

**WAITANGI TRIBUNAL**

Wai 1040

**CONCERNING**

the Treaty of Waitangi Act 1975

**AND**

the Te Paparahi o Te Raki Inquiry

**MEMORANDUM-DIRECTIONS OF THE PRESIDING OFFICER**

**1. Introduction**

In our 17 September 2009 memorandum-directions (Wai 1040, #2.5.26) we requested submissions from counsel regarding the postponement of the initial hearings. This memorandum-directions addresses the points raised in the submissions filed. It focuses on:

- Matters relevant to preparation for the initial hearings; and
- Issues raised by claimants and claimant counsel.

**2. General comments**

It is no easy task to prepare 600 claims for hearing in a streamlined manner. This is a particularly complex inquiry but thoroughness at this stage will benefit claimants when the hearings begin.

Matters have certainly progressed since October. We have indications of a hearing date and the names of potential witnesses. While it is pleasing to see progress being made, it does appear to be in urgent need of further co-ordination.

We appreciate the efforts of counsel to improve coordination. We are concerned, however, that some claimants do not have counsel who have experience with Tribunal inquiries. It is also of concern that some counsel have not taken the opportunity to be involved in the coordinated efforts of Ms Tuwhare and others.

**3. Matters relevant to preparation for hearing**

***Further updates by joint memorandum***

As we stated in our memorandum-directions of 17 September 2009, it is clear that most claimants are using counsel to assist them. We appreciate the co-ordinated effort that counsel have been making and the joint memoranda that have been filed. We encourage all

claimants and counsel to be part of the process by which future joint memoranda are prepared. This will require all claimants and counsel to work together.

We understand that counsel should advocate for the needs and wishes of their clients and if the submissions differ from those in the joint memorandum then they should file separate memoranda. However, it is unnecessary and ineffective to file memoranda which do not make any fresh submissions to the Tribunal. Nor is it helpful for counsel to file submissions which do not directly speak to issues raised by the Tribunal, especially if leave has been granted for those submissions to be filed after the filing date. This does not benefit the Tribunal process. The process simply becomes protracted, which can only prejudice claimants because their grievances are not being heard sooner.

As a commission of inquiry we expect and need submissions to be of a high standard in order for the inquiry process to run effectively. The outcome for claimants will be far better if the Tribunal can run an effective inquiry.

### ***Indication of initial hearing date***

There seems to be a general consensus that it would be feasible to commence the initial hearings in late March 2010. A number of counsel, including those who filed the joint memorandum, have indicated that they anticipate being ready to proceed to hearing in either the week beginning 22 March 2010 or the week beginning 29 March 2010.

The Tribunal cannot yet confirm a start date for the initial hearings. We must wait to see how the briefing of witnesses progresses. We will review parties' readiness for hearing at the end of January 2010. We therefore require claimants to file further memoranda by **5.00pm 28 January 2010** updating the Tribunal on their readiness for the initial hearings.

While we are yet to set a start date for the initial hearings, we can indicate that the three weeks of initial hearings will be spaced two months apart. Therefore if we were to start in late March the second hearing week would be late May and the third in late July.

### ***Request for further hearing time***

We note that a number of counsel advised that they may request more hearing time than the three weeks that has been set for the initial hearings. The Tribunal advises that it has no intention of allocating further hearing time for the initial hearings. It reminds claimants that local hearings will be held later and there will be opportunities to present traditional history and iwi and hapū kōrero there.

### ***Indication of witnesses***

More than 80 potential claimant witnesses have been identified in the memoranda filed to date. Plainly, this is too many for the initial hearings. We repeat that effective evidence is not about quantity: it is about quality. All evidence must focus on the statement of issues (Wai 1040, #2.5.22).

### ***Schedule***

We commented in our 17 September 2009 memorandum—directions that one of the main tasks for claimants is finalising the schedule of claimant witnesses. The Tribunal's draft hearing schedule, with time allocated to claimant witnesses, remains to be completed.

The Tribunal will leave it to parties to decide how they wish to co-ordinate witnesses and fill in witness names in the gaps provided in the Schedule. The point is that the filing of a

detailed witness schedule will give the Tribunal an indication of claimant readiness for hearing. It will be a vital element in the progress report to be filed by claimants by 28 January 2010.

The **attached** updated hearing schedule notes when Tribunal and Crown technical witnesses will give evidence.

### ***Presiding Officer***

In response to Ms Mangu's comments about the Presiding Officer (see Wai 1040, #2.5.11; Wai 1040, #2.5.15; and Wai 1040, #2.5.20), I reiterate that the Chairperson of the Tribunal appoints the members of Tribunal panels. The Chairperson of the Tribunal does not intend to meet with any party involved in this inquiry to discuss the membership of Te Paparahi o Te Raki tribunal. That would be completely inappropriate.

## **4. Issues raised by claimants and claimant counsel**

We note below matters that were raised in the memoranda filed with the Tribunal.

### ***Site visits***

There has been no progress made in terms of the proposed site visits. We look forward to receiving more detail about this.

### ***Further research***

We note some claimants have requested that further research be undertaken. The Tribunal will not be commissioning any further research for the initial hearings. If claimants wish to undertake further research then that is for them to decide and arrange. We note that any further research should not delay the start of the initial hearings.

### ***Report following initial hearings***

There have been further questions about whether the Tribunal will release a report following the initial hearings. We simply repeat the comments in our memorandum-directions of 17 September 2009 that:

- 1. ....a number of claimants and counsel asked whether the Tribunal would be producing a report following the initial hearings. The short answer is that we do not know. The Tribunal has not made a commitment one way or the other. Whether the Tribunal can report depends in large part on the submissions and evidence that are put before it. Based on our understanding of the issues, it is difficult to predict the outcome.*
- 2. The Tribunal notes, however, that its jurisdiction to make recommendations to the Crown is limited to recommending how the Crown might remedy the prejudice to claimants that has been found by the Tribunal to have been caused by Crown acts, omissions, policies (etc) inconsistent with the principles of the Treaty (s.6(3) Treaty of Waitangi Act 1975). The issues in the initial Te Paparahi o Te Raki hearings concern the meaning of He Whakaputanga and Te Tiriti. At the conclusion of the initial hearings, therefore, the Tribunal will not be in a position to make findings that would support recommendations to the Crown. This could influence the decision as to whether Tribunal resources should be dedicated to writing a report at that stage of the Te Paparahi o Te Raki inquiry.*

### **Briefs of evidence**

We support the approach whereby claimants' briefs of witnesses' evidence are exchanged by the end of January 2010.

### **Hauraki Wai 100**

We note counsel for Wai 100, the Hauraki claim, requests leave to make submissions in this inquiry and that these claimants rely on the evidence already produced before the Tribunal in the Hauraki inquiry. We grant the leave sought.

### **Notice of Cluster meetings**

David Stone filed a memorandum on 18 November 2009 raising concerns that not all claimants are being informed of the cluster hui. He asked that the Tribunal distribute a list of up-coming cluster hui and direct cluster co-ordinators to notify the Northland distribution list of any hui planned.

It is not appropriate for the Tribunal to direct claimant collectives on how they communicate with their members. It is the prerogative of claimants to make their own decisions about their own responsibilities.

### **5. Conclusion**

We would encourage claimants and counsel to review the memoranda-directions that this tribunal has issued recently. To assist claimants we have put these on the Tribunal website at [www.waitangi-tribunal.govt.nz/inquiries/genericinquiries/northland](http://www.waitangi-tribunal.govt.nz/inquiries/genericinquiries/northland).

We look forward to receiving a joint memorandum by **5.00pm 28 January 2010** to confirm readiness for the initial hearings.

The Registrar is to send this direction to all those on the notification list for Wai 1040, the combined record of inquiry for the Te Paparahi o Te Raki claims.

**DATED** at Wellington this 10<sup>th</sup> day of December 2009



Judge C T Coxhead  
Presiding Officer

**WAITANGI TRIBUNAL**

## Appendix 1

### Draft Hearing Schedule

WEEK 1:

VENUE:	Monday	Tuesday	Wednesday	Thursday	Friday
9-10.30	Opening powhiri (Time and Venue to be arranged by Claimants)	Session 3 <b>Oral-traditional Evidence</b>	Session 7 <b>Oral-traditional</b>	Session 11 <b>Oral-traditional</b>	Session 15 <b>Oral-traditional</b>
11-12.30		Session 4 <b>Oral-traditional Evidence</b>	Session 8 <b>Oral-traditional</b>	Session 12 <b>Oral-traditional</b>	Session 16 <b>Oral-traditional</b>
1.30-3.00	Session 1 <b>Claimant opening submissions</b>	Session 5 <b>Oral-traditional</b>	Session 9 <b>Oral-traditional</b>	Session 13 <b>Oral-traditional</b>	Session 17 <b>Oral-traditional</b>
3.30-5.00	Session 2 <b>Claimant opening submissions</b>	Session 6 <b>Oral-traditional</b>	Session 10 <b>Oral-traditional</b>	Session 14 <b>Oral-traditional</b>	Session 18 <b>Oral-traditional</b>

\*Each session allows for a witness or witnesses to give evidence as well as time for questions.

WEEK 2:

VENUE:	Monday	Tuesday	Wednesday	Thursday	Friday
9-10.30	Session 1 <b>Oral-traditional</b>	Session 5 <b>Oral-traditional</b>	Session 9 <b>Site-visits</b>	Session 13 <b>Claimant Technical Evidence (e.g. historians)</b>	Session 17 <b>Claimant Technical</b>
11-12.30	Session 2 <b>Oral-traditional</b>	Session 6 <b>Oral-traditional</b>	Session 10 <b>Site-visits</b>	Session 14 <b>Claimant Technical Evidence</b>	Session 18 <b>Claimant Technical</b>
1.30-3.00	Session 3 <b>Oral-traditional</b>	Session 7 <b>Oral-traditional</b>	Session 11 <b>Site-visits</b>	Session 15 <b>Claimant Technical Evidence</b>	Session 19 <b>Claimant Technical</b>
3.30-5.00	Session 4 <b>Oral-traditional</b>	Session 8 <b>Oral-traditional</b>	Session 12 <b>Site-visits</b>	Session 16 <b>Claimant Technical Evidence</b>	Session 20 <b>Claimant Technical</b>

\*Each session allows for a witness or witnesses to give evidence as well as time for questions.

WEEK 3: 2010

VENUE:	Monday	Tuesday	Wednesday	Thursday	Friday
9 -10.30	Session 1 <i>Tribunal Technical</i>	Session 5 <i>Tribunal Technical</i>	Session 9 <i>Crown opening submissions and Evidence (including questions)</i>	Session 13 <i>Crown Evidence</i>	Session 17 <i>Crown Evidence</i>
11-12.30	Session 2 <i>Tribunal Technical</i>	Session 6 <i>Tribunal Technical</i>	Session 10 <i>Crown Evidence</i>	Session 14 <i>Crown Evidence</i>	Session 18 <i>Crown Evidence</i>
1.30-3.00	Session 3 <i>Tribunal Technical</i>	Session 7 <i>Tribunal Technical</i>	Session 11 <i>Crown Evidence</i>	Session 15 <i>Crown Evidence</i>	Session 19 <i>Crown Evidence</i>
3.30-5.00	Session 4 <i>Tribunal Technical</i>	Session 8 <i>Tribunal Technical</i>	Session 12 <i>Crown Evidence</i>	Session 16 <i>Crown Evidence</i>	Session 20 <i>Crown Evidence</i>

\*Each session allows for a witness or witnesses to give evidence as well as time for questions.