

# OFFICIAL

Wai 1040, #2.5.45

## 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

### Introduction

1. In our memorandum-directions of 12 March 2010 (Wai 1040, #2.5.34) the decision was made to extend the number of initial hearing weeks from three to four. We also stated that following week two we were prepared to review the timetable to determine whether more hearing time was required to hear further claimant evidence.
2. To assist us with our review, we sought the views of claimants and counsel and subsequently we received a joint memorandum of claimant counsel ("joint memorandum") from Ms Tuwhare on 2 July 2010 (Wai 1040, #3.1.225). We have also taken into consideration other matters. These included the nature and quality of the evidence which has been presented to date, the number of witnesses who have been afforded hearing time and the financial resources available to the Tribunal and the claimants.

### Request for a Chambers conference

3. In the joint memorandum, counsel requested a chambers conference to discuss matters relating to the review and their request for further hearing time. We decline this request. There is only a limited amount of time before week three of the initial hearings. We think it best to deal with this review in a quick and efficient manner. We have given counsel and claimants an opportunity to provide submissions. We think a timely decision is needed to give people as much time as possible for which to plan for week three and beyond.

### Review of the hearing timetable

4. We have consistently emphasised the importance of bringing quality evidence before the Tribunal. The Tribunal was impressed by the calibre and quality of the evidence that was presented in hearing week one. As we have stated on a number of occasions the presentation of evidence is about quality not quantity. However, it appeared that the discipline and organisation that was conveyed during week one has not continued in hearing week two. Unfortunately we see a

similar pattern emerging when we look at the draft timetable for hearing week three, which was filed with the joint memorandum of claimant counsel.

5. In the second hearing week, while some of the evidence focussed on the issues, much of the evidence that was brought before the Tribunal was not focussed on the seven questions that were set out in our statement of issues memorandum-directions of 29 May 2009 (Wai 1040, #2.5.23). Instead, we heard evidence based largely on personal and hapū-specific experiences. We consider this evidence to be more relevant to the stage two Inquiry.
6. The large number of witnesses who were afforded a place in the timetable to present their evidence is of concern. Because of the numbers, most witnesses did not have ample opportunity to present. This was particularly detrimental to the witnesses whose evidence was directly relevant to our issues.
7. Counsel must take steps to ensure there is sufficient discipline exercised in the process of selecting witnesses for the timetable. There also needs to be discipline to ensure that the evidence is to a high standard and focussed on the issues.
8. Again we remind parties that the initial hearings are only the beginning of the process. The Tribunal is planning to hold stage two hearings.

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

9. In the joint memorandum claimant counsel request a further eight days of hearing time for presentation of claimant evidence. This is on the basis of:
  - Current hearing time estimates for both technical and tangata whenua evidence yet to be heard;
  - The need to allow time for non-clustered and unrepresented claimants;
  - The number of claimant groups within the Inquiry district; the significance of the issues; and
  - Further time needed for the presenting of closing submissions.
10. Claimant counsel also state that there are a number of claimant technical witnesses who are unable to present in hearing week three and have expressed an interest in presenting in hearing week four.
11. All hearings have limited time. That is a simple reality. Based on careful consideration of all the issues, the Tribunal are not persuaded to grant a further eight days for the initial hearings as requested. However, we deem it necessary to make accommodation for closing submissions. We extend the initial hearing time by a further three days. This allows two further days for claimant evidence at the beginning of week four.
12. We propose that hearing week five for closing submissions be held in the in Waitangi, beginning on Monday, 6 December 2010 and concluding on Wednesday, 8 December 2010. This is seven weeks after week four of the initial

hearings. Our preference is to hold the closings in the Waitaha Room at the Copthorne Hotel.

### **Schedule for the remaining hearing weeks**

13. Having extended the hearing time to four weeks and three days (23 days) we propose that the weeks will proceed as follows:

#### ***Week three (5 days) 9-13 August 2010***

4 days: Claimant evidence. This may include Claimant technical witnesses.

1 day: Tribunal witnesses.

#### ***Week four (5 days) 11-15 October 2010***

2 days: Claimant technical witnesses (e.g. CFRT commissioned).

3 days: Crown evidence.

#### ***Week five (3 days) 6-8 December 2010***

2 days: Claimant closings.

1 day: Crown closing.

### **Claimant evidence to be presented in hearing week three**

14. In the draft timetable for the third hearing week filed with the joint memorandum there are a number of witnesses on the timetable whose evidence was taken as read in hearing week two. We are unsure if these witnesses are appearing to present further evidence or the evidence is already taken as read. We would appreciate an explanation in writing from claimant counsel on the matter, no later than **12pm, Friday 23 August 2010**.

### **Order of presentation of evidence**

15. In a memorandum filed on 4 June 2010 (Wai 1040, #3.1.210), the Crown has raised an issue about a request in a memorandum filed on 27 May 2010 by Ms Mason and Ms Agius (Wai1040, #3.1.193) that further Claimant evidence would follow the presentation of Crown evidence.

16. As we recall in our memorandum-directions of 27 September 2009 (Wai 1040, #2.5.26), we encouraged claimants to take the lead. The Crown took initiative by filing their evidence early. We believe that the claimants been provided with plenty of time in which to respond to the evidence of the Crown and should have done so in the time they have been allocated to present their own evidence. The above timetable proposes that all claimant evidence will be presented prior to the Crown evidence.

### **Dr Grant Phillipson**

17. In our memorandum-directions of 19 May 2010 (Wai 1040, #2.5.38) we advised that Dr Phillipson would be unavailable to present claimant evidence at these initial hearings. We sought the views of claimants and the Crown as to whether there would be a requirement for questions to be filed in writing to Dr Phillipson.

18. The Crown in its memorandum dated 4 June 2010 (Wai 1040, #3.1.210) advised that it would abide by the Tribunal's decision. It also provided a possible timetable for the filing of questions for Dr Phillipson. Claimant counsel in the joint memorandum agreed with the proposed timetable as suggested by the Crown.
19. Dr Phillipson has been consulted on this matter and has agreed to file written replies to questions of claimants and counsel. However, we emphasise to parties that the questions asked of Dr Phillipson must pertain directly to the issues being addressed in the initial hearings.
20. We direct the Crown and claimant counsel to file these questions no later than **12pm, Friday 19 August 2010**. Dr Phillipson is to file replies in writing to the Tribunal by no later than **12pm, Friday 15 October 2010**.

**Week three venue**

21. We have received notice that the venue for week three of the initial hearings may be held at Waipuna in Panguru. The Tribunal confirms that this is the venue for week three.

**DATED** at Wellington this 19<sup>th</sup> day of July 2010



Judge C T Coxhead  
Presiding Officer

**WAITANGI TRIBUNAL**