, due on 24 December 2020.

12. I also direct claimant counsel to file the final timetable for tūāpapa hearing one by **12pm, Thursday 24 December 2020.** This was previously due to be filed by 18 December 2020 (Wai 2700, #2.5.36). An updated inquiry timetable is attached as **Appendix A.**

Conflict of interest protocol

13. On 28 September 2020, Stephanie Roughton filed a joint memorandum which advised that work was being undertaken by claimant counsel on a possible protocol to manage conflicts of interest in relation to the joint research committee (Wai 2700, #3.1.280).

14. On 20 October 2020, I directed Ms Roughton to update the Tribunal as to progress on this issue by the end of November 2020 (Wai 2700, #2.5.33).

15. On 30 November 2020, Ms Roughton, Siaosi Loa and Katherine Alty filed a memorandum providing an update on this matter (Wai 2700, #3.1.316).

16. Counsel advised that Kāhui Legal and Wackrow Williams & Davies had drafted a general conflict of interest policy to deal with all conflicts of interest that may arise in relation to the joint research committee. Counsel also advised that Tamaki Legal, Wackrow Williams & Davies and Grant Hewison Barrister were working on a draft policy to address the specific concerns around the commissioning and tendering process. These concerns related to the appearance of bias where possible candidates who wish to receive a research commission are part of the same committee responsible for commissioning research. Counsel sought to provide a further update to the Tribunal on 14 December 2020.

17. On 7 December 2020, I directed claimant counsel to file an update by 14 December 2020 (Wai 2700, #2.5.36). I also advised that while the general conflict of interest policy will be useful, the commissioning policy will no longer be required due to my decision that any person appointed to the committee will not be eligible for a research commission.

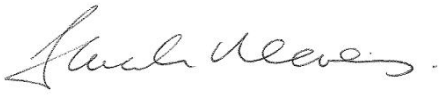
18. On 14 December 2020, Ms Roughton filed a memorandum, with two draft conflict of interest protocols (Wai 2700, #3.1.318; #3.1.318(a); #3.1.318(b)). Counsel are of the view that despite my research commission decision, there is still possibility of a research commission related conflict, namely where a commission is sought by an associate, friend or whanaunga of a committee member. Both policies have been amended to reflect this situation and circulated

to counsel. Counsel seek additional time to gather the responses from all claimant counsel and provide confirmation of the supported policy by 5pm, 8 January 2021.

19. I confirm that this memorandum should be filed by **5pm, Friday 8 January 2021.**

The Registrar is to send this direction to all those on the notification list for Wai 2700, the Mana Wāhine Kaupapa Inquiry.

DATED at Wellington on this 16th day of December 2020



Judge S F Reeves
Presiding Officer
WAITANGI TRIBUNAL