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 REGARDING FORWARD PLANNING FOR THE TŪĀPAPA HEARINGS

18 March 2022

Tūāpapa hearings

1. Tūāpapa hearings four, five and six were deferred due to difficulties preparing and presenting evidence under COVID-19 restrictions (Wai 2700, #2.5.63, #2.5.67). On 1 February 2022, I provided alternative hearing dates for the panel's availability to hear the remaining tūāpapa evidence in 2022 and granted leave for coordinating counsel to provide an update on forward planning for the tūāpapa hearings by 4 February 2022 (Wai 2700, #2.5.67).

2. On 4 February 2022, coordinating counsel advised that a claimant counsel audio visual link hui ('zhui') was convened on 2 February 2022 to discuss the forward hearing programme; a list of attendees was appended to the memorandum (Wai 2700, #3.1.565, #3.1.565(a)). Counsel state there was 'overall consensus for the inquiry to progress and not be subject to further delays' (Wai 2700, #3.1.565 at [4]). The majority of 'zhui' attendees indicated a preference to retain the regional approach due to the claimants' connection to their rohe and whanaunga (Wai 2700, #3.1.565). Counsel notes this approach would also allow for an easy transition between remote and in-person hearings depending on the COVID-19 situation.

3. Claimant counsel who attended the 'zhui' had no issue with the dates proposed by the Tribunal, however the memorandum noted that Phoenix Law advised that their clients, who constitute 9 of the 13 witnesses in the current South Island hearing timetable, would be unable to participate in the hearing scheduled for 30 May to 3 June 2022 (Wai 2700, #3.1.565). Coordinating counsel advised that due to the implications of adjusting the hearing schedule, they are liaising with claimant counsel regarding hearing dates and locations and would update the Tribunal accordingly.

4. Coordinating counsel also advised that based on the assumption COVID-19 restrictions may continue throughout 2022, claimant counsel were seeking further instructions as to whether their clients can prepare and present their evidence remotely. Counsel proposed that in order to complete the tūāpapa phase in 2022, claimants and witnesses who are able and willing to prepare and present their evidence via AVL do so during one of the remaining tūāpapa hearings (Wai 2700, #3.1.565 at [12a]). Counsel suggested the following alternatives for claimants and witnesses who are unable or unwilling to prepare and present their evidence remotely (Wai 2700, #3.1.565 at [12b]):

    a) By filing briefs of evidence by 26 August 2022 to be taken and read and questions put to the witness in writing; or

    b) By filing briefs of evidence by 26 August 2022, to be presented in the next hearing phase. This would still allow written evidence to be considered by the Tribunal during the tūāpapa phase (to some extent) as well as being available for the Tribunal and JRC commissionees; or

    c) As a last resort, for those who are incapable of meeting with their counsel remotely (or by any other means) in the short term, are granted the ability to file and present tūāpapa evidence in the next hearing phase. Those who engage this way accept that their evidence will not be considered by the Tribunal prior to the next hearing phase and will not be considered for the first historical overview report, nor the anchor report.

Tūāpapa hearing dates and locations

5. On 24 February 2022, coordinating counsel filed a further update on tūāpapa forward hearing planning along with witness lists for the remaining hearings and for those who wish to participate by filing written evidence (Wai 2700, #3.1.570, #3.1.570(a), #3.1.570(b), #3.1.570(c), #3.1.570(d), #3.1.570(e), #3.1.570(f)).

6. Following further consultation with claimant counsel, coordinating counsel submit that the proposed 30 May – 3 June 2022 dates for tūāpapa hearing four are unworkable due to several factors, including: a reluctance by the remaining South Island witnesses to present their evidence until vaccine mandate issues are resolved; the likelihood of scheduling clashes with the North-Eastern Bay of Plenty (Wai 1750) inquiry Nga Kōrero Tuku Iho hearings which would be too difficult for claimants involved in both inquiries; and the preference of some claimant groups that the lower North Island tūāpapa hearing is held on the proposed August dates due to other commitments during the earlier hearing dates proposed (Wai 2700, #3.1.570).

7. Based on the proposed May/June 2022 tūāpapa hearing dates being unworkable, coordinating counsel submitted the following proposal for consideration:

    a) Tūāpapa hearing four is held in Whakatāne from Monday 11 July to Friday 15 July 2022.

    b) Tūāpapa hearing five is held in the lower North Island from Monday 22 August to Friday 26 August 2022.

    c) Tūāpapa hearing six is held in the South Island, either by AVL or in-person, at an agreed date after 26 August 2022.

8. Coordinating counsel confirm the proposal outlined above is supported by a majority of the parties, and those witnesses seeking to present evidence, particularly in Whakatāne and the lower North Island, are aware of and accept the required filing timeframes (Wai 2700, #3.1.570 at [8]).

Preparing and presenting evidence via AVL

9. Coordinating counsel liaised with claimant counsel to confirm their remaining witnesses' willingness and ability to present via AVL if necessary due to COVID-19 restrictions. On 24 February 2022, coordinating counsel refiled updated witness lists to reflect the filing and presentation options proposed in the update provided on 4 February 2022 (Wai 2700, #3.1.570(a), #3.1.570(b), #3.1.570(c), #3.1.570(d), #3.1.570(e), #3.1.570(f)). Coordinating counsel note there are a small number of claimants and witnesses who are yet to provide instructions and if required counsel can refile final lists of witness capabilities once confirmation is received. Coordinating counsel also filed witness lists for remaining witnesses who either wish to file evidence by 26 August 2022 and have it taken as read and present during the next hearing phase or who wish to file and present their evidence in the next hearing phase (Wai 2700, #3.1.570(e), Wai 2700, #3.1.750(f)).

10. Parties are advised to monitor the Waitangi Tribunal COVID-19 Protection Framework Protocols available on the Waitangi Tribunal website as these are regularly updated to align with the Governments COVID-19 protection framework (traffic lights system) and the current COVID-19 situation.

Decision

11. We will proceed with coordinating counsels' proposal set out in their submissions to complete the tūāpapa phase in 2022 either remotely or in-person in response to concerns and COVID-19 restrictions. Where restrictions require a hearing to be held remotely, claimants and witnesses who are able and willing to present their evidence via AVL should do so, and claimants and witnesses who are unable or unwilling to present their evidence remotely may still participate in the tūāpapa phase by choosing one of the options outlined above at paragraph 4.

12. Coordinating counsel are directed to refile final lists of witness preferences and capabilities by **12pm, Tuesday 5 April 2022**. I advise parties that the tūāpapa hearings will be completed in 2022 by the most suitable means available at the time. This Tribunal reserves the right to re-evaluate the South Island hearing if witness numbers drop below what we regard as reasonable for staging a hearing event.

13. The proposed May/June 2022 dates for tūāpapa hearing four have been released and I now confirm the following hearing details for tūāpapa hearing four and five:

    a) Tūāpapa hearing four will be held at **Te Mānuka Tūtahi Marae, 105 Muriwai Drive, Whakatāne from Monday 11 July to Friday 15 July 2022**.

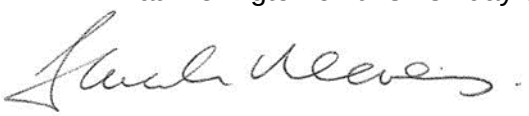
    b) Tūāpapa hearing five will be held in the **lower North Island from Monday 22 August to Friday 26 August 2022**.

14. Coordinating counsel are directed to file submissions on preferred locations for the lower North Island hearing by **12pm, Tuesday 5 April 2022**.

15. My expectation is that the substantial notice given will assist parties to prepare their evidence in an organised and timely manner, mitigating any challenges caused by the proximity of tūāpapa hearings four and five. A filing timetable for tūāpapa hearings four and five is attached as **Appendix A**.

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 18th day of March 2022.



Judge S F Reeves
Presiding Officer
WAITANGI TRIBUNAL