

IN THE WAITANGI TRIBUNAL

Wai 1040

CONCERNING

the Treaty of Waitangi Act 1975

AND

the Te Paparahi o Te Raki
Inquiry

MEMORANDUM-DIRECTIONS OF JUDGE C T COXHEAD

23 August 2021

Request for the aggregation of a claim

1. These memorandum-directions concern a request for Wai 1477, the Emma Gibbs Smith and Whānau (Bay of Islands) claim to be changed from consolidated to aggregated in Wai 1040, the Te Paparahi o Te Raki Inquiry.

The nature of aggregation and consolidation

2. In 2011, at the beginning of the aggregation and consolidation process for Wai 1040, I outlined the nature of consolidation and aggregation to parties (Wai 1040, #2.5.87):

Where there are multiple claims in an inquiry, the Tribunal's practice is to combine the record of inquiry of each claim into one common record of inquiry. In doing so, the record of each individual claim is either consolidated or aggregated within the combined record.

If a claim is consolidated, it means that all allegations in the claim fall within the Te Paparahi o Te Raki inquiry boundaries. The entire claim will be heard as part of our inquiry. If a claim is aggregated, it means that some allegations in the claim fall within the Te Paparahi o Te Raki inquiry boundaries, and some allegations fall within the boundaries of other inquiries. Only aspects of the claim that fall within the Te Paparahi o Te Raki inquiry boundaries will be heard in our inquiry.

3. I released the Tribunal's assessment of which claims should be aggregated or consolidated within the Wai 1040 record of inquiry, and invited parties to file any response (Wai 1040, #2.5.87 at [6]). As objectives were not received at that time, many claims were consolidated into the Wai 1040 inquiry on 22 December 2011 (Wai 1040, #2.5.106).
4. The Tribunal has since commenced its kaupapa inquiry programme. The Chairperson, in his memorandum concerning the kaupapa inquiry programme has emphasised that claims or parts of claims cannot be inquired into twice (Wai 2500, #2.5.8 at [21]).
5. Requests for aggregation of claims consolidated into Wai 1040 have arisen before in relation to the Military Veterans inquiry. On that occasion, I decided to specifically exclude military veterans' issues from the Wai 1040 inquiry and consequently aggregated the claims raising military veterans' allegations.
6. On 7 February 2020, I confirmed a change of status from consolidated to aggregated in relation to nine claims. However, I also noted that several claims may not necessarily be eligible for inclusion in the kaupapa inquiries they wish to participate in (Wai 1040, #2.7.30). Eligibility for inclusion in an inquiry is determined by the respective Tribunal panel of those inquiries.

The current request

7. On 26 July 2021, counsel for the Wai 1477 claimants requested that the status of the claim is amended from consolidated to aggregated (Wai 1040, #3.4.36). Counsel submit that the claimants have, or are about to, file claims in other inquiries including Wai 2500, the Military Veterans Kaupapa inquiry and Wai 2700, the Mana Wāhine Kaupapa inquiry.

Directions

8. I have decided that it is appropriate for Wai 1477, the Emma Gibbs Smith and Whānau (Bay of Islands) claim to be reclassified as aggregated into the Wai 1040, the Te Paparahi o Te Raki inquiry. In examining the claim as it currently is and taking into account the Mana Wahine and Military Veteran allegations that have not been heard in this inquiry, it is apparent that this inquiry will not fully inquire into and report on this claim.

9. I direct the Registrar to remove Wai 1477, the Emma Gibbs Smith and Whānau (Bay of Islands) claim from the list of consolidated claims in Wai 1040, the Te Paparahi o Te Raki inquiry, and to add that claim to the list of aggregated claims.
10. I note that it is ultimately up to the kaupapa inquiry Tribunal panels to determine which claims will be included in their inquiries.

The Registrar is to send this direction to all those on the notification list for Wai 1040, the Te Paparahi o te Raki inquiry.

DATED at Rotorua this 23rd day of August 2021



Judge C T Coxhead
Presiding Officer

WAITANGI TRIBUNAL