OFFICIAL

IN THE WAITANGI TRIBUNAL WAI 898

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF Te Rohe Pōtae District Inquiry

CROWN MEMORANDUM OUTLINING THE CROWN'S VIEWS ON THE PROPOSAL OF THE CLAIMANT COUNSEL COORDINATING COMMITTEE FOR CLOSING SUBMISSIONS

Dated 2 May 2014

RECEIVED
Waitangi Tribunal
2 May 2014
Ministry of Justice
WELLINGTON

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MAY IT PLEASE THE TRIBUNAL:

Introduction

1. This memorandum is filed in response to the Presiding Officer's direction that counsel for the Crown outline their views on the proposal for closing submissions that the Claimant Counsel Coordinating Committee (CCCC) filed on 28 March 2014.[1]

Crown's response

2. Counsel for the Crown support aspects of the CCCC's proposal. In particular, counsel support the proposal for generic closing submissions that focus on the issues contained in the Tribunal's statement of issues. Counsel acknowledge the proposal for claimant-specific closing submissions and have no objection to that, although we consider that it would be helpful for the CCCC to indicate in this planning stage how many sets of specific submissions there would likely be, how they would be organised and what matters they would cover.

3. For their part, however, counsel for the Crown have a strong preference to draft just one, integrated set of submissions that respond at a generic level to the Tribunal's statement of issues and refer as necessary to specific issues in order to illustrate particular points or because the generic submissions do not cover them.

4. In the timeframe the Tribunal has set down, with the last evidential hearing week starting on 6 July 2014 and the final hearing week in December 2014, counsel submit that that is the only approach that is realistically manageable for the Crown.

5. Further, counsel have particular concerns about the timeframes that would apply to it under the CCCC's proposal. For example, the proposal is that claimant counsel file generic closing submissions on Monday 22 September, six weeks before hearing 15, and that the Crown file four weeks later on 20 October, two weeks before the hearing.

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1 The Presiding Officer's direction is set out in Wai 898, #2.6.63, para 8.1-8.3. The CCCC's proposal is contained in Wai 898, #3.3.710.

6. Based on the Crown's experience in preparing closing submissions in previous inquiries, four weeks would not allow the Crown enough time to respond to claimant counsel's generic closing submissions.

7. Similarly, the CCCC's proposal has claimant counsel's specific closing submissions to be filed on Friday 31 October, five weeks before week 16, and Crown counsel filing closing submissions on claimant specific matters four weeks later on 28 November, one week before the hearing. Again (and putting aside for the moment that the Crown's strong preference is to file just one set of submissions, not two), this would not allow enough time for counsel to prepare a response.

8. Compounding the concerns that counsel for the Crown have outlined, there is the very real prospect, based on the experience of previous inquiries, that there will be delays in filing closing submissions.

9. Counsel also have concerns about the CCCC's proposal that in hearing week 15 generic closing submissions would be presented issue by issue, with some related issues grouped together, and that submissions in respect of each issue would be presented by claimant counsel followed by Crown counsel.

10. Counsel consider that this approach could well prove inefficient and have the unintentional result of artificially compartmentalising issues that are necessarily interconnected. It could limit the ability of claimant counsel presenting a whole claimant perspective and, likewise, counsel for the Crown presenting a whole Crown perspective.

11. Finally, there is a remaining concern with the CCCC's proposal for claimant counsel's submissions in reply to be filed by the end of February 2015. Given the limited scope of submissions in reply, it is not clear why such a lengthy time is required. Counsel submit that one month from the receipt of the Crown's closing submissions would be a reasonable time but otherwise submissions in reply should certainly be filed by mid-January 2015.

12. For these reasons, the Crown prefers a more orthodox approach to closing submissions as follows:

Milestone	Timing	Filing Date
Claimant counsel file generic closing submissions	6 weeks before hearing week 15	Monday 22 September
Claimant counsel file claim-specific closing submissions	2 weeks before hearing week 15	Monday 20 October
Crown counsel file closing submissions (generic and claim-specific)	2 weeks before hearing week 16	Monday 24 November
Claimant counsel file submissions in reply	1 month after receipt of Crown closing submissions	Wednesday 24 December

Discussions with the CCCC

13. Crown counsel communicated the concerns outlined above and the proposed alternative timetable to the CCCC by email on 9 April 2014 and on 30 April participated in a telephone conference with the CCCC to discuss matters further.

14. In light of that discussion, the CCCC proposed a revised timetable for filing closing submissions as follows:

Milestone	Timing	Filing Date
Generic Closing Submissions		
Claimant counsel file generic closing submissions	9 weeks before hearing week 15	Monday 1 September 2014
Crown counsel file generic closing submissions	2 weeks before hearing week 15	Monday 20 October 2014
Claimant Specific Closing Submissions		
Claimant counsel file claimant specific closing submissions	3 weeks before hearing week 16	Friday 14 November 2014
Crown counsel file closing submissions on claimant specific matters	1 week before hearing week 16	Friday 28 November 2014

15. In particular, this revised proposal would bring forward the filing date for claimant counsel generic submissions and would give the Crown more time

to respond to them. It was also suggested that, if the Crown need additional time to complete its generic closing submissions, it could file on a staggered basis, filing its submissions on as many as issues as possible two weeks before hearing week 15 and the balance no later than one week before hearing week 15. There was also support for the suggestion that, if claimant counsel did not meet their filing deadlines, the Crown would receive an extension equivalent to the length of the delay.

16. On reflection, counsel for the Crown do not consider that the CCCC's revised proposal overcomes the Crown's main concerns. It still requires the Crown to prepare two major sets of submissions, which, as submitted above, lies outside what is manageable in the overall inquiry timeframe. Further, the revised CCCC proposal shortens, from four weeks to two, the period in which the Crown would have to respond to claimant counsel's specific closing submissions.

17. Counsel for the Crown communicated these concerns to the CCCC by email on 1 May 2014 and advised they still preferred the Crown's timetabling proposal. There has been a suggestion that the CCCC and Crown counsel meet later in May to discuss the timetabling issues further.

2 May 2014

Geoffrey Melvin / Liam McKay
Counsel for the Crown

TO: The Registrar, Waitangi Tribunal
AND TO: Claimant Counsel