

IN THE WAITANGI TRIBUNAL

Wai 2750
Wai 2575

CONCERNING

the Treaty of Waitangi Act 1975

AND

the Housing Policy and
Services Kaupapa Inquiry

AND

the Health Services and
Outcomes Kaupapa Inquiry

**MEMORANDUM-DIRECTIONS OF DEPUTY CHIEF JUDGE C T COXHEAD AND
JUDGE D STONE ON THE PROPOSAL FOR A JOINT SITTING OF THE WAI 2750
AND WAI 2575 TRIBUNAL PANELS**

9 September 2024

Purpose

1. This memorandum-directions addresses a proposal to convene a joint sitting of the Housing Policy and Services Kaupapa (Wai 2750) and the Health Services and Outcomes Kaupapa (Wai 2575) inquiry panels.

Background

2. On 28 August 2023, we issued a joint memorandum-directions addressing a proposal received from both Wai 2750 and Wai 2575 co-ordinating counsel to convene a joint sitting to hear overlapping claim issues between these inquiries (Wai 2575, #2.6.139 & #Wai 2750, #2.6.53).
3. Our 28 August 2023 memorandum-directions provided the procedural background to the proposal (Wai 2575, #2.6.139 & #Wai 2750, #2.6.53). In summary:
 - (a) On 16 May 2022, claimant co-ordinating counsel in the Wai 2750 inquiry filed a memorandum in which, among other matters, counsel first suggested that a joint hearing between the Wai 2575 and Wai 2750 panels could be the best way to address the 'potential for significant overlap' of claim issues between these inquiries (Wai 2750, #3.2.313 at [24] – [25]).
 - (b) On 2 June 2022, Crown counsel in the Wai 2750 inquiry filed a memorandum in response to the above by noting that the Crown would abide by the Tribunal's decision on the proposed joint sitting. However, Crown counsel noted that such practice has not been common in previous Tribunal inquiries (Wai 2750, #3.2.315 at [9]).
 - (c) On 7 December 2022, in setting out next steps for the Wai 2750 inquiry, now Deputy Chief Judge Coxhead noted the 'potentially significant usefulness' of the proposal for a joint hearing, but cautioned that 'this may be difficult to arrange in light of the Wai 2575 inquiry's full inquiry programme and the minimal collaboration being undertaken between parties in both inquiries at this stage'. Deputy Chief Judge Coxhead deferred his final decision on this proposal to a later date (Wai 2750, #2.6.41 at [79]).
 - (d) On 19 May 2023, the Tribunal received a joint memorandum from claimant co-ordinating counsel in the Wai 2575 and Wai 2750 inquiries (Wai 2575, #3.2.727 & Wai 2750, #3.2.404). The memorandum made detailed submissions on the proposed joint sitting to hear evidence on claim issues that, counsel submit, 'significant[ly] overlap' between the inquiries (Wai 2575, #3.2.727 & Wai 2750, #3.2.404 at [9]). Several claimant counsel also supported the memorandum (Wai 2575, #3.2.727(a) & Wai 2750, #3.2.404(a)).
 - (e) On 23 May 2023, the Tribunal received a joint memorandum in response to the above from counsel for the Ngaati Kaapoo (Tibble) (Wai 2109) and Health Services and Outcomes (Moxon) (Wai 2910) claimants. Counsel advised that their clients are concerned about the potential diversion of time and resources that could arise as a result from the proposed joint sitting. On this basis, the claimants do not oppose the proposed joint sitting, so long as 'any work' in relation to these fixtures does not occur until after the Tribunal publishes its report for the disability inquiry. Counsel further submitted that any joint hearing weeks should occur 'within' the Housing inquiry. This is premised on their view that housing-related issues – including building standards, heating and ventilation, healthy homes legislation, and overcrowding – have an 'impact on health that is not limited to disability' (Wai 2575, #3.2.728).
4. In response to the above, our 28 August 2023 memorandum-directions noted that (Wai 2575, #2.6.139 & #Wai 2750, #2.6.53 at [20]):

- (a) The presiding officers of the Wai 2575 and Wai 2750 inquiries met to discuss the proposed joint sitting. However, the Tribunal was not at that stage in a position to respond substantively to the proposal for a joint sitting between these inquiries.
 - (b) Counsel's proposal raised several logistical and planning challenges within the context of the Wai 2575 and Wai 2750 inquiry programmes. It also raised broader questions on the interconnectedness of issues before the Tribunal in its wider kaupapa inquiry programme – beyond the scope of health and housing issues. These prompted us to consider how the Tribunal should appropriately address this interconnectedness. Therefore, before responding to this proposal, the Tribunal wished to understand these policy considerations internally, and to potentially develop a principled approach for addressing the interconnectedness of kaupapa inquiry issues moving forward.
5. We then signalled that we would issue our decision on the proposed joint sitting in due course (Wai 2575, #2.6.139 & #Wai 2750, #2.6.53 at [21]).

Tribunal decision

6. We have now further considered the proposal and its implications to both the Wai 2750 and Wai 2575 inquiries.
7. In principle, we see potential benefits and efficiencies to be gained from joint hearings between inquiries, particularly where there are clear overlaps of issues and where both inquiry programmes coincide. However, we do not see such efficiencies arising in a proposed joint sitting between the Wai 2750 and Wai 2575 inquiry panels at this time.
8. Counsel submitted that there were approximately 40 claims that have both overlapping health and housing issues and that have expressed an interest in participating in such joint proceedings. However, the claims themselves, and the precise nature of their apparent overlap, is not immediately clear from counsel's submissions, although counsel suggest a high-level focus that would encompass the correlation and causation of Maaori health and housing issues, the negative health impacts of poor housing for Maaori, and housing accessibility issues experienced by taangata whaikaha and whaanau hauaa. Upon considering the nature of these overlaps, it is evident how such a sitting could inform the Wai 2750 inquiry and its final report into housing system claim issues. It is, however, difficult to see at present how this sitting would significantly benefit the Wai 2575 inquiry into the health system.
9. Further, it is unclear how the proposed joint hearing fixture could be accommodated without creating undue disruption to each inquiry's respective programmes. Currently, the Wai 2575 inquiry is scheduled to hear closing submissions for the disability phase of stage two in December 2024. It will then shift its focus towards writing the disability inquiry report. Planning for the mental health and addictions phase of stage two is yet to begin. This will likely occur alongside a hearing into the disestablishment of Te Aka Whai Ora, which is planned for the second quarter of 2025. On the other hand, the Wai 2750 inquiry is still progressing its commissioned research reports to inform a further particularisation of claims and finalisation of the Tribunal statement of issues. Both inquiries therefore appear to be at different stages with currently incompatible priorities and objectives.
10. For these reasons, at this point in time, we decline the proposed joint sitting of the Wai 2750 and Wai 2575 inquiry panels.

The Registrar is to send this direction to all those on the notification list for Wai 2750, the Housing Policy and Services Kaupapa Inquiry, and Wai 2575, the Health Services and Outcomes Kaupapa Inquiry.

DATED at Wellington this 9th day of September 2024.



Deputy Chief Judge Craig Coxhead
Presiding Officer of the Wai 2750 inquiry

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Judge Damian Stone
Presiding Officer of the Wai 2575 inquiry

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