

IN THE WAITANGI TRIBUNAL

Wai 2575

CONCERNING

the Treaty of Waitangi Act 1975

AND

the Health Services and
Outcomes Kaupapa Inquiry

**MEMORANDUM-DIRECTIONS OF JUDGE D STONE CONCERNING TE
AKA WHAI ORA PRIORITY INQUIRY**

29 Noema 2024

Purpose

1. This memorandum-directions concerns the priority inquiry into the disestablishment of Te Aka Whai Ora (the Maaori Health Authority) within the Health Services and Outcomes Kaupapa Inquiry (Wai 2575).
2. In particular, I:
 - (a) respond to the Crown's filing of 22 November 2024, in response to my directions seeking further information in unredacted form;
 - (b) confirms extension requests received for parties to file closing submissions for the priority inquiry, and a request regarding the late filing of reply submissions;
 - (c) addresses a request to file a further brief of evidence; and
 - (d) addresses additional documents to be added to the Wai 2575 record of inquiry.

Crown filing of unredacted information

Procedural background

3. On 15 November 2024, the Tribunal received a memorandum from Crown counsel in response to my directions dated 12 November 2024, requesting that Crown counsel file a number of unredacted copies of documents as set out in those directions (Wai 2575, #3.2.1216 at [2]).
4. Among other matters, Crown counsel's submissions were that:
 - (a) more time was required to check whether grounds to withhold information were still arising and whether the Crown will submit that the Tribunal should vary its direction on those grounds; and
 - (b) in the time available, they had not been able to confirm whether all such information could be supplied to the Tribunal without redaction and the legal grounds for any ongoing redaction sought.
5. The Crown submitted that the remaining redacted information is not relevant to the issues under inquiry and concerns either the broader health portfolios or other portfolios. Accordingly, counsel sought an extension until 22 November 2024 to obtain further instructions and respond in appropriate detail.
6. In memorandum-directions dated 21 November 2024, I granted the leave sought for the Crown to file the remaining documents, pursuant to my directions of 12 November 2024 (Wai 2575, #2.6.194), or submissions concerning whether it seeks continued confidentiality of the redacted information contained in those documents by 22 November 2024.

Crown memorandum filed 22 November

7. On 22 November 2024, Crown counsel filed a memorandum which sought to provide in unredacted form all remaining information the Tribunal had requested, with the exception of one line in the table of the Ministry of Health's "Briefing to the Incoming Minister of Health" dated November 2023, referred to in paragraph [8(b)] of my memorandum-directions of 12 November 2024 (Wai 2575, #3.2.1217; #2.6.194).

8. Counsel submit that the redacted information is irrelevant to issues in this inquiry and remains subject to Cabinet decision-making. As such, the Crown proposes not to provide the Tribunal with an unredacted copy of this document on a confidential basis and seeks leave to forego that step.
9. Counsel reiterate their submission that the record of inquiry should comprise relevant material only, and irrelevant content can remain redacted on the record.

E-mail from Tribunal Registrar

10. On 22 November 2024, shortly following my review of the Crown's memorandum and the unredacted documents, parties were informed via an e-mail from the Tribunal Registrar that the Crown documents filed on that day do not add to the relevant evidence before the Tribunal.
11. However, if claimant counsel have a different view or wish to make submissions on any of the unredacted information, they must have done so by 5pm on Monday 25 November.

Smail Legal memorandum

12. On 26 November 2024, Roimata Smail filed a memorandum on behalf of the Te Aka Whai Ora (Māori Health Authority) Urgent (Wai 3307) claim in response to my directions at [11] above (Wai 2575, #3.2.1224).
13. The claimants agree that the unredacted documents filed by the Crown do not add any relevant evidence. They do not seek to file any submissions except to note that nothing that has been unredacted changes the following facts:
 - (a) The very same day the establishment of the Maaori Health Authority was announced, Minister Shane Reti announced that the National Party would disestablish the legislation if elected.
 - (b) The Crown in disestablishing Te Aka Whai Ora did not consider the findings and recommendations of this Tribunal panel in *Hauora*.
 - (c) The Crown in disestablishing Te Aka Whai Ora did not consider that Te Aka Whai Ora was a success.

Decision

14. Leave is granted for the documents received from the Crown on 22 November 2024 to be added to the Wai 2575 record of inquiry. I accept the Crown's submission that any irrelevant material may remain unredacted on the record of inquiry as suggested by the Crown at [7] of its memorandum.
15. Leave is also granted for the Ms Smail's memorandum to be added to the record, and the submissions set out in this memorandum have been noted.

Extension requests for closing submissions and late filing of reply submissions

Claimant closing submissions

16. Claimant and interested party closing submissions in relation to the process and steps to disestablish Te Aka Whai Ora were due on 14 October 2024 (Wai 2575 #2.6.191).
17. On 14 October 2024, the Tribunal received the following extension requests from:

- (a) Tukau Law on behalf of Ngati Hine Lands, Forests and Resources (Wai 682) claim, Te Kapotai and Ngati Pare Hapu and Waikare Inlet (Wai 1464 & Wai 1546) claims, and the Te Rūnanga nui o Te Aupōuri and Witana (MACA Act) (Wai 2831) claim, for 5pm, 15 October 2024 (Wai 2575, #3.2.1194);
- (b) Kaupare Law on behalf of Ngati Rehia Hapu (Wai 1341) claim and The Tohunga Suppression Act (Te Hira) (Wai 2476) claim for 5pm 15 October 2024 (Wai 2575, #3.2.1196); and
- (c) Kaahui Legal behalf of the Maori Health Disparities (Jansen, Laking & Moke) (Wai 2499) claim for 5pm 16 October 2024 (Wai 2575, #3.2.1195).

18. On 15 October 2024, the Tribunal received two more extension requests from:

- (a) Bennion Law on behalf of the Te Roopu Waiora Trust (Wai 3073) claim and Maaupoko Lands & Resources (Greenland) (Wai 2139) claim, for 5pm, 16 October 2024 (Wai 2575, #3.2.1197); and
- (b) Phoenix Law on behalf of Ngaati Kuta Ki Te Rawhiti Wai (1307) claim, the Health Services and Outcomes (For Displaced Children) (Wai 2850) claim, Opuā Lands and Waterways (Wai 120) claim, Maaori Affairs Act and Burials and Cremations Act (Wai 179) claim, the Health Services and Outcomes (Lawrence) (Wai 2849) claim, and Waitaha (Te Korako and Harawira) (Wai 1940) claim, for 5pm, 21 October 2024 (Wai 2575, #3.2.1198).

19. In an email from the Tribunal Registrar on 15 October 2024, parties were advised that I had granted the extension requests from Tukau Law, Kaupare Law, Kāhui Legal and Bennion Law as requested, and an extension for Phoenix Law was granted until 5pm on 16 October 2024.

20. On 17 October 2024, a further extension request was sought by Woodward Law on behalf of the Maaori Health (New Zealand Maaori Council) (Wai 2644) claim for 5pm, 21 October 2024 (Wai 2575, #3.2.1207). Counsel advised that their principal lawyers had recently returned from overseas, and that Barrister Phillip Cornegè was now overseas until January 2025.

21. My decision granting Woodward Law an extension until 5pm on 17 October 2024 was communicated to parties via an e-mail from the Tribunal Registrar on 17 October 2024. This e-mail also advised that there would be no further extensions granted to file closing submissions in the priority inquiry.

Crown closing submissions

22. Crown closing submissions in relation to the disestablishment of Te Aka Whai Ora were due to be filed by 21 October 2024. Any claimant and interested party reply submissions were due by 25 October 2024 (Wai 2575 #2.6.191).

23. On 18 October 2024, Crown counsel filed a memorandum requesting an extension until 25 October 2024 (Wai 2575, #3.2.1211). Crown counsel advised that their request came in light of a number of extensions being granted the week prior, and that an extension was sought 'to ensure the Crown has adequate time to review and respond to the closing submissions filed by other parties.'

24. This extension was granted, and the decision communicated to parties via an email from the Tribunal Registrar on 21 October 2024. This e-mail also communicated that a

corresponding extension for any claimant or interested party reply submissions was granted until 5pm on 1 November 2024.

25. Accordingly, the Crown filed their closing submissions on 25 October 2024 (Wai 2575, #3.3.155).

Late reply submissions

26. On 11 November 2024, the Tribunal received claimant reply submissions from Mahony Horner Lawyers on behalf of the Maaori Disabled (Wai 2619) claim (Wai 2575, #3.3.163).
27. Counsel advised that their claimant did not originally intend to file reply submissions, but upon review of the Crown closing submissions, claimant closing submissions and a discussion aa-tinana on 8 November 2024, counsel were instructed to file a submission in reply addressing the framing of Maaori health disparities in the context of the decision to disestablish Te Aka Whai Ora.

Request to file further evidence

Sykes & Co memorandum

28. On 21 October 2024, Sykes & Co filed a memorandum of counsel on behalf of the Taumanu Land and Nga Uri o Nga Tokotoru o Manawakotokoto Lands & Resources (Wai 1194 & Wai 1212) claims, Maaori Nurses (Wai 2713) claim and Racism against Maaori (Wai 2494) claim advising that counsel had 'recently become aware that evidence relied upon in their closing submissions filed on 14 October 2024 had yet to be filed on the Wai 2575 record of inquiry' (Wai 2575, #3.2.1222).
29. In regard to this filing, counsel advised that before the allocated hearing week for the priority inquiry was vacated, counsel had engaged members of the claimant community and Ms Mapihi Raharuhi, Chair of Te Ruunanga of Ngaati Pikia, had completed and executed evidence on the 20th of August 2024.
30. Counsel further advised that Dr Heather Came and Professor Tim McCreanor also advised counsel that their current academic writing would be most relevant to the disestablishment issue. They jointly provided a brief of evidence and an affidavit already filed regarding the disestablishment of Te Aka Whai Ora.
31. Claimant counsel therefore sought leave to have the following documents relevant to the Te Aka Whai Ora priority inquiry filed on the Wai 2575 Record of Inquiry:
- (a) the brief of evidence of Ms Mapihi Raharuhi;
 - (b) the joint brief of evidence of Dr Heather Came and Professor Tim McCreanor and an accompanying appendix; and
 - (c) Appendix A to the Joint Brief of Evidence of Dr Heather Came and Professor Tim McCreanor.

Decision

32. In my memorandum-directions dated 1 October 2024, I informed parties that the Tribunal has already received a significant amount of evidence and submissions regarding the disestablishment of Te Aka Whai Ora and declined any requests seeking to file further evidence (Wai 2575, #2.6.191 at [51] – [52]).

33. Consequently, I declined the request from Sykes & Co for the evidence above at [32] above to be added to the Wai 2575 Record of Inquiry. This decision was communicated in an email from the Tribunal Registrar on 21 October 2024.

Additional documents added to the Wai 2575 record of inquiry

34. On 12 November 2024, I released directions adding a number of publicly available documents to the Wai 2575 record of inquiry (Wai 2575, #2.6.194 & #2.6.194(a)).

35. It has come to the Tribunal's attention that additional documents, relevant to the priority inquiry into the disestablishment of Te Aka Whai Ora, are not on the Wai 2575 record of inquiry.

36. On 25 November 2024, I directed the Registrar to add these two additional documents to the Wai 2575 record of inquiry:

(a) Office of the Minister of Health, "Pae Ora (Disestablishment of Maaori Health Authority) Amendment Bill: Approval for Introduction" (Wai 2575, #6.2.22(a)); and

(b) New Zealand House of Representatives, "Coalition Agreement: New Zealand National Party & ACT New Zealand" (Wai 2575, #6.2.23).

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

I HAINATIA i Te Whanganui-aa-Tara i te 29 o ngaa raa o Noema 2024.



Judge Damian Stone
Presiding Officer

WAITANGI TRIBUNAL