OFFICIAL

TE ROOPUU WHAKAMANA I TE TIRITI O WAITANGI

Wai 2575

E PAA ANA KI *CONCERNING*	the Treaty of Waitangi Act 1975
AA, *AND*	the Health Services and Outcomes Kaupapa Inquiry

HE PAANUI WHAKAHAU O TE KAIWHAKAWAA JUDGE D STONE / MEMORANDUM-DIRECTIONS OF JUDGE D STONE CONCERNING THE TE AKA WHAI ORA PRIORITY INQUIRY

6 Maaehe 2025

Purpose

1. This memorandum-directions addresses planning for stage two of the priority hearing concerning the Crown's alternative plans to address Maaori health in lieu of a Maaori health authority (the stage two priority inquiry).

2. In particular, I:

   (a) address the scope of the stage two priority inquiry;

   (b) release an indicative inquiry timetable ahead of the priority hearing currently set down for 26 to 30 May 2025; and

   (c) confirm associated hearing procedures.

Procedural background

Priority hearing on the Crown's alternative plans

3. In my memorandum directions dated 3 February 2025, I confirmed that a priority hearing on issues concerning the Crown's alternative plans to address Maaori health in lieu of a Maaori health authority would take place from 26 to 30 May 2025 via audio-visual link (AVL). I indicated that an inquiry timetable and any related hearing protocols and procedures would be confirmed in due course (Wai 2575, #2.6.200).

4. Given the indications provided by the Crown in its 12 August 2024 Cabinet Paper (Wai 2575, #M40), I directed the Crown to file by 17 February 2025:

   (a) any information on the Crown's alternative plans, or an update with regard to such plans, further to what has already been provided to the Tribunal; and.

   (b) indicative timeframes for finalising relevant decisions and the introduction of relevant legislation.

Crown memorandum dated 12 February 2025

5. On 12 February 2025, Crown counsel filed a memorandum responding to my directions at [4] above (Wai 2575, #3.2.1240).

6. Counsel advise that the Crown has no further information to update the Tribunal with at this time and that, with the appointment of a new Minister of Health, decisions have yet to be made in relation to the matters outlined at [4(a)] – [4(b)] above.

7. Crown counsel say they will update the Tribunal once more information becomes available.

Smail memorandum dated 3 March 2025

8. On 3 March 2025, Roimata Smail filed a memorandum on behalf of the Te Aka Whai Ora (Māori Health Authority) (Wai 3307) claim (Wai 2575, #3.2.1239).

9. At [2] of this memorandum, counsel advises their clients' understanding that the Crown has been progressing work on its alternative plans to Te Aka Whai Ora. Counsel advises:

   (a) A Hauora Maaori Service Consultation Document was sent to Iwi Maaori Partnership Boards (IMPBs) seeking their feedback before Christmas 2024. Counsel advises that the document describes a prior process of engagement with kaimahi and unions stretching back as far as the announcement of the government's intentions to disestablish Te Aka Whai Ora. The document says a final decision will be presented to all kaimahi in early February 2025 and staffing changes will commence in late

February/early March 2025.

(b) A number of IMPBs made a joint submission during the consultation period prior to Christmas 2024, opposing the proposal. There has been no update provided since their submission was made. Counsel submits 'there will be large amounts of work and relevant documents' that would have been produced in this period that should have been provided by the Crown to the Tribunal.

(c) The claimants understand that IMPBs were recently given six weeks to prepare Community Health Plans relevant to the strategic commissioning/consultation plans that Minister Reti promoted as his alternative to Te Aka Whai Ora.

(d) The claimants understand a new Funding Board has been established in the Ministry of Health or Te Whatu Ora, which appears to be directly relevant to this inquiry as part of the alternative to Te Aka Whai Ora.

(e) The Ministry of Health/Te Whatu Ora has sent out documents proposing a Primary Health Organisation (PHO) expansion.

10. Counsel advises that their claimants are concerned that the Crown does not intend to provide any relevant information until the plans are a fait accompli, and that the Crown may be attempting to force the abandonment of the hearing scheduled for May.

11. Therefore, counsel seek directions that the Crown:

(a) Provide all documents and information referred to at paragraph [2] of counsel's memorandum (and outlined at [9] above).

(b) Provide the documents listed at [5.1] – [5.4] of counsel's memorandum, which are:

(i) Lester Levy's implementation plan.

(ii) Briefing to the incoming Minister of Health from the Health Maaori Directorate (which the claimants understand he received last week).

(iii) Any briefings to the income Minister from the Hauora Maaori Advisory Committee.

(iv) Detail of how the Crown has spent the $749 million "to enable Health New Zealand/Te Whatu Ora to deliver hauora Maaori services" in Vote Health Budget 2024/2025 now that Te Aka Whai Ora is gone.

(c) File evidence including all collections of data and all reports prepared by Te Aka Whai Ora.

12. Counsel further advises that the claimants are able to provide evidence further to that filed in September 2024 and submit that the Tribunal can and should proceed with the hearing scheduled for May, even if much of the evidence is from the claimants.

Scope of the priority inquiry into the Crown's alternative plans

13. I have previously stated that the stage two priority inquiry will assess the Crown's alternative plans for Maaori health in lieu of a Maaori health authority.

14. For further clarity, and to assist in parties' preparations, I confirm that the scope of the stage two priority inquiry encompasses the following questions:

(a) What are the Crown's alternative plans to address Maaori health in lieu of a Maaori health authority, and what steps were taken in developing such plans?

(b) Was the Crown's process in developing alternative plans to address Maaori health in lieu of a Maaori health authority consistent with Te Tiriti o Waitangi and its principles?

(c) Are the Crown's alternative plans to address Maaori health in lieu of a Maaori health authority consistent with Te Tiriti o Waitangi and its principles?

Inquiry timetable

An indicative timetable

15. Parties will recall that on 13 August 2024, counsel for the Crown filed a memorandum providing a Cabinet Paper dated 12 August 2024, which outlined the then-Minister of Health, Dr Shane Reti's, plans for Maaori health over the next 12 months following the disestablishment of Te Aka Whai Ora (Wai 2575, #3.2.1094). That Cabinet Paper noted Dr Reti's intention to 'report back to Cabinet by December 2024 with a refreshed Maaori health strategy, following targeted engagement' (Wai 2575, #M40 at pp. 3 & 12). It further signalled that the revised strategy would be launched in early 2025 (Wai 2575, #M40 at p. 6).

16. In response to this, on 21 August 2024, I confirmed that the priority hearing, then-set for the week of 7 October 2024, was deferred until the Crown was expected to have more information on its alternative plans to address Maaori health. I signalled that the Tribunal was open to issues concerning Te Aka Whai Ora's disestablishment to be reported on separately and on the papers. In these circumstances, the deferred hearing would focus solely on the Crown's proposed alternative plans once they are known (Wai 2575, #2.6.183 at [17] – [20]). On 1 October 2024, following submissions from parties, I confirmed that the priority inquiry would proceed in stages as proposed (Wai 2575, #2.6.191 at [47]).

17. The Tribunal has signalled for some time that it wishes to review the Crown's alternative strategies to address Maaori health following the disestablishment of Te Aka Whai Ora. We have already deferred the hearing of these matters. We set the new hearing for the week of 26 May 2025 in reliance on the Crown's earlier indication that its revised strategy would have been available by now. Unfortunately, this is not the case.

18. I am not inclined to defer this hearing again. To maintain the current hearing date, an indicative timetable should now be in place. I therefore set out an indicative timetable for the priority hearing as currently scheduled. This indicative timetable is now **attached** as **Appendix A.**

19. The indicative timetable is predicated on the Crown making the necessary decisions on its alternative plans ahead of the hearing. As the indicative timetable suggests, the Tribunal considers that it needs to know details of the Crown's alternative plans by **5pm, Monday 14 April 2025 or earlier**. The May hearing date may be at risk if the Crown's alternative plans are not known to the Tribunal by then. Of course, the Tribunal gives this indication to enable the Crown to consider whether the Crown's alternative plans will be known by then and advise the Tribunal accordingly, rather than to influence in any way the Crown's own decision-making process and associated timeframes. That said, it would assist the Tribunal's planning for this inquiry if the Crown could keep the Tribunal and parties proactively informed of any timeframes for finalising relevant decisions and/or the introduction of relevant legislation intended to address these matters.

20. The indicative timetable will need to be confirmed in due course. I therefore direct Crown counsel to file an update no later than **5pm, Monday 31 March 2025** on the Crown's alternative plans and whether the Crown will be able to inform the Tribunal of those plans by 14 April 2025. The inquiry timetable will be finalised once the Tribunal has received this update.

Crown evidence

21. By memorandum dated 3 March 2025, counsel for Wai 3307 seeks various documents that are said to reflect decisions that the Crown has already made in response to the disestablishment of Te Aka Whai Ora and therefore form part of the Crown's alternative plans. Counsel argues that these documents should have already been disclosed by the Crown given the Tribunal's earlier directions for the Crown to provide the details of the alternative plans.

22. At a high level, it is difficult to ascertain whether the documents referred to by counsel constitute Crown decisions, or whether they are part of the Crown's consultation process before decisions are made. That said, I agree in principle with counsel for Wai 3307 that if policy decisions have already been made by the Crown that respond in any way to the disestablishment of Te Aka Whai Ora, the Crown should file the relevant documents with the Tribunal. It is understood that there may be a suite of policy responses to the disestablishment of Te Aka Whai Ora and that some of those policy decisions may not yet be finalised. However, that does not mean that the Crown should wait until all policy decisions are made before filing information with the Tribunal. The Crown should update the Tribunal, and provide all relevant information, as soon as practicable after each relevant decision is made.

23. With this in mind, I direct Crown counsel to provide a response to the 3 March 2025 memorandum of counsel for Wai 3307 by **5pm, Monday 12 March 2025**.

Sequencing of filing and indicative milestones

24. The focus of this inquiry is in examining the adequacy and Te Tiriti-compliance of the Crown's alternative strategies, plans and policies to address Maaori health in lieu of a Maaori health authority. In order to do so, the Tribunal considers that it must first receive details of the Crown's alternative plans in evidence, which would then be evaluated and tested through our usual hearing process. Therefore, the Tribunal proposes to seek evidence and submissions from the Crown on its alternative strategies on Maaori health first. Then, the Tribunal proposes for the claimants and interested parties to file evidence and submissions in response to the Crown.

25. While this filing order departs slightly from conventional inquiry procedure, I note that similar approaches have been taken in other inquiries focused on examining specific Crown policies, including the Oranga Tamariki (s 7AA) Urgent Inquiry (Wai 3350, #2.5.4 at [18]) and the urgent inquiry into the Treaty clause review (Wai 3300, #2.6.41(a)).

26. Therefore, subject to the Crown's ability to update the Tribunal on its alternative plans, the indicative inquiry timetable proposes that:

    (a) Crown evidence on its alternative plans to address Maaori health in lieu of a Maaori health authority should be filed by **5pm, Monday 21 April 2025.** Crown opening submissions are also due on the same date and should address the issue questions at [14] above.

    (b) Claimant evidence and opening submissions should be filed by **5pm, Monday 12 May 2025**. Any Crown evidence in reply should be filed by **5pm, Monday 19 May 2025.**

    (c) A draft hearing timetable agreed to by parties (including indications for cross-examination and Tribunal questions) should be filed by **5pm, Tuesday 20 May 2025**. Any cross-examination documents should also be filed by this date.

    (d) Closing submissions are to be presented orally at hearing and filed in writing by **5pm, Tuesday 3 June 2025.**

    (e) Any follow-up filing sought at hearing should be filed by **5pm, Wednesday 4 June 2025.** Any reply submissions from the Crown should be submitted in writing by no later

than **5pm, Friday 6 June 2025.**

RSVPs

27. Parties should confirm their intention to participate in the priority hearing by way of e-mail to the Tribunal's Registrar (WT.Registrar@justice.govt.nz) by no later than **5pm, Monday 19 May 2025**. A link to join the priority hearing will only be provided to those who RSVP.

Hearing procedures

28. To prevent any duplication of material, I strongly encourage counsel to file jointly wherever possible on any shared positions and submissions.

29. To ensure the effective use of hearing time, all opening submissions will be taken as read, with any questions arising to be raised at the hearing.

30. Counsel for the claimants and interested parties should work together to minimise any duplication of cross-examination. We are amenable to approaches that would allow this, such as the nomination of lead counsel, or for the Tribunal to begin questioning prior to counsel cross-examination.

31. Such arrangements should be reflected in the joint hearing draft timetable.

Me tuku atu te Kaireehita i teetehi kape o teenei whakahau ki eeraa ki te raarangi whakamoohio moo Wai 2575, the Health Services and Outcomes Kaupapa Inquiry.

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

WHAKAPŪMAUTIA ki Pooneke i te 6 o Maaehe 2025

Kaiwhakawaa Damian Stone
Tumuaki Pakirehua
TE ROOPUU WHAKAMANA I TE TIRITI O WAITANGI