WAITANGI TRIBUNAL

Wai 1040

CONCERNING the Treaty of Waitangi Act 1975

AND the Te Paparahi o Te Raki Inquiry

DIRECTION RELEASING RESEARCH RECOMMENDATIONS

1. In my 27 June 2011 directions (Wai 1040, #2.5.85), I indicated at paragraphs 17 and 29 that I intended to release the Tribunal's recommendations on gap-filling research on generic issues. These recommendations are designed to ensure that the Te Paparahi o Te Raki evidential casebook is sufficient and adequate for the purposes of Stage 2 hearings on generic issues.

2. As stated at paragraph 30 of my 27 June directions, 'most of the technical research and other evidence relevant to region-wide generic claim issues has been available to the parties for some time past'. Our preliminary appraisal, assisted by staff advice, confirms that the available technical research and other evidence is to an adequate professional standard and breadth of coverage to enable the Tribunal to hear and consider most of the major generic issues that are likely to be presented in the first round of regional hearings. We emphasise that this preliminary assessment does not displace either the examination of the technical research in hearing or the need for the claimants and the Crown to present their own evidence on the generic issues before the Tribunal.

3. In considering the extent of evidential gaps that may require additional research, we are mindful that a narrowing of the issues at large between claimants and Crown may reduce the need for such research. There would be little point in expending time and effort on researching issues that were not likely to go to hearing. It is open both to the Crown to make concessions and to the claimants to prioritise the claims they want heard, thereby concentrating effort on issues that matter.

4. We note the Crown's constructive indication that it might be prepared to make early generalised concessions leading to later specific concessions that would help to narrow the scope of the inquiry (Wai 1040, #3.1.435 para. 26). We appreciate that the Crown needs to know the full extent of the claims against it and that the development of claimant statements of generic and local issues, reflecting the general claimant concern to have a single interlocutory process, may take some time. Crown counsel has nonetheless indicated both that 'the Crown is committed to making concessions about whether it has breached the principles of the Treaty as soon as it practicably can' and that 'the Crown needs to have a satisfactory basis of evidence to support any concession, whether the concession is general or specific' (Wai 1040, #3.1.435 para. 24). In its response to the recommendations in this direction, it would be helpful for the Crown to give a substantive indication of what additional research, if any, it considers might be needed to provide such a satisfactory basis of evidence and of how it might best be carried out.

5. We propose therefore to limit our recommendations at this point to gaps that are likely to require additional research regardless of Crown concessions and claimant prioritisation. We consider that further research gaps may arise should significant concessions and prioritisation not eventuate, particularly in respect of nineteenth century land transactions.

6. Our principal recommendation is that a regional economic history be undertaken as an overview report covering opportunities for and obstacles to Māori engagement in economic development from 1840 to the present. The report would draw largely on information in other technical research, providing a regional synthesis. It would include the principal economic sectors of the regional economy and examine the role and capability of government in enabling Māori engagement and addressing obstacles. It would also cover Māori land use and development, and institutional vehicles such as incorporations and trusts.

7. Although local government and rating have a dedicated research report, the broader dimension of Crown-Māori political relations in the twentieth century is not sufficiently covered in the technical research. We invite the parties to give their views on how this evidential gap might be addressed; the claimants may prefer to give evidence on their own behalf rather than extend the technical research.

8. One specific gap that we have identified is the lack of sufficient maps in several reports, such as those by Vincent O'Malley and by David Armstrong and Evald Subasic (Wai 1040, A6 & A12 respectively). It is in our view not an optional extra but essential that reports that make extensive reference to places, land areas, infrastructure and spatial characteristics are well supported by appropriate maps. We would like to see this deficiency remedied in time to assist the parties and the Tribunal in the interlocutory proceedings.

9. Parties may file submissions on these recommendations, and on any other generic research gap that they consider must be addressed, by noon on Thursday 4 August 2011. We remind parties that submissions should focus on the big-picture generic issues, not on local matters.

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 Wellington, this 15th day of July 2011.

Judge C T Coxhead
Presiding Officer
WAITANGI TRIBUNAL