GUIDE TO
THE PRACTICE AND PROCEDURE OF
THE WAITANGI TRIBUNAL

A Comprehensive Practice Note Issued under
Clause 5(9) and (10) of Schedule 2 to the
Treaty of Waitangi Act 1975

August 2023

This *Guide* replaces the following practice notes:

- 'Mediation', 18 September 1990
- 'Translations', 29 June 1991
- 'Claim Terminology', 1 July 1991
- 'Claim Priorities', 18 July 1991
- 'Negotiations and Settlements', 22 August 1991
- 'State Enterprise and Education Lands', 5 September 1991
- 'Procedure', 1 November 1990
- 'Relationships with Maori', 25 February 1992
- 'Legal Assistance', 25 February 1992
- 'Claims for the Return of State Enterprise, Education, Crown Forest and Railway Lands', 25 February 1992
- 'Casebook Method', August 1996 (working draft)
- All previous versions of the Guide to Practice and Procedure with the preceding version being last updated in August 2018.

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Part 1: Te Tīmata

Overview

1.1 The Waitangi Tribunal inquires into claims by Māori relating to Te Tiriti o Waitangi,[1] and its principles. Its jurisdiction is unique within New Zealand. It functions not as an adversarial court but as a commission of inquiry that makes recommendations relating to the practical application of Te Tiriti. To that end, the Tribunal is required to have regard to Te Tiriti's Māori and English texts, and for the purposes of the Treaty of Waitangi Act 1975 it has exclusive authority to determine the meaning and effect of Te Tiriti as embodied in the two texts and to decide issues raised by the differences between them.[2]

1.2 The Tribunal has developed a particular way of working to suit the nature of its work and the following is a guide to its practices, procedures, and claims management. If circumstances require it, however, the Tribunal, through the Chairperson, Deputy Chairperson, a Presiding Officer, or a member acting by the direction or with the authority of the Chairperson, may at any time vary the specific procedures or practices outlined here.

1.3 This guide replaces the practice notes listed in the schedule and is to be read in conjunction with the legislation that governs the Tribunal, including the Commissions of Inquiry Act 1908,[3] the Treaty of Waitangi Act 1975, and the various enactments giving effect to Treaty claim settlements.

Mission and vision

1.4 The Waitangi Tribunal's mission is to uphold the principles of Te Tiriti.[4] It does so by serving as the primary forum for hearing and reporting on Māori claims against the Crown alleging breaches of Te Tiriti, offering a 'truth and reconciliation' process and impartial findings on claims.[5] It

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1. For the purposes of the *Guide to Practice and Procedure*, 'Te Tiriti o Waitangi' is used to refer to both texts unless otherwise stated.
2. The two texts are set out in the second schedule to the Treaty of Waitangi Act 1975.
3. As per section 38(2) of, and schedule 1 to, the Inquiries Act 2013, the Commissions of Inquiry Act 1908 is the current legislation that applies to the Waitangi Tribunal.
4. The mission and vision are as outlined in the Waitangi Tribunal, *Strategic Direction, 2014–2025* (Wellington: Waitangi Tribunal, 2014).
5. Noting the discussion in *Wairarapa Moana ki Pouākani Inc v Mercury NZ Ltd* [2022] NZSC 142 at [84], [137], the Tribunal is uniquely placed to undertake this work through its members, who include mātanga and who have a deep understanding of relevant principles; both Western legal principles and those of tikanga Māori.

contributes to the durable and fair resolution of Te Tiriti claims and to restoring and upholding the Te Tiriti partnership between Māori and the Crown. In so doing, the Tribunal aims to advance the well-being of the Māori–Crown relationship and to sustain the political, social, and cultural fabric of Aotearoa/New Zealand.

1.5 The Waitangi Tribunal's vision is that Māori and the Crown, reconciled in the spirit of the principles of the Te Tiriti o Waitangi, will be empowered to join in creating a better future for all New Zealanders. This is expressed in the Tribunal's whakataukī composed by Tā Hirini Moko Mead:

> **Transitioning from our past to a new future**
> *Tākiri te haeata, ka ao, ka awatea, horahia mai ko te ao mārama*
> Dawn breaks, comes the daylight and the world is aglow with brilliant light

Biculturalism

1.6 The Waitangi Tribunal functions as a bicultural body. It comprises both Māori and non-Māori members, who are appointed with regard to 'the partnership between the 2 parties to Te Tiriti' as well as to their personal attributes and their 'knowledge of and experience in the different aspects of the matters likely to come before the Tribunal'.[6] At any sitting of the Tribunal, at least one Māori member must be present.[7] Tikanga Māori will generally inform the Tribunal's process in inquiries. Evidence and submissions (both written and oral) may be given in te reo Māori and English (see *paragraphs 6.23–6.26*).

6. Treaty of Waitangi Act 1975, s 4(2A).
7. At sch 2 cl 5(6).

Part 2: Making a Claim

What is a claim?

2.1 Section 6 of the Treaty of Waitangi Act 1975 sets out what a claim is. Subsection (1) states:

> (1) Where any Maori claims that he or she, or any group of Maoris of which he or she is a member, is or is likely to be prejudicially affected—
>
> (a) by any ordinance of the General Legislative Council of New Zealand, or any ordinance of the Provincial Legislative Council of New Munster, or any provincial ordinance, or any Act (whether or not still in force), passed at any time on or after 6 February 1840; or
>
> (b) by any regulations, order, proclamation, notice, or other statutory instrument made, issued, or given at any time on or after 6 February 1840 under any ordinance or Act referred to in paragraph (a); or
>
> (c) by any policy or practice (whether or not still in force) adopted by or on behalf of the Crown, or by any policy or practice proposed to be adopted by or on behalf of the Crown; or
>
> (d) by any act done or omitted at any time on or after 6 February 1840, or proposed to be done or omitted, by or on behalf of the Crown,—
>
> and that the ordinance or Act, or the regulations, order, proclamation, notice, or other statutory instrument, or the policy or practice, or the act or omission, was or is inconsistent with the principles of the Treaty, he or she may submit that claim to the Tribunal under this section.

2.2 This subsection is qualified by the remainder of section 6 and by other statutory provisions, which are to be read in conjunction with it. Note that various enactments giving effect to Treaty claim settlements limit the Tribunal's jurisdiction to inquire into certain matters.[8]

Definition of 'historical claim' and 'contemporary claim'

2.3 The Tribunal inquires into two types of claims: historical claims and contemporary claims.

2.4 A 'historical Treaty claim' is defined in section 2 of the Treaty of Waitangi Act 1975 as:

8. For example, the Ngāi Tahu Claims Settlement Act 1998.

> a claim made under section 6(1) that arises from or relates to an enactment referred to in section 6(1)(a) or (b) enacted, or to a policy or practice adopted or an act done or omitted by or on behalf of the Crown, before 21 September 1992.

2.5 A 'contemporary Treaty claim' is a claim that arises from or relates to an enactment referred to in section 6(1)(a) or (b) enacted, or to a policy or practice adopted,[9] or an act done or omitted by or on behalf of the Crown, after 21 September 1992.

Limitations on claims submitted to the Tribunal

2.6 Any Māori or group of Māori seeking to submit a claim to the Tribunal should take note of the statutory limitations:

- **(a)** After 1 September 2008, no Māori may submit a claim to the Tribunal that is a historical claim or amend a claim already submitted that is not or does not include a historical Treaty claim, by including a historical Treaty claim.[10]
- **(b)** The Tribunal cannot recommend the return to Māori ownership of any private land or the acquisition by the Crown of any private land.[11]
- **(c)** The Tribunal cannot inquire into commercial fishing or commercial fisheries and any related enactments. This also includes the deed of settlement between the Crown and Māori dated 23 September 1992.[12]
- **(d)** The Tribunal cannot inquire into any Bill that has been introduced into the House of Representatives unless the Bill has been referred to the Tribunal pursuant to section 8 of the Treaty of Waitangi Act 1975.[13]
- **(e)** The Tribunal cannot further inquire into or make findings with respect to any enactments listed in schedule 3 to the Treaty of Waitangi Act 1975.[14]
- **(f)** The Tribunal does not have jurisdiction, in relation to licensed land (within the meaning of the Crown Forest Assets Act 1989) in

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9. A contemporary claim may include allegations regarding the continuation of a policy or practice that was introduced before 21 September 1992.
10. Treaty of Waitangi Act 1987, s 6AA(1).
11. At s 6(4A).
12. At s 6(7).
13. At s 6(6).
14. At s 6(8)(a).

the takiwā of Ngāi Tahu Whānui, to make a recommendation for compensation or for the return of the land to Māori ownership.[15]

2.7 All claims registered by the Waitangi Tribunal are subject to those statutory limitations within the Treaty of Waitangi Act 1975.

Who may bring a claim?

2.8 The Treaty of Waitangi Act 1975 entitles any Māori or group of Māori, to submit a claim to the Tribunal.[16] There is no rule requiring tribal consensus; indeed, the Tribunal may be obliged to hear a claim of any individual, or of a whānau or hapū, despite opposition from other individuals, whānau, or hapū.

2.9 While the statutory right to submit a claim may not be questioned so long as the claimants are Māori, the right of those claimants to represent other Māori may be challenged. The Tribunal may note such challenges, but, for its purposes, it generally does not need to determine representation issues. It is sufficient that all persons have adequate notice and a full opportunity to be heard. To that end, the Tribunal gives notice of a claim to others who it is aware could be interested or affected, including other Māori and groups and organisations that might be affected.

2.10 Nevertheless, it is within the Tribunal's general jurisdiction to recommend to the Crown the persons with whom settlement negotiations should be conducted, in light of the Tribunal's experience in hearing the claim and knowledge of the interested groups and their status. This is distinct from the duty of the Tribunal, when making binding recommendations for the return of licensed Crown Forest lands or memorialised lands under sections 8A to 8HJ of the Treaty of Waitangi Act 1975, to identify the Māori or group of Māori that is to receive those assets.

Submitting a claim

Procedure

2.11 Claimants may submit a contemporary claim at any stage. After 1 September 2008, no new historical claims can be submitted to the Tribunal (see *paragraph 2.6*).[17]

2.12 Claims are to be sent to the Registrar of the Tribunal generally via email to WT.Registrar@justice.govt.nz.[18] The Tribunal prefers to receive claims

15. At s 6(8)(b).
16. Treaty of Waitangi Act 1975, s 6(1).
17. At s 6AA(1). Also, for the avoidance of doubt, this sentence refers to the submitting of completely new claims and not filing amendments to existing claims.
18. The Tribunal's filing requirements outlined at *paragraph 5.1* will apply accordingly, to the extent they are relevant.

by email. However, claimants may also submit a claim by post at the following address:

Waitangi Tribunal
DX SX 11237
Wellington
New Zealand

2.13 Claims must be signed by the claimants or their legal counsel.

2.14 There is no fee for submitting a claim and no prescribed form of application, but claims must satisfy the criteria set out in section 6(1) of the Treaty of Waitangi Act 1975 (as qualified by other statutory provisions). The Tribunal's website contains a sample claim form,[19] and the Registrar can provide claimants or their counsel with further information and guidance about submitting a claim.

2.15 It is not necessary for research to have first been completed prior to submitting a claim. However, claimants may be asked to provide further information if the statement of claim contains insufficient information to enable registration.

2.16 When a claim is registered, it is assigned a reference known as a 'Wai number'. The 'Wai number' is used only for identifying the claim. The fact that a 'Wai number' has been assigned does not imply anything about the merits of the claim or the representative capacity of the claimants to bring it.

Definition of 'submit'

2.17 The Tribunal considers a claim to be 'submitted' once the Tribunal receives the claim. All claims are received through email or post during the Tribunal's operating hours and dated accordingly. A claim is not submitted until the Tribunal receives it.

Amendments to a claim

2.18 Unless the Tribunal directs otherwise, claimants may amend a claim at any time, up until it has been heard or the deadline for filing fully particularised statements of claim has passed.[20] Where claimants seek to amend a claim after it has been heard or after the deadline for filing particularised statements of claim has passed, the leave of the Tribunal will be required.

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19. https://waitangitribunal.govt.nz/claims-process/make-a-claim.
20. Apart from those listed in these paragraphs, how a statement of claim can be amended will be subject to 'consolidation, aggregation, and eligibility' – see *paragraphs 3.20–3.25*.

2.19 After 1 September 2008, no Māori may submit a claim to the Tribunal that is, or includes, a historical Treaty claim; or amend a claim already submitted to the Tribunal that is not, or does not include, a historical Treaty claim by including a historical Treaty claim.[21]

2.20 A wholly contemporary statement of claim may be amended to be more specific or include further contemporary treaty claims for the relevant inquiry the claim is participating in, at any time (whether the claim was submitted before, on or after 1 September 2008).

2.21 Historical claims submitted on or before 1 September 2008 may be amended in any way under s 6AA of the Treaty of Waitangi Act 1975.[22]

2.22 Claimant counsel submitting amended statements of claim should file memoranda setting out the practical effect of the amended statement of claim, whether the amendment adds new claims or totally replaces previous versions or should be read in conjunction with other amended statements of claim or a mixture of purposes.

2.23 Where the Tribunal finds it unclear whether a claim submitted before 1 September 2008 is historical or contemporary, the Tribunal will consider the claim to be both historical and contemporary. Such a claim may be amended to include further historical particulars.

2.24 Unless authority to prosecute the claim has been duly transferred by the original claimant or claimants, the Tribunal will generally register an amendment to a claim only if it has been signed by the same individual or individuals who submitted the original claim or their counsel. Where a claimant(s) wishes to withdraw from prosecuting a claim, the claimant(s) may at any stage in the inquiry transfer authority to prosecute the claim to another person(s), provided that person(s) meets the statutory requirements (see *paragraphs 2.8–2.10*).

2.25 Where a claimant dies and it is not clear who has authority to prosecute the claim, the Tribunal will work with the claimant group/s and/or counsel to identify new named claimants, on a case-by-case basis, and may accept a broad range of evidence as appropriate to determine the identity of the new named claimants.

Claims in relation to private land

2.26 Section 2 of the Treaty of Waitangi Act 1975 defines 'private land' for the purposes of that Act. Māori may submit claims that relate to private land and the Tribunal may inquire into such claims.

2.27 However, the Tribunal may not recommend the return to Māori ownership of any private land; or the acquisition by the Crown of any private

21. Treaty of Waitangi Act 1975, s 6AA(1).
22. At s 6AA(2).

land. This limitation is subject to sections 8A to 8H and 8HJ of the Treaty of Waitangi Act (which relate to the Tribunal's power to make binding recommendations for the return of memorialised lands – see *paragraphs 3.57–3.59*).

Applications that land or interest in land be no longer subject to resumption – section 8D of the Treaty of Waitangi Act 1975

2.28 The owner of land or an interest in land that is subject to resumption on the recommendation of the Tribunal may apply under section 8D of the Treaty of Waitangi Act 1975 for a recommendation by the Tribunal that the whole or part of the land or interest in land be no longer subject to resumption. The practice note at *Appendix G* outlines this process.

Relief or compensation

2.29 In the initial stages of an inquiry, the Tribunal generally does not require claimants to state fully the relief or compensation that is sought should the claim be held to be well founded. However, the Tribunal does expect claimants to state whether or not the relief sought includes the recovery of any land, or interest in land, in relation to which the Tribunal may make a binding recommendation.[23]

2.30 Any such claim to land may be expressed generally or particularly. For example:

- **(a)** 'a recommendation is sought pursuant to sections 8A to 8HJ of the Treaty of Waitangi Act 1975 for the recovery of all relevant State enterprise, education, Crown forest, and railway land in . . . [*Describe area*]'; or
- **(b)** 'a recommendation is sought pursuant to sections 8A to 8HJ of the Treaty of Waitangi Act 1975 for the recovery of . . . [*Describe the particular lands*]'.

2.31 Apart from its power to make binding recommendations in relation to these categories of land, the Tribunal's recommendations do not bind the Crown.

23. See the Treaty of Waitangi Act 1975, ss 8A–8H.

Part 3: General Procedure

Procedure by way of inquiry

3.1 The Waitangi Tribunal is a specialist body whose members are appointed for their expertise and knowledge of the matters likely to be raised in claims submitted to it. It functions as a commission of inquiry and its proceedings are by way of inquiry and report. Its main function is to inquire into claims submitted to it by Māori under section 6 of the Treaty of Waitangi Act 1975 and to determine whether they are well-founded.

3.2 Where the Tribunal finds a claim to be well-founded, it may recommend to the Crown that action be taken to compensate for or to remove the prejudice or to prevent others from being similarly affected in the future. The Tribunal considers that any claim, once admitted to the register, is a claim under inquiry.

3.3 The Tribunal has broad statutory authority to regulate its own procedures and it is able to conduct its own research. In reporting on claims, it seeks to produce a comprehensive and authoritative report and provide recommendations to inform the Crown and to guide it in remedying any prejudice the Tribunal has found – whether by compensation, legislative or policy reform or any other remedial measures. To achieve this, the Tribunal's reports aim to satisfy the claimants, the relevant Ministers of the Crown, the public, and indeed future generations that all matters that should have been examined have been addressed.

3.4 The Waitangi Tribunal follows the rules of natural justice to ensure that all parties and all other persons entitled to appear before it, receive a fair hearing. However, the procedures used in the general courts do not necessarily apply to the unique jurisdiction of the Tribunal.

Categories of inquiries

3.5 The Tribunal conducts inquiries to consider claims – see *paragraphs 3.8–3.14*. It categorises inquiries in several different ways. The main categories the Tribunal typically employs are district inquiries, kaupapa inquiries, urgent inquiries, and remedy inquiries.

3.6 The Tribunal, drawing on staff advice, projects and then annually reviews how it will allocate research and other resources to claims and inquiries based on the Tribunal's *Strategic Direction 2020*. The Tribunal may amend its priorities as circumstances require, or after hearing from claimants seeking reprioritisation.

3.7 How a particular inquiry is structured ultimately is decided by the Tribunal panel, though with consideration of the views of claimant and Crown parties.

District inquiries

3.8 In district inquiries, the Tribunal groups historical and contemporary claims to be heard concurrently within geographical areas called inquiry districts. Contemporary claims that arise in district-based claims may in some cases be heard in kaupapa or urgent inquiries.

3.9 See *Appendix C* regarding the Tribunal's process for district inquiries.

Kaupapa inquiries

3.10 In kaupapa inquiries, the Tribunal groups for concurrent inquiry claims that concern or relate to a particular theme or 'kaupapa' that is an issue of national significance affecting Māori as a whole, or a section of Māori in similar ways, and which have not previously been fully heard, reported on, or settled.

3.11 Examples of kaupapa inquiries are the Military Veterans, Health Services and Outcomes, and the Mana Wāhine kaupapa inquiries. The Chairperson's memorandum concerning the kaupapa inquiry programme is appended at *Appendix B* and outlines the Tribunal's kaupapa inquiry programme and the order in which they are scheduled.

Urgent inquiries

3.12 An urgent inquiry is where, the Tribunal decides to urgently inquire into a claim, a group of claims, or part of a claim. Such inquiries are initiated by a decision to grant an application to the Tribunal for an urgent hearing. The application procedure is set out at *paragraphs 3.35–3.38*. The Tribunal will grant an application for an urgent inquiry only in exceptional cases.

Remedy inquiries

3.13 A remedies inquiry occurs when the Tribunal has found a claim or claims to be well-founded. If the Tribunal finds that any claim submitted to it under section 6 of the Treaty of Waitangi Act 1975 is well-founded it may, if it thinks fit having regard to all the circumstances of the case, recommend to the Crown that action be taken to compensate for or remove the prejudice or to prevent other persons from being similarly affected in the future.

3.14 In such a case, the claimants may ask the Tribunal to make general recommendations or, if appropriate, binding recommendations in respect of certain categories of land. This is explained in more detail at *paragraphs*

3.57–3.59. See also *paragraphs 3.31–3.34* for an application for an urgent remedies inquiry.

Prioritisation

Prioritisation of claims for inquiry

3.15 Priority can occur in different situations. In previous instances where the Tribunal has employed the term within a district or kaupapa inquiry, particular issues or claims have been prioritised for hearing and reporting. How and when this occurs is at the discretion of the relevant Tribunal panel. This is different from an application for prioritisation where a claimant whose claim is not currently included in an inquiry seeks to be prioritised by the Tribunal to be heard.

3.16 In determining whether to grant priority to claims that raise a particular issue, the Tribunal may have regard to:

- the readiness of claimants to proceed;
- the time that a claim has been outstanding on the register;
- the availability of hearing time allowed by gaps in the hearing of active inquiries; and
- any other relevant factors.

3.17 Claimants seeking an adjustment of the priority given to their claim shall apply to the Tribunal with reasons for the adjustment sought. An application is to be sent to the Registrar. The Tribunal will grant such applications in exceptional cases only.

Reprioritisation of kaupapa inquiry programme

3.18 Claimants who seek an adjustment of the Tribunal's priorities shall apply to the Tribunal giving reasons for the adjustment sought. Any applications to reprioritise a kaupapa inquiry should address the following criteria:[24]

- the removal of the Tribunal's ability to inquiry;
- the immediacy of the *take* or potential remedy;
- the seriousness of the alleged breach or prejudice;
- the importance of the *take* to claimants;
- the importance of the *take* to Māoridom; and
- the importance of the *take* to the nation.

3.19 Applications are to be sent to the Registrar to be put before the Chairperson. Such applications are granted in exceptional cases only.

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24. As outlined in Chairperson, memorandum concerning kaupapa inquiry programme, 1 April 2015 at [22].

Consolidation, aggregation, and eligibility

3.20 The Tribunal's practice is to group related claims together for concurrent inquiry. This requires the Tribunal to determine whether a claim is 'consolidated' or 'aggregated' within an inquiry.

3.21 If a claim is consolidated, all the issues within the claim will be heard in a single inquiry, whether it be a district, a kaupapa, or some other inquiry. This is because the entire claim is considered to wholly relate to that particular inquiry. For example, a claim that relates only to specific land and historical matters in Northland will be consolidated and fully heard in Te Paparahi o te Raki (Northland) Inquiry.

3.22 If a claim is aggregated, only some of the issues within that claim will be heard in a particular inquiry. The remaining issues will be heard in another inquiry relevant to those issues. For example, a claim that has both specific issues relating to land and historical matters and more general issues relating to health inequities in the Northland region may be aggregated and heard in both the Te Paparahi o te Raki (Northland) (Wai 1040) Inquiry and the Health Services and Outcomes (Wai 2575) Inquiry.

3.23 Once the Tribunal has determined a claim to be consolidated, those claims will generally be limited from participating in other inquiries. If a claimant wishes to amend their consolidated claim to include further allegations outside the scope of their inquiry, this must be done by seeking leave in writing from the Presiding Officer if the inquiry is still active or the Chairperson or Deputy Chairperson if the inquiry has reported on the claim.

3.24 The process of consolidation and aggregation has been largely employed for district inquiries. For kaupapa and urgent inquiries, the Tribunal has generally adopted a process of determining whether claims are eligible to participate in the inquiry. The Tribunal's eligibility exercise reviews the claims for relevance, jurisdictional issues, and whether they have been consolidated or aggregated in other inquiries, among other considerations. If deemed eligible, this officially recognises the claim as participating in the inquiry.

3.25 The status of an eligible claim is akin to being aggregated. An eligible claim may not necessarily be precluded from participating in other inquiries and will likely have interconnected issues across more than one kaupapa inquiry.

Applications seeking urgent Tribunal consideration

3.26 As outlined above at *paragraph 3.12*, urgent inquiries and urgent remedy inquiries must be initiated by application to the Tribunal. There are two circumstances in which parties may apply for urgent Tribunal consideration:

(a) *Applications for an urgent inquiry:* The claimants or the Crown may apply to the Tribunal for an urgent inquiry into a claim or a group of claims, or into an aspect of a claim or a group of claims.

(b) *Applications for an urgent remedies hearing:* Where the Tribunal has determined that a claim is well-founded but has not made recommendations for relief, the claimants may apply for the Tribunal panel to urgently reconvene to determine what remedies should be recommended to compensate for or to remove the prejudice, or to prevent other persons from being similarly affected in the future, by the breaches of Te Tiriti that the Tribunal has found to be established.

Criteria for applications seeking urgent inquiry Tribunal consideration

3.27 In deciding whether to grant urgent consideration to a claim or claims, the Tribunal must set criteria for determining the proper deployment of its resources to research, hear, and report on all the claims before it. The Tribunal will grant an urgent inquiry only in exceptional cases and only once it is satisfied that adequate grounds for urgency have been made out. Such inquiries will inevitably delay active inquiries already in train, and the claims of those seeking urgency must be balanced against the numerous claims involved in active inquiries and those in preparation. Deferral of an existing inquiry may be the practical effect of a decision to grant an urgent hearing.

Applications for an urgent Inquiry

3.28 In deciding an urgency application, the Tribunal has regard to several factors. Of particular importance is whether:

(a) the claimants can demonstrate that they are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions or policies;

(b) there is no alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise; and

(c) the claimants can demonstrate that they are ready to proceed urgently to a hearing, generally without the need of further research to be filed.

3.29 Other factors that the Tribunal may consider include whether:

(a) the claim or claims challenge an important current or pending Crown action or policy;

(b) an injunction has been issued by the courts on the basis that the claimants have submitted to the Tribunal the claim or claims for which urgency has been sought; and

(c) any other grounds justifying urgency have been made out.

3.30 Prior to making its determination on an urgency application, the Tribunal may consider whether the parties or the issues or both are amenable to alternative resolution methods, such as informal facilitated hui or formal mediation under clause 9A of schedule 2 to the Treaty of Waitangi Act 1975.

Applications for an urgent remedies hearing

3.31 The Tribunal will consider an application for an urgent remedies hearing only where it has previously released a report in which the applicant's claim or claims have been determined to be well-founded.

3.32 In considering whether to grant urgency to an application for a remedies hearing, the Tribunal has regard to a number of factors. Of particular importance are whether:

(a) the claimants can demonstrate that they are suffering, or are likely to suffer, significant and irreversible prejudice if a remedies hearing is not urgently convened;

(b) there is no alternative remedy that, in the circumstances, it would be for the claimants to exercise; and

(c) the claimants can demonstrate that they are ready to proceed urgently to a hearing.

3.33 In assessing whether the claimants are suffering or are likely to suffer significant and irreversible prejudice if a remedies hearing is not urgently convened, the Tribunal may have regard to the factors set out in *Haronga v Waitangi Tribunal*,[25] namely:

(a) the size of the group represented by the claimants, and whether the claimants can show clear support for their application from this group;

(b) the connection between the remedy or remedies sought to be awarded and the original Te Tiriti breach or breaches, including, where the return of land is sought as a remedy, whether this land was the subject of the well-founded claim or claims from which the application arises; and

(c) where there are current negotiations between the Crown and a mandated settlement body to reach an agreed settlement of the well-founded claim or claims, whether the Tribunal's jurisdiction to hear the claimants on remedies is likely to be imminently removed by legislation as a result of these negotiations.

3.34 Prior to making its determination, the Tribunal may consider whether the parties or the issues or both are amenable to alternative resolution methods – see *paragraphs 3.49–3.53*.

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25. *Haronga v Waitangi Tribunal* [2011] NZSC 53.

Procedure for applications seeking urgent inquiry

Application requirements

3.35 An application seeking urgent Tribunal consideration is to be filed with the Registrar and a copy served on the Crown (where the Crown is not the applicant).[26]

3.36 There is no prescribed form of application. A suggested template is available on the Tribunal website. The Tribunal recognises that unrepresented claimants may not be aware of the formal documents used in litigation process and remains flexible as to the form in which urgency applications are filed.

3.37 An application must set out the following information:

(a) The specific reasons why an urgent inquiry or urgent remedies hearing is sought, taking into account the factors listed above at *paragraphs 3.28–3.34*.

(b) Whether the application relates to a claim or a group of claims in their entirety or whether it relates to an aspect of a claim or of a group of claims.

(c) Whether the claimants are ready to be heard or whether any research first needs to be carried out or completed. If research is required, the nature and extent of that research should be outlined. However, it should be noted that a need for extensive research may be a factor against an applicant's readiness to proceed to a hearing.

(d) Any people or bodies that the claimants believe should be notified by the Tribunal because they are affected by the application.

(e) Any other information that is relevant to the application.

3.38 Where appropriate and able to do so, applications should be filed with a supporting affidavit(s),[27] in relation to the relevant criteria for urgent applications outlined above.[28]

Tribunal consideration of an application

3.39 Following the receipt of an application seeking an urgent Tribunal hearing, the Chairperson or Deputy Chairperson will determine the procedure to be followed and will manage the resulting process.[29] The Chairperson or Deputy Chairperson may determine the application,

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26. The address for service on the Crown is: Treaty Team, Crown Law Office, PO Box 2858, Wellington 6140; email: treaty.teams@crownlaw.govt.nz.
27. Supporting affidavits are a means to put factual evidence before the Tribunal, not opinions or submissions.
28. As this is an interlocutory application usually heard on the papers, briefs of evidence will generally be inappropriate and counsel representing claimants should file sworn affidavits.
29. Generally, the determination of urgency applications is delegated to the Deputy Chairperson.

or the Chairperson may delegate consideration of the application to a Tribunal member or to a Tribunal panel.[30] If a member is delegated a urgency application for consideration they will generally also meet the requirements to be a Presiding Officer under the Act.[31]

3.40 The general process is that the member or Tribunal panel determining the application will seek responses from the Crown or relevant claimant(s),[32] and any interested parties (see *paragraphs 3.67–3.72*). In some cases, the Tribunal may first seek further information from applicants before proceeding. The applicant will then have an opportunity to reply to submissions and evidence filed by the relevant parties. The Tribunal will determine the application after receiving all submissions and evidence.

3.41 Where an application for a remedies hearing is made, the Chairperson or Deputy Chairperson will delegate the determination of that application, where possible, to the Tribunal panel that heard and inquired into the original claim. Where a member or members of the panel are unable to continue in their role, replacement members will be appointed to the panel in accordance with clauses 5AA to 5AE of the second schedule to the Treaty of Waitangi Act 1975.

3.42 The application may be determined on the papers or by convening a conference to hear submissions from the claimants and others who have a sufficient interest, including the Crown.

Where an application is granted

Urgent inquiries

3.43 Where a claim is granted urgency, the Tribunal's inquiry into it may proceed independently of claims with which it would otherwise be heard and without the compilation of a casebook (see *paragraph 4.7*). In these situations, the procedure to be followed will be determined by the Tribunal hearing the claim. Generally, however, the circumstances that warrant a claim being granted urgency will make it desirable or necessary that the Tribunal hear and report on it as quickly as possible.

3.44 Accordingly, the Tribunal will expect the parties, and especially the claimants who have sought urgency, to be ready and able to do all that is reasonably possible, before and during the hearings, to promote the

30. Noting *Baker v Waitangi Tribunal* [2014] NZHC 1177 at [37] and the Treaty of Waitangi Act 1975, sch 2 cl 8(2).

31. Treaty of Waitangi Act 1975, sch 2 cl 5(2).

32. Depending on whether the applicant is a claimant or the Crown.

rapid inquiry into, and reporting of, an urgent claim. To this end, the Tribunal may issue a range of procedural directions. These may include:

(a) strict timetables for the filing of all evidence and submissions before hearings start;

(b) strictly prescribed hearing time;

(c) taking as read some or all affidavits and briefs of evidence and submissions filed before the hearing; and

(d) cross-examination only with advance notice and by leave of the Tribunal.

3.45 Just as the hearing of an urgent claim is influenced by the need for speed, so too is the style of a Tribunal report on such a claim. Generally, it is to be expected that a report on an urgent claim will be more summarised in its content than a report on a non-urgent claim and will focus on the outcome of the Tribunal's inquiry, including any recommendations the Tribunal may make.

Urgent remedies hearings

3.46 Where an urgent remedies hearing is granted, the procedure to be followed will be determined by the Tribunal panel.

Disclosure of documents in urgent inquiries

3.47 Urgent inquiries can occur under tight timeframes due to the nature of the claim(s). Disclosure of documents therefore will generally be very targeted. See *paragraphs 5.22–5.27* for the process of disclosing documents in urgent inquiries.

Withdrawal of an application for urgency

3.48 The applicant may withdraw their application, at any time until the release of the determination of their application. The applicant should inform the Tribunal in writing, via the Registrar, of their wish to withdraw the application and clarify whether they also wish to withdraw the relevant claim or only that part relating to their urgency application, or simply not proceed urgently.

Mediation

3.49 As a forum that seeks to provide a durable and fair resolution of Te Tiriti claims, directed at restoring and upholding partnership under Te Tiriti, the Tribunal encourages mediation to facilitate the resolution of claims where appropriate. Mediation processes are consensual and generally confidential between the relevant parties. Parties may also choose to adopt a tikanga-based process in the mediation of their claims.

Statutory mediation

3.50 The Tribunal may, at any stage, refer a claim to mediation under clauses 9A to 9D of the second schedule to the Treaty of Waitangi Act 1975. While a party to a claim may apply to the Tribunal for the claim to be referred to mediation, the Tribunal may appoint a mediator without prior reference to the parties but on the basis that the mediator will initially consult with those affected on their willingness to enter into mediation. The Tribunal may appoint two co-mediators, which past practice has shown to be effective.

3.51 The mediator or mediators will manage the mediation process with support from Tribunal staff. Mediators may use tikanga Māori to facilitate their mediations. Parties to the mediation will be required to enter into an agreement to mediate which is approved by both parties and sets out the terms of the mediation. The mediators may facilitate preliminary hui with the parties and issue memoranda to outline logistics and preparation for the mediation. The mediator or mediators may also ask for parties to file an outline of their positions, whether jointly or separately.

3.52 The Tribunal may decline to refer a claim to mediation if it considers the existing record of inquiry is inadequate. It may also await further research to be filed, or commission research itself, before it decides whether to refer a claim to mediation. Where the Tribunal refers a claim to mediation under these provisions, the mediator's duty is to use their best endeavours to bring about a settlement of the claim or aspects of it.

Private mediation

3.53 It is also possible for a party to propose and participate in a private mediation concerning any aspect of a claim. This mediation does not occur under the provisions of the Treaty of Waitangi Act 1975 and is for the parties to personally facilitate. The Tribunal encourages the mediation of selected issues where parties are prepared to take their own initiatives. A private mediation may not necessarily be between the claimants and the Crown; it may, for example, be between two or more claimant groups or between a claimant group and a third party (such as a private landowner). Where a private mediation is proposed, the Tribunal may adjourn all or part of its inquiry, and it will give appropriate weight to any resulting agreements when completing its inquiry and report.

Settlement negotiations

3.54 Historical claims may be settled through direct negotiation between the claimants and the Crown.[33] The Waitangi Tribunal is not involved in

33. Te Arawhiti/Office of Māori Crown Relations negotiates for the Crown in the settlement of historical claims.

those negotiations, although any report it has issued that relates to the claim or group of claims under negotiation may inform negotiations.

3.55 Claimants may choose to negotiate the settlement of their claim, historical or contemporary, at any stage. Claimants may therefore elect to negotiate a settlement before the Tribunal undertakes any inquiry into it or they may do so at some stage during the Tribunal's inquiry. Alternatively, they may wait until the Tribunal has issued its report with findings and recommendations, if any.

3.56 Counsel for either the Crown or claimants shall, with the signed acknowledgement of the other, advise the Tribunal by memorandum if a settlement of a claim has been reached and a deed of settlement entered into. The memorandum shall include a summary of the terms of the settlement, where practicable and, in the case of a partial settlement, it shall advise whether the party seeks an inquiry into those matters not settled.

General recommendations and binding recommendations

3.57 As outlined at *paragraph 3.13*, the Tribunal makes general recommendations, they do not bind the Crown or any other party.[34] These recommendations are made where the Tribunal finds that any claim submitted is well-founded and therefore it may recommend to the Crown that action be taken to compensate for or remove the prejudice or to prevent other persons from being similarly affected in the future.[35] These recommendations may be in general terms or may indicate in specific terms the action which in the opinion of the Tribunal, the Crown should take.[36]

3.58 In certain instances, however, the Tribunal may recommend the return, or the resumption of certain lands and these recommendations can become binding on the Crown. The resumption regime is prescribed in ss 8A to 8HJ of the Treaty of Waitangi Act 1975. This section summarises those provisions. The lands in relation to which the Tribunal may make a binding recommendation are:

(a) Crown forest land that is subject to a Crown forestry licence; and

(b) memorialised lands, being land or an interest in land:

(i) transferred to a State enterprise under section 23 of the State-Owned Enterprises Act 1986 or vested in a State enterprise by a notice in the *Gazette* under section 24 of the State-Owned Enterprises Act 1986 or vested in a State enterprise by an Order in Council made under section 28 of the State-Owned Enterprises Act 1986;

34. Treaty of Waitangi Act 1985, s 6(3).
35. At s 6(3).
36. At s 6(4).

(ii) transferred to a tertiary institution under section 207 of the Education Act 1989 or vested in an institution by an Order in Council made under section 215 of the Education Act 1989; or

(iii) that, immediately before being vested in a Crown transferee company under section 6 of the New Zealand Railways Corporation Restructuring Act 1990, was owned by the Crown.

3.59 If the Tribunal makes a binding recommendation for the return or resumption of land, all its recommendations are interim recommendations for 90 days, during which period the claimants and the Crown may enter into negotiation to settle the claim. If a settlement is reached within the 90 days, the Tribunal is required to cancel or modify its interim recommendation so as to reflect that settlement. If no settlement is reached during the 90 days, the interim recommendation takes effect as a final recommendation that is binding on the Crown.

Deferral of an inquiry

3.60 Where a claimant or the Crown seeks the deferral of an active inquiry, where for example hearings have been scheduled or are underway, they are to notify the Tribunal as soon as possible.

3.61 The Tribunal may require an appearance on any proposal to defer an inquiry. The Tribunal may need to be satisfied that the request is generally agreed to by the members of the claimant group, or it may need to defer an inquiry without prejudice to the right of any other persons with an interest to submit their own claim or to seek leave to be heard in respect of the same matter.

3.62 Where such a proposal for deferral is made, the Tribunal will consider all the relevant circumstances, including:

(a) the attitudes of the other parties to the proposal;

(b) the expected length of time of any deferral;

(c) the state of research commissioned by the Tribunal or the parties;

(d) the urgency of the claim; and

(e) the extent of notice that has been given to the other parties and the Tribunal (if a hearing date has been set).

3.63 If granted, the Tribunal will defer to a set date by which the parties will be required to provide an update on the status of their claim or defer the inquiry without any future date assigned.

Withdrawal of a claim

3.64 A claimant may withdraw a claim at any stage by advising the Registrar in writing. Where only part of a claim is to be withdrawn, the claimant shall file an amended statement of claim and advise the Tribunal in writing of the part that has been withdrawn.

3.65 Subject to any statutory restrictions, the withdrawal of a claim does not affect the right of any other Māori to bring a claim in respect of the same matter. See *paragraph 2.24* regarding transferring authority to prosecute a claim.

Tribunal staff

3.66 While it is necessary from time to time for Tribunal staff members to liaise with parties and with other persons entitled to be heard, staff have no authority to bind the Tribunal. Decisions of the Tribunal will be conveyed by directions or memoranda issued by the Chairperson, the Deputy Chairperson, the Presiding Officer of an inquiry, or a member acting with the authority of the Chairperson, or they will be conveyed by staff on the authority of the Tribunal.

Right to appear and interested parties

3.67 The Tribunal is obliged under the Commissions of Inquiry Act 1908 to hear any person who establishes that he or she:

- **(a)** has an interest in the inquiry apart from any interest in common with the general public; or
- **(b)** may be adversely affected by evidence before the Tribunal (see section 4A of the Commissions of Inquiry Act 1908).

3.68 The Tribunal is also empowered to receive in evidence any material that, in its opinion, may assist it to deal effectively with the matters before it (see section 4B of the Commissions of Inquiry Act 1908).

3.69 Any individual or group seeking to be heard in an inquiry as an interested party should apply to the Tribunal, outlining how they satisfy the relevant criteria under section 4A of the Commissions of Inquiry Act 1908, and the extent of participation sought in the proceeding. Participation as an interested party is by leave of the Chairperson, Deputy Chairperson, member acting with the authority of the Chairperson, or the relevant Presiding Officer.

3.70 In general, therefore, the Tribunal encourages any person who may be able to assist it to appear or to make submissions.

3.71 While people who are not parties to a claim but who seek to be heard may signal that intention to the Tribunal at any time, the Tribunal prefers that written notice of such intent be given to the Registrar as early as possible.

3.72 An exception to the right to be heard applies when, in the course of an inquiry, a question arises concerning any land in relation to which the Tribunal may make a binding recommendation under sections 8A to 8HJ of the Treaty of Waitangi Act 1975. In these instances, the only persons entitled to appear and be heard are the claimants, the Minister for Māori

Development, any other Minister who notifies they wish to be heard, and any other Māori with an interest in the inquiry.[37] These provisions ensure that the owners of the land, including a private owner who has purchased the land with notice of the possibility of its resumption, do not then challenge the hearing or settlement of a claim relating to that land.

Appearance by counsel or other representative

3.73 Clause 7 of the second schedule to the Treaty of Waitangi Act 1975 states:

> (1) Any claimant or other person entitled to appear before the Tribunal may appear either personally or, with the leave of the Tribunal, by—
>
> (a) A barrister or solicitor of the High Court; or
>
> (b) Any other agent or representative authorised in writing.
>
> (2) Any such leave may be given on such terms as the Tribunal thinks fit, and may at any time be withdrawn.

3.74 Although representation is therefore at the Tribunal's leave, the Tribunal prefers that claimants have legal representation, especially when dealing with claims dependent on documentary records or claims that give rise to complex issues. Where the Tribunal is to meet the expense of claimant-commissioned research, counsel should be in place first, in order that the researcher might work with counsel, and to enable the research is focused on the issues directed by the Tribunal.

3.75 Where counsel represents a party or a person entitled to appear before the Tribunal, counsel will be the address for service for the party or that person and the Tribunal will conduct its formal communications via counsel. From time to time, however, the Tribunal, and particularly Tribunal staff, may need to be in direct contact with parties or with other persons entitled to be heard, particularly in order to make arrangements for hearings.

3.76 The Registrar is to be advised by memorandum if there is any appointment or change of solicitor or counsel, or any change of address for service. Such notice should be served on relevant parties.

Authority of solicitor or counsel

3.77 Where a solicitor or counsel acts on behalf of a party or a person entitled to appear, he or she is deemed to warrant to the Tribunal that he or she is acting with the authority of that party or person.

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37. See the Treaty of Waitangi Act 1975, ss 8C, 8HD, and 8HJ and *Wairapapa Moana ki Pouākani Inc v Mercury NZ Ltd* [2022] NZSC 142 at [140]–[158].

3.78 A solicitor or counsel may sign any document relating to proceedings before the Tribunal on behalf of the party or person for whom he or she is acting, unless otherwise stated in this guide.

Counsel to assist

3.79 The Tribunal may, under clause 7A of the second schedule to the Treaty of Waitangi Act 1975, appoint counsel to assist it in respect of any proceedings before the Tribunal. Such counsel may provide their expert advice on a particular subject matter, lead Tribunal commissioned witnesses at hearings, and adduce evidence on behalf of the Tribunal.

Legal aid

3.80 Claimants to the Waitangi Tribunal may apply for civil legal aid to help them to meet legal costs to pursue their claim(s).[38] The Tribunal however does not provide claimants seeking legal representation with referrals to legal aid providers.

Powers of the Tribunal

3.81 Although the Waitangi Tribunal does not have the power to award costs, it has all the other powers of a commission of inquiry under the Commissions of Inquiry Act 1908, as well as the powers conferred on it by the Treaty of Waitangi Act 1975. This means that in appropriate circumstances the Tribunal:

- **(a)** may issue a summons requiring the attendance of a witness before the Tribunal;
- **(b)** may require the production of documents and other records for examination;
- **(c)** has the same powers of a District Court, in the exercise of its civil jurisdiction, to conduct and maintain order at the inquiry;
- **(d)** may adjourn hearings and defer hearing time for a particular claimant group;
- **(e)** may commission research to be submitted to it as evidence;
- **(f)** may appoint counsel to assist;
- **(g)** may decide not to hear particular evidence; and
- **(h)** may refuse or withdraw the leave of counsel or another agent or representative to appear before the Tribunal, or it may grant leave to appear on such terms as it thinks fit.

3.82 The Tribunal has no power to issue injunctions.

38. Visit www.justice.govt.nz/courts/going-to-court/legal-aid.

Part 4: Claim Documentation

Research phase

4.1 In a few cases, claims are fully researched before they are submitted to the Tribunal, or the nature of the claim is such that research is not required. Most often, however, claims do require the assembly and analysis of information relevant to the assertions being made, and often this is completed after the Tribunal has registered a claim. Research can be completed in the following ways, none of which necessarily excludes the others:

- claimants may carry out their own research independently of the Tribunal or other body;
- the claimants may seek research funding from bodies such as the Crown Forestry Rental Trust – in relation to district inquiries or should check whether Crown agency funding is available;
- under clause 5A of the second schedule to the Treaty of Waitangi Act 1975, the Tribunal has the power to commission its own research. The Tribunal may commission a person, whether or not a member of its research staff, to carry out research for the Tribunal. Alternatively, or in addition, it may authorise a claimant to commission research on behalf of the claimant at the Tribunal's expense.

4.2 Members of the Tribunal's research staff assess the research needs of claims and inquiries, liaise with claimants and with agencies conducting research, and provide advice to the Tribunal as to the research that it might commission. In determining whether to commission research, the Tribunal will satisfy itself that a demonstrable need exists, that it will not unnecessarily duplicate other research, that it will be carried out by people with the appropriate skills and expertise, and that the timeframes for completing the research are acceptable. Sometimes, the Tribunal will first commission a scoping report to help it assess these matters.

4.3 Claimants may also submit research proposals to the Tribunal, and they should refer to the Chief Historian for further information about the Tribunal's requirements and procedures in that regard. Contacting the Chief Historian may be done through liaising with the Tribunal Registrar at the contact details listed on the Tribunal's website.

4.4 Before commissioning research, the Tribunal gives parties an opportunity to comment on research likely to be required. It does so by way of a pre-casebook discussion paper prepared under the auspices of the Chief

Historian and discussed at a judicial conference. The purpose of this process is to:

- create a casebook that provides sufficient evidential coverage to hear the claim(s) while avoiding unnecessary duplication (see *paragraphs 4.7–4.9*); and
- seek input from parties on the research evidence required for the casebook.

4.5 Tribunal-commissioned research reports are subject to the Tribunal administration's quality-assurance procedures overseen by the Chief Historian. Draft reports will also be circulated to parties for comment before final revision. If the report meets the terms of the commission, and if it is adequate in terms of its breadth and depth, the Chief Historian will advise the Tribunal it has met the Chief Historian standard. the Presiding Officer will then issue a direction to place the report on the record of inquiry and distribute it to relevant parties.

4.6 Although the Tribunal aims to have most research completed before hearings start, additional research may be undertaken and filed with the Tribunal later in the inquiry if a need for it is identified.

Casebooks

4.7 The casebook is a way of physically bundling together the main evidential material for an inquiry in a particular order for ease of reference. The Tribunal will generally create an inquiry casebook comprising all the technical evidence needed to give the Tribunal a sufficient evidential base to go to hearing. The Chief Historian will provide a discussion paper for parties on what is likely to be required in the casebook and, after hearing submissions, the Presiding Officer will direct the casebook to be produced for the inquiry.

4.8 As casebook reports and other evidence are completed, they are entered on the record of inquiry and distributed to parties. Once the casebook is complete, a Tribunal member and the Chief Historian will review the content of the casebook in order to advise the Tribunal whether it covers the claim issues sufficiently for hearings to commence. If necessary, additional research can be commissioned to address any identified gaps in coverage. The Tribunal will generally only go to hearing once all or the majority of the casebook is complete.

4.9 The casebook will generally contain:

- the research reports and briefs of evidence that the claimants provide and intend to rely on;
- Tribunal-commissioned research reports and research reports produced by the Crown;
- any other research reports and documents that the Tribunal considers relevant to the inquiry; and

- any specific information that the Tribunal has asked the Crown to produce for inclusion in the casebook (for example, relevant Crown statistics or data sets).

Document banks and supporting documents

4.10 The Waitangi Tribunal receives two types of document bank as evidence in its inquiries. The first is a general document bank; a compilation of the essential documentation, obtained from all accessible sources, that relates to a claim or group of claims, or an issue or issues within a claim. The Tribunal may commission a researcher to compile a general document bank, or a party may submit its own. This is normally done in the early stages of an inquiry.

4.11 The second type of document bank is a supporting papers bank, which accompanies a research report. It comprises of all the key supporting documents relied on by a researcher in a report but are not published or easily accessible. These documents are to be indexed, paginated, and filed alongside the research report. They are not annexed to evidence or submissions. The following material should not be included in a supporting papers document bank:

- Published material (such as extracts from the *Appendix to the Journal of the House of Representatives* and statutes).
- Primary source material that is easily accessible online (such as newspaper articles from the National Library's 'Papers Past' website).[39]
- Archival material restricted from public access (such as restricted files from Archives New Zealand).
- Material containing private information about individuals (such as documents provided to the researcher from government agencies under agreed terms of access). Such information may be made available with private information redacted.

4.12 Every document bank shall contain an index showing the title of each document, a description of its contents, and its source or location. A supporting papers document bank should be filed indexed and paginated (where appropriate) in the same format as the report – generally an electronic PDF version and preferably via electronic link if too large. It is the author's responsibility to compile the supporting papers document bank and to ensure its accuracy and that copies of documents are legible.

4.13 Given their size, document banks can be provided to parties on request by emailing WT_Requests@justice.govt.nz.

4.14 Once a document bank is entered on the record of inquiry, parties shall not, in their evidence or submissions, file copies of any document

39. However, if the information on a website is unlikely to be accessible in the future, parties should file a copy of the information or the document from the relevant website.

reproduced in the bank but shall instead refer to the document, referring to the document bank name, record of inquiry reference number and page number. This is to avoid the duplication of documents on a record of inquiry.

Maps

4.15 Where possible, geographical references in evidence (such as references to land blocks or place names) are to be adequately supported by maps or other geographical information. The Tribunal may coordinate the production of maps so as to reduce the number required in an inquiry, maintain consistency of reference, and apply quality controls.

Record of inquiry and document distribution

4.16 The Tribunal maintains a record of inquiry for each claim. It lists the essential papers relating to the conduct of the Tribunal's inquiry (the record of proceedings) and the evidence and other information that the Tribunal has before it (the record of documents). Everything on the record is indexed systematically. The Tribunal will periodically circulate copies of the index to a record of inquiry.

4.17 When the Tribunal groups related claims for concurrent inquiry, it will combine the record of inquiry of each claim into one common record of inquiry.

4.18 The documents are added to the record of inquiry at the leave or on the direction of the Chairperson, Deputy Chairperson, Presiding Officer, or member acting with the authority of the Tribunal, depending on the relevant circumstances. Once approved to go on the record, the documents are given their relevant record of inquiry reference and distributed to parties electronically by the Tribunal. The documents can then be accessed via the Tribunal's website.

4.19 Documents or indexes to a record of inquiry, particularly where the document is not available on the website, due to size or technical issues, can also be requested by emailing WT_Requests@justice.govt.nz.

4.20 Part I of the record, the record of proceedings, is the legal and procedural section of the record. It contains all the documentation related to pleadings, applications, submissions, and the conduct of the inquiry. It includes the statement(s) of claim and any amendments, Tribunal memoranda, research commissions, memoranda of counsel, transcripts, translations, and public notices.

4.21 Part II, the record of documents, is the evidential section of the record. It contains the documents on which the Tribunal may rely, any documents and other evidential material received, and any other documents, including unpublished primary sources, that Tribunal members may wish to add to the record in the course of inquiry hearings. The record of docu-

ments thus informs parties and others of the data that the Tribunal has before it.

4.22 Documents on the record of proceedings are numbered within six subseries as follows:

- subseries 1 lists the various statements of claim and any amendments, including final or particularised statements of claim, the statement(s) of response from the Crown, Crown bodies, or Crown entities, and the Tribunal's statement(s) of issues;
- subseries 2 lists the memoranda, directions, and decisions issued by the Tribunal concerning the registration of new claims, the amendment of claims, judicial conferences and hearings, research commissioned by the Tribunal, and other matters;
- subseries 3 lists applications, submissions, and memoranda of counsel for the parties to the inquiry, including opening and closing submissions and reply submissions;
- subseries 4 lists transcripts, translations, and audio recordings;
- subseries 5 lists public notices concerning judicial conferences, hearings, and agenda for conferences and hearings; and
- subseries 6 lists other papers filed in proceedings that do not fall under any of the other five subseries.

4.23 Documents on the record of documents are categorised in alphanumeric subseries in the following way:

A1	Affidavit of claimant A
A2	Brief of evidence of claimant B
A3	. . .
B1	Brief of evidence of Crown witness
B2	Report of Tribunal commissioned expert witness
B3	. . .

and so on.

4.24 *Appendix A* shows an exemplar of how documents and information are organised on a record of inquiry.

4.25 Each successive letter refers to a period, usually between the end of one hearing and the end of the next. Different inquiries, however, may organise the record of documents according to the needs of the particular inquiry. Please contact the Registrar at first instance for any enquiries regarding the record of inquiry.

4.26 Where the Tribunal hears claims concurrently, it combines the index to the record of inquiry for each claim that will be heard in that inquiry into one comprehensive index, which is referred to as a 'combined record of inquiry'.

Part 5: Filing and Service of Documents

General filing procedures and timetables

5.1 All documents filed in Waitangi Tribunal proceedings are to be filed with the Registrar. The following filing and service timetables apply once a claim or an inquiry is brought on to the Tribunal's hearing programme, after which the Presiding Officer will usually issue a direction outlining the document filing and service timetables for the inquiry.

5.2 Any directions setting filing and service timetables must be adhered to. Filing timetables include an allowance for the Tribunal's administration to copy and distribute documents to Tribunal members (and, if necessary, others involved in the inquiry) and for Tribunal members, parties and others entitled to be heard to have sufficient time to adequately consider material before a conference or hearing starts. Failure to adhere to filing and service timetables may jeopardise a fair and efficient inquiry. Anyone seeking to deviate from a filing timetable must apply to the Tribunal with their reasons at the earliest opportunity, either at a conference or hearing or in writing through the Registrar.

5.3 Unless the Tribunal directs otherwise, documents are to be filed in the Tribunal's registry by 5pm on the day that they are due.

Distribution lists

5.4 The Tribunal will compile all the relevant email addresses to form the distribution list for an inquiry or claim. This distribution list is for the filing and serving of documents electronically. The distribution list is also used to distribute documents entered on to a record of inquiry and Tribunal communications like directions or notices.

5.5 Distribution lists are managed by the Tribunal Claims Coordination Team and are updated regularly. Parties are to notify the Tribunal, via the Registrar, if they no longer wish to be a part of the distribution list and use the most up-to-date distribution list in filing and serving documents.

Filing and service of documents

5.6 This general procedure applies to the filing of most documents in the Tribunal. A specific procedure for the filing of research documents and technical information is outlined at *Appendix E*.

5.7 All filings of documents shall follow the following process unless otherwise stated or varied by the relevant Presiding Officer:

- **(a)** All documents should be filed as PDF files electronically by email to the Registrar at WT.Registrar@justice.govt.nz;
- **(b)** The Tribunal's preference is for electronic filing but will also accept documents filed in hardcopy by post.
- **(c)** The document should be filed using the relevant inquiry email distribution list,[40] serving all parties.
- **(d)** Documents should be signed and paginated and all paragraphs should be clearly numbered for ease of reference.
- **(e)** Parties filing supporting document bundles should ensure that the bundle of documents is paginated and has a corresponding index.
- **(f)** Documents that are too large to be sent by email may filed with the Registrar by way of a USB drive or electronic link (like Dropbox or Sharepoint).[41]
- **(g)** Any documents filed outside Tribunal office hours (9 am to 5 pm, Monday to Friday) or on public holidays (including Wellington Anniversary Day), will be treated as being received by the Tribunal on the next working day. Counsel filing documents out of time should seek the relevant leave in their filing email or memorandum.

5.8 The Registrar of the Tribunal may allow filing to be accepted by the Tribunal that departs from these general rules. However, the Registrar's discretion extends only to the form of filing and not to those powers generally considered within the discretion of the Chairperson or Presiding Officer (for example, the granting of extensions).

5.9 The Tribunal will copy and distribute to affected claimants, the Crown, and other affected persons who are entitled to be heard, all documents entered on the record of inquiry in which they have an interest.

Documents produced at conferences and hearings filed after the filing deadline

5.10 The Presiding Officer or Registrar will inform parties of the deadline by which all documents must be filed before a conference or hearing. Generally, any party or other person entitled to be heard who wishes to seek leave to file documents after the deadline is to provide:

- a copy for each Tribunal member;
- two hard copies for the Tribunal's record of inquiry; and

40. The distribution list is the list of email addresses for service to which all filing for a particular inquiry is sent.

41. The Ministry of Justice email server has a limit of 25MB for documents it can receive. Electronic documents larger than this must be subdivided into parts, with each part attached to a separate email.

- where documents are in te reo Māori, an English translation with sufficient copies for Tribunal members and the Tribunal's record of inquiry;
- electronic versions of the documents, to be served on all other parties on the inquiry distribution list.

Restricting access to, or use of, sensitive information

5.11 A party or a person entitled to appear may seek to protect particular sensitive and/or confidential information by applying to the Tribunal for a direction restricting access to it or its use (or both). In considering such applications, the Tribunal must have regard to any applicable legislation or regulations, the rules of natural justice and clause 5A of the second schedule to the Treaty of Waitangi Act 1975.[42]

5.12 While the Tribunal will be bound by any rule of law, statutory constraint or direction of the courts that applies, the Tribunal itself is not otherwise constrained by a direction it makes to restrict access to, or the use of, evidence. It may use the evidence as it sees fit for the purpose of conducting its inquiry into, and reporting on, the claim or claims to which the evidence relates, although it will do so with due regard to the sensitivity of the evidence.

5.13 Further, witnesses are to be informed that, irrespective of any Tribunal directions restricting use or access, evidence presented to the Tribunal could be brought before the courts in judicial review proceedings. However, protections apply in such proceedings, under the rules and processes of particular courts, as to how material relating to the proceedings can be used.

5.14 The process for making an application for confidentiality is outlined at *Appendix F*. Confidential documents will not form part of the public record of inquiry.

Public access to documents on the record of inquiry

5.15 Members of the public may access and copy a document entered on the record of inquiry, subject to any Tribunal directions restricting use and access, the provisions of the Copyright Act 1994, and any other statutory provision or rule of law.

5.16 Documents on the record of inquiry are accessible on the Tribunal's website.

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42. The rules of natural justice may require that some or all counsel (and their clients) have a right to access and use the evidence for the purposes of the Tribunal's inquiry, and clause 5A gives every party to proceedings a right to receive a copy of a report that the Tribunal has itself commissioned.

5.17 A claimant seeking access to a document entered on the record of inquiry of another claim to which she or he is not a party will be treated initially as a member of the public.

Disclosure of documents

General disclosure

5.18 Unlike the general courts, there is no formal disclosure process in the Waitangi Tribunal. In all cases, the Tribunal encourages cooperation amongst parties and others involved in an inquiry in the disclosure of documents that are relevant to the claims in issue. Many Tribunals have adopted discovery protocols to coordinate the disclosure of documents.

5.19 Where claims relate to recent or current Government policy, parties and others involved in an inquiry should, where necessary, exercise their rights under the Official Information Act 1982 and the Local Government Official Information and Meetings Act 1987.

5.20 The Tribunal encourages cooperation in disclosing documents in this way, but will, in appropriate circumstances, use its powers under the Treaty of Waitangi Act 1975 and the Commissions of Inquiry Act 1908 to require the production of documents.

5.21 Where the Tribunal directs a party or other person to supply all the information relating to a particular matter that is in the possession of the party or person, it may permit that party or person to file an indexed list of the documents concerned, with an archival, or file, reference for each item, enabling those involved in the inquiry to decide which material they require.

Disclosure for urgent inquiries

5.22 Where, for any reason, an urgent inquiry proceeds under a particularly tight timeframe, it may not be possible to follow the process of disclosure outlined here, and a truncated version will be agreed.

5.23 Parties may claim privilege or confidentiality in respect of particular documents on the well-established bases.

5.24 In addition, parties may apply to have the Tribunal impose restrictions on access to or use of sensitive evidence on, or to be entered on, the record of inquiry. The process for such applications is explained at *paragraphs 5.11–5.14* and *Appendix F*. The categories of sensitivity are not closed, and the Tribunal will always endeavour to be sensitive to context.

5.25 The disclosure of documents in urgent Tribunal inquiries will proceed broadly on the same basis as discovery in civil litigation. A focus on the issues to be inquired into will be foremost, with a view to ensuring that all the documents material to the Tribunal's inquiry are available to all participants in good time before hearing.

5.26 The Tribunal will retain discretion as to the detail of the process, but the provision of documents will in normal circumstances proceed on the following basis:

- **(a)** After input from the parties, the Tribunal produces a statement of issues.
- **(b)** In judicial conference, and following the production of the statement of issues, the broad categories of documents that are envisaged to be relevant to the inquiry are identified and discussed. Parties prepare their lists of documents in accordance with the categories of documents that have been determined to be relevant.
- **(c)** Enough time is made available to ensure that:
  - **(i)** those with documents to produce (usually primarily the Crown) have enough time to go through files, carefully identify all relevant documents, and coherently list them; and
  - **(ii)** the documents are put into folders and each page is consecutively and uniquely numbered for easy location and identification, especially at the hearing.
- **(d)** Once lists are provided, the parties make their documents available for inspection. Depending on how many there are, either the discovered documents are provided in full to the other parties and the Tribunal, or a place and time for inspection is agreed and copies of documents are provided to the parties as requested.
- **(e)** After the parties have undertaken inspection, the parties whose documents have been inspected will provide to the Tribunal, via the Registrar, a copy of all relevant documents they seek to put before the Tribunal, together with any other documents that the Tribunal may seek.
- **(f)** The parties file briefs of evidence.

5.27 Counsel will coordinate their efforts sensibly to ensure that the process of disclosure is not unnecessarily complicated or prolonged.

Confidential and/or privileged documents

5.28 If there are issues of confidentiality and/or privilege identified by the Tribunal or in dispute between the Crown and claimants, the Tribunal may inspect the documents to determine their relevance and whether the relevant grounds for confidentiality and/or privilege are made out. Inspection by the Tribunal will only occur where good reasons exist to suggest that the privilege or confidentiality claim is not properly made.

5.29 Following inspection, if the Tribunal considers the grounds for confidentiality and/or privilege are made out, the Tribunal will inform parties that the grounds are made out and that the disputed material should not be released.

5.30 If the grounds for confidentiality and/or privilege are not made out, in whole or in part, the Tribunal will issue a direction accordingly for the disclosure of the documents, with any applicable conditions. Parties may be invited to submit on the conditions attached to the disclosure of the documents.

Part 6: Conducting the Inquiry

Conferences

6.1 The Tribunal may convene conferences with claimants, the Crown, and such others as the Tribunal considers necessary or desirable to case-manage closely its inquiry process. Conferences may be called before hearings start in an inquiry and throughout the course of an inquiry for a variety of purposes.

6.2 Conferences may be conducted by the Presiding Officer of a particular inquiry or with other panel members present. Otherwise, conferences may be conducted by the Chairperson or a member acting with the authority of the Chairperson.

6.3 Conferences are open to the public, unless otherwise notified. In certain situations, conferences may also be held remotely by electronic means where appropriate. The Tribunal usually sends notice of a conference only to parties and other persons who are affected. The Tribunal may limit the number of people who may attend, including the claimants and their representatives, and, on occasion, where all parties and other affected persons are represented by counsel, it may limit attendance to counsel only.

6.4 The Tribunal encourages parties and others involved in an inquiry to resolve outstanding procedural issues in advance of hearings so that hearing time can concentrate on the receipt of evidence and submissions rather than on issues of procedure. In the first instance, those who are affected must try to resolve issues amongst themselves without the intervention of the Tribunal. However, where that is inappropriate or cannot be achieved, a party or other affected person may apply to the Tribunal for a conference to be scheduled.

Coordinating counsel

6.5 It is common practice that an inquiry will have a coordinating counsel. More than one lawyer may undertake the role of coordinating counsel. Coordinating counsel play a key role in most inquiries. It is common practice for one or more of the claimant counsel appearing in an inquiry to take on the role of coordinating counsel. They are appointed to liaise with claimants, their counsel, interested parties, the Crown, Tribunal staff, and the Tribunal itself on all kinds of hearing-related matters – planning, timetabling, and scheduling – and the preparation of joint responses or proposals as directed by the Tribunal or initiated by parties.

6.6 Generally, coordinating counsel are nominated by claimant counsel following discussions amongst themselves. If necessary, the Tribunal may confirm the appointment. While the Tribunal's preference is for claimant counsel to determine who will undertake the role, in some situations the Tribunal may itself appoint coordinating counsel or suggest who might undertake the role.

Scheduling hearing time hearing dates and timetables

6.7 The Tribunal will determine the hearing dates for an inquiry in consultation with the claimants, their counsel and the Crown. The Tribunal generally will let parties know of their available sitting dates and coordinating counsel will liaise with claimants and the Crown to confirm their availability. The Tribunal may, at its discretion, require changes to be made to a proposed hearing timetable. The Tribunal also makes available the hearing calendar for the year on its website for parties wishing to propose hearing dates.

6.8 If parties become unavailable to attend their scheduled time in a hearing calendar, they should liaise with the relevant coordinating counsel and notify the Tribunal as soon as reasonably possible.

6.9 The coordination of the hearing timetable, including scheduling the order of counsel submissions and witness presentations will generally be done by the coordinating counsel in consultation with other claimant counsel, self-represented claimants, parties, the Crown, and Tribunal staff. The Crown coordinates the hearing timetable for the hearing time allocated to present its evidence and submissions.

Hearing venue

6.10 The Tribunal endeavours to hear each claimant group on its own marae or at another place of its choosing, and according to its protocols, where that is desired. Crown and on occasion claimant counsel may have advisory kaumatua sitting with them. Kaumatua in this role perform a valuable role guiding counsel and on occasion speaking on their behalf during proceedings. The Tribunal welcomes this.

6.11 The Tribunal will consult with the claimants and relevant coordinating counsel as to the most appropriate venue for a particular hearing. The Crown may also propose an appropriate venue for the hearing of its own evidence and submissions.

6.12 In all cases, however, the Tribunal retains discretion to decide where it will sit. Amongst other things, the Tribunal must be satisfied that a venue will allow the Tribunal to carry out its functions adequately and that health and safety needs will be met, including the Tribunal's public health protocols where those apply.

6.13 A Presiding Officer may also choose to adopt protocols as appropriate for the relevant inquiry for example the use of accessibility protocols like in the Health Outcomes and Services Inquiry (Wai 2575).

6.14 Hearings are normally open to the public. In certain situations, hearings may also be held remotely where appropriate. It will be at the discretion of the relevant Tribunal to determine how livestreaming of events occurs. Tribunal also has the power to meet in private, and, where a restriction on access to certain evidence applies, it may limit who may attend the part of a hearing where that evidence is presented.

Structure of a Tribunal inquiry

6.15 There is no set structure that determines how a Tribunal inquiry, and its associated hearings will be run. It is open to claimants and their counsel or other claimant representative to determine how to present a particular claim. The Crown also plays a role in deliberations of how an inquiry is structured. Ultimately this will be at the Tribunal's discretion.

6.16 The phases of a Tribunal inquiry generally proceed as follows. However, the processes within phases are indicative only and may change, depending on the circumstances and type of inquiry. For example, some kaupapa inquiries have been staged by to focus on particular issues.

Phase 1: pre-hearing stage

At the initial stages of an inquiry, the Tribunal will work with claimants and the Crown to determine the scope of the inquiry and undertake preliminary conferences on hearing planning and the structure of the inquiry.

The Tribunal will work with the parties to assess what research is required to support the inquiry.

The Tribunal may undertake contextual hearings – such as ngā kōrero tuku iho or tūāpapa hearings – where witnesses can present contextual evidence about their claims that build the Tribunal's understanding.

Phase 2: hearing stage

The Tribunal may hear from claimants, interested parties, expert witnesses, commissioned researchers, and Crown witnesses.

Opening submissions: Generally, the hearing stage of an inquiry will consist firstly of opening submissions made by counsel or self-represented parties. Opening submissions generally introduce a party's case to the Tribunal and other parties.

Evidence: Witnesses who have filed evidence will then have the opportunity to present that evidence and answer questions (see *paragraphs 6.28–6.34*).

Closing submissions: All relevant parties will then file and present closing submissions. These submissions summarise the party's case and will usually also

focus on what recommendations (or remedies) the parties seek from the Tribunal.

Reply submissions: Claimant parties then have the opportunity to file submissions in reply to the Crown's evidence and closing submissions.

The closing and reply submissions may be heard 'on the papers'. This means there is no in-person hearing, and the Tribunal makes its determination on the basis of the documents that have been filed.

Phase 3: post hearing and report release

Following the completion of the hearing phase, the Tribunal will draft its report. The Tribunal may seek further submissions from parties during this period if necessary.

Presentation of evidence

6.17 At hearings, witnesses should swear/affirm their written statements, then speak generally to the matters raised in them. The general practice of providing written forms of evidence should not hinder witnesses such as kaumatua giving oral evidence like kōrero tuku iho.[43] Where witnesses use rough notes as a guide, the notes (and presentation slides if used) are to be provided to the Tribunal.

6.18 Expert witnesses are expected to summarise, or speak to, their reports, rather than to read them verbatim. The Tribunal will often require such witnesses to produce a written summary of their evidence that will then often be used to at hearings to present an oral summary of their evidence. The Tribunal may impose a time limit for the presentation of such summaries and for other witnesses' evidence.

Findings – remedies

6.19 In some inquiries, the Tribunal may issue an interim report at an intermediate stage in the proceedings, either while proceedings continue or while they are adjourned.

6.20 Otherwise, once hearings are concluded, the Tribunal will then consider whether the claim is well-founded and will issue a report on its findings of fact and interpretation. The report may include recommendations, or further research and hearings on remedies may be necessary before the Tribunal makes detailed recommendations.

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43. Kōrero tuku iho is understood to be history, stories of the past, traditions, oral tradition, 'kōrero handed down by tupuna as kōrero unreserved (nga kōrero tutuku a ou tupuna) and unblemished by others not party to that korero' (Wai 898, #3.1.251).

Closed session hearings

6.21 Parties may request the Tribunal to hold closed sessions during a hearing, generally where they have witnesses giving evidence that is particularly sensitive. In a closed session, it is anticipated that only the necessary persons need be present. This will generally be the witness and support persons, their counsel, Crown counsel, the Tribunal and Tribunal staff are to be present in the room. The Tribunal will confirm all those to be present in during a closed session, dependent on the circumstances.

6.22 The transcript for the closed session will be placed on the record of inquiry confidentially and there will be no disclosure outside of the sessions of any information or documentation disclosed or heard during the closed sessions. Public coverage or any other recording of these sessions will be prohibited, including live-streaming, personal recordings and media reporting. Requests for closed sessions should be raised at the earliest opportunity to the Tribunal. The Tribunal's decision will take into account the privacy interests of any person or people, the requirements of natural justice and the need for openness and transparency of its processes.

Te Reo Māori i te Rōpū Whakamana i te Tiriti o Waitangi

6.23 The Tribunal affirms te reo Māori as the indigenous language and an official language of New Zealand, further it is a taonga of te iwi Māori and a language valued by the nation.[44] The Tribunal supports the use of te reo Māori by all participants in Tribunal processes (including Tribunal members, claimants, counsel, witnesses and interested parties) and in all written documentation and oral content (including submissions and evidence). The Tribunal presumes that te reo Māori will be used by participants at hearings and will provide a te reo Māori interpreter to provide simultaneous translation at Tribunal events.[45]

6.24 Parties who file documents in te reo Māori are not required to provide an English translation, however, they will be invited by the Tribunal in the first instance to do so, should they wish to have their own English translation on the record of inquiry.

6.25 If the relevant party or witness decides they do want to provide their own English translation, this should be filed with the Tribunal as soon as practicable. The translation will be placed on the record of inquiry as well as the original in te reo Māori.

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44. Te Ture mō Te Reo Māori (Māori Language) Act 2016, s 3(2)(a).
45. At s 7(3).

6.26 If the relevant party or witness cannot or choose not to provide their own English translation, they should they should notify the Tribunal, via the Registrar, as soon as practicable. The Tribunal will then provide, in consultation with the relevant party and their counsel, an English translation of the document. Once the translation is completed, the relevant party should be given the opportunity to review the translation for accuracy and can provide feedback. The translation will be placed on the record of inquiry as well as the original in te reo Māori.

Interpreters and translations

6.27 The proceedings of the Tribunal should be as accessible as reasonably possible. Previous Tribunals have provided sign interpretation and coordinated documents to be translated into accessible formats. Where required and appropriate, the relevant party should notify the Tribunal, via the Registrar, in writing of their need for interpretation and/or translation services. Ultimately, how this occurs is at the discretion of the relevant Tribunal inquiring into the claim(s).

Cross-examination

6.28 The Tribunal recognises that cross-examination can assist its inquisitorial process. The Tribunal is not a court of law, and its primary jurisdiction is recommendatory. Accordingly, and consistent with the requirements of natural justice, the Tribunal may limit or exclude cross-examination on occasion.[46] However, the right of direct cross-examination remains, and all witnesses are to be forewarned that they are liable to cross-examination if they elect to give evidence."

6.29 The extent of cross-examination will depend on each inquiry situation and counsel are to be mindful and respectful of the forum in which questioning occurs. Extensive oral examination may not always be useful in the Tribunal setting. Where it is necessary to question research in detail or to obtain more particulars, the Tribunal may, in addition to cross-examination, allow time for written questions and responses to be made. In those instances, written questions are to be filed with the Tribunal.

6.30 When the Tribunal is sitting on a marae and following marae protocol, it may be appropriate for counsel to avoid direct questioning of kaumatua and instead make a statement of a possible position and invite the kaumatua to respond to it. Any problems associated with personal evidence on marae can generally be covered in subsequent legal argument on the weight to be given it. The Tribunal may limit direct cross-examination, particularly if the line of questioning is inappropriate in the circum-

46. *Badger v Whangarei Refinery Expansion Commission of Inquiry* [1985] 2 NZLR 688.

stances. If more suitable, the Tribunal may instead direct that such questions be put in writing.

6.31 To promote a free flow of evidence and discussion, the Tribunal may prefer that specific witnesses are recalled for cross-examination after an overview of the inquiry has first been presented and the issues have been defined.

6.32 Where counsel seek to reserve the right to recall particular witnesses at a later stage, they are to notify the Tribunal of the witnesses sought to be recalled and state their reasons and advise why the evidence cannot be dealt with by calling contrary opinions.

6.33 Members of the Tribunal may wish to put questions to witnesses, and counsel must ensure that sufficient time is allowed for these questions.

6.34 If cross-examination is not required, the witness may be excused from attending hearings.

Chair

6.35 Different members of the Tribunal, with the consent of the Presiding Officer, may chair different parts of a hearing, for example a historian member may chair the presentation of historical evidence.

Transcripts and audio

6.36 The Tribunal generally transcribes all conferences and hearings. Following such events, the Tribunal releases draft transcripts for parties to review and file corrections. Parties should file these corrections with the Registrar as separate documents or as an appendix to their filing memorandum. The corrections should be in table form referencing the specific section within the transcript and then on the same row show the relevant correction. Transcripts may not be available for all previous Tribunal hearings, particularly for those dating from its early years.

6.37 The Tribunal may also livestream and video record its proceedings. The livestreaming of a Tribunal hearing or conference is to provide greater access for claimants. See *paragraphs 6.40–6.42* for requesting to use livestream recordings.

6.38 The Tribunal also holds audio tapes for many Tribunal proceedings. If these are available on the inquiry record of inquiry, any individual may make a request for access to one or more audio tapes to the Tribunal by writing to the Chairperson via email to WT.Registrar@justice.govt.nz, outlining the reasons for the request and intended use of the audio tapes. The Chairperson will determine whether to grant the request.

Site visits

6.39 Sometimes the Tribunal will conduct a site visit in the course of its inquiry. A site visit may include a tour of areas of special significance

to a claim, such as pā sites and wāhi tapu. Claimants or their counsel should give sufficient notice to the Tribunal of a proposed site visit. The process for requesting that the Tribunal conduct a site visit is outlined at *Appendix D*.

Requests from the media or individuals to record or use recordings of hearings

6.40 The Tribunal usually livestreams its hearings. The Tribunal may permit the media and individuals to record proceedings and, in the case of the media, to broadcast them via news and current affairs programmes and articles. The Tribunal may impose constraints on how those authorised may use those recordings.

6.41 Media organisations and individuals seeking to record and/or broadcast Tribunal proceedings (or to access or record the Tribunal's livestream of a hearing) must first seek the approval of the Presiding Officer of the inquiry concerned. This is done by submitting an application form available on the Tribunal website,[47] or from Tribunal staff during hearings. The completed form can be emailed to the Registrar at WT.Registrar@justice.govt.nz or handed directly to Tribunal staff at hearings. If possible, requests should be submitted at least one working day before the date on which the recording is to be made; late requests may not be granted.

6.42 Applications are granted on the following basis:

- **(a)** The Presiding Officer must give prior approval before any recording is made. The Presiding Officer may advise those at the hearing of the presence of media, the recording of the hearing or use of livestream footage.
- **(b)** The recording must comply with all relevant Tribunal directions, including any directions that limit the use of, and access to, particular evidence or submissions.
- **(c)** The recording must be carried out in such a way that it does not interfere with the conduct of the proceedings, the confidentiality of discussions amongst Tribunal members and Tribunal staff, or the confidentiality of counsel's discussions with each other and with clients and witnesses.
- **(d)** The recording must be used in a way that gives an accurate, impartial, and balanced coverage of the proceedings and the parties and other persons involved.
- **(e)** Witnesses may object to having their image or their testimony, or both, recorded. If necessary, the objection will be determined by the Presiding Officer or Chairperson.

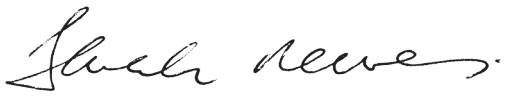
47. www.waitangitribunal.govt.nz/applications/media-applications.

6.43 While those involved in proceedings may make statements to the media in the course of the proceedings, the Tribunal urges caution and restraint so that what may be sensitive situations surrounding Tribunal inquiries are not inflamed.

Te Whakamutunga

6.44 As stated, the Tribunal has a broad discretion to determine its practices and procedures and may at any time vary the specific practices and procedures outlined here. The Chairperson may therefore issue directions, practice notes, or protocols that supplement or supersede sections of this Guide to Practice and Procedure where appropriate.

Whakapūmautia ki Te Whanganui-a-tara i te rā 21 o Hereturikōkā i te tau 2023 / Dated at Wellington on 21st August 2023



Kaiwhakawā Sarah Reeves
Tiamana Whakakapi / Acting Chairperson
Te Rōpū Whakamana i Te Tiriti o Waitangi / The Waitangi Tribunal

APPENDIX A

Index to the Record of Inquiry

WAITANGI TRIBUNAL

INDEX TO THE WAI [NO] RECORD OF INQUIRY

THE [NAME OF CLAIM]

Part 1: Record of Proceedings

Document dates are:

- For documents generated by the Tribunal, the date of signature.
- For documents filed with the Tribunal, the date received.

All dates are to take the form dd mmm yy (eg, 27 Jun 98).

1 Claims

1.1 Statements of claim

1.1.1 Wai:

Date of SOC:
Date received:
Claimant:
Representing:
Concerning:

1.2 Final statements of claim

1.3 Statements of response

1.4 Statements of issues

1.5 Final generic statements of claim

2 Tribunal Memoranda, Directions, and Decisions

2.1 Registering new claims

2.2 Amending statements of claim

2.3 Waitangi Tribunal research commissions

2.4 Section 8D applications

2.5 Pre-hearing stage

2.6 Hearing stage

2.7 Post-hearing stage

2.8 Other matters

3 Submissions and Memoranda of Parties

3.1 Pre-hearing stage
3.2 Hearing stage
3.3 Opening, closing, and in reply
3.4 Post-hearing stage
3.5 Other matters

4 Transcripts and Translations

4.1 Transcripts
4.2 Translations
4.3 Audio recordings

5 Public Notices

5.1 Judicial conferences
5.2 Hearings
5.3 Agenda for conferences and hearings

6 Other Papers in Proceedings

6.1 Filed by the parties
6.2 Other documents

Part II: Record of Documents

* Document is confidential and unavailable to the public without leave from the Tribunal
L Document is held in the Waitangi Tribunal library
The hearing column denotes the hearing or hearings at which the document was presented in evidence

A Up to the Completion of the Casebook, [date]

Doc	Author	Title and date	Filed by	Filing date	Hearing

APPENDIX B

Memorandum of the Chairperson concerning the Kaupapa Inquiry Programme

Waitangi Tribunal

Concerning	The Treaty of Waitangi Act 1975
And	The kaupapa inquiry programme

Memorandum of the Chairperson concerning the Kaupapa Inquiry Programme

27 March 2019

Tena koutou katoa

Introduction

1 In my memorandum of 1 April 2015 I set out the Waitangi Tribunal's kaupapa inquiry programme, detailing the proposed order in which inquiries into claims raising issues of national significance would be heard. The order of inquiries as listed under that programme is attached as Appendix A.

2 The purpose of this memorandum is to inform all claimants and the Crown of amendments and updates to the Waitangi Tribunal's kaupapa inquiry programme, as set out below. The revised inquiry programme is attached as Appendix B.

3 The memorandum also outlines some refinements to the process that the Tribunal will follow in scheduling and commencing kaupapa inquiries. It is not intended to replace the process set out in the April 2015 memorandum, but rather to refine and update it so as:

(a) to enable pressing contemporary issues to be prioritised for rapid inquiry where early reporting would make a significant difference;

(b) to outline preliminary steps that the Tribunal will usually take before commencing a listed or new kaupapa inquiry; and

(c) to clarify the Tribunal's approach to including specific and local claims that relate to the issues of national significance with which kaupapa inquiries are concerned.

Background – an emerging contemporary focus

4 In its *Strategic Direction, 2014–2025*, the Tribunal recognised that as well as claims currently being heard in district inquiries, a number of unheard claims lodged with the Tribunal raised historical and contemporary grievances concerning issues of national significance ('kaupapa issues'). Two of the Tribunal's strategic goals were to commence inquiry into claims relating to high-priority kaupapa issues by 2020 and to substantially advance or complete the hearing of claims relating to other kaupapa issues by 2025.

5 Since issuing the *Strategic Direction*, the Tribunal has commenced or taken steps to commence five kaupapa inquiries, under which claims raising issues of national significance have been grouped for hearing. The inquiries are:

(a) the Māori Military Veterans inquiry (Wai 2500);

(b) the Health Services and Outcomes inquiry (Wai 2575);

(c) the Marine and Coastal Area (Takutai Moana) Act inquiry (Wai 2660);

(d) the Mana Wahine inquiry (Wai 2700); and

(e) the Housing Policy and Services inquiry (Wai 2750).

6 In addition to these inquiries the Tribunal has continued its hearings in the National Freshwater and Geothermal Resources inquiry (Wai 2358), which commenced prior to the formal kaupapa inquiry programme being established.

7 The Tribunal's experience to date in four of the five kaupapa inquiries (Māori Military Veterans being a partial exception) is that most claimants who have sought to participate have put greater emphasis on the contemporary elements of their claims, with some requesting that they be heard ahead of historical grievances. More specifically, in some cases claimants have proposed that the Tribunal give priority to the early hearing and reporting of claims alleging significant actual or potential prejudice from current Crown policy and practice.

8 As a part of its commitment to progressing high-priority kaupapa claims, the Tribunal is giving due weight to this emerging preference when reviewing the sequencing of kaupapa inquiries and the targeting of issues within inquiries. It may not always be appropriate to start an inquiry where the Crown is already engaging with Māori and develop-

ing policy that may address the issue complained of. In general, however, while taking due account of historical antecedents and context that are a part of some kaupapa claims, the Tribunal will prioritise pressing contemporary claim issues where Tribunal inquiries may make a substantive contribution to strengthening the Crown–Māori Treaty partnership.

Prioritising contemporary kaupapa issues

Sequencing kaupapa inquiries

9 The Tribunal's approach to setting the order of inquiries for hearing is set out in paragraph 22 of the April 2015 memorandum. It identifies six criteria to be taken into consideration. These are, in summary:

- **(a)** removal of the Tribunal's ability to inquire;
- **(b)** the immediacy of the take or potential remedy;
- **(c)** the seriousness of the alleged breach or prejudice;
- **(d)** the importance of the take to claimants;
- **(e)** the importance of the take to Māoridom; and
- **(f)** the importance of the take to the nation.

10 These criteria continue to apply, with the stronger focus on contemporary kaupapa issues giving additional weight to the immediacy of the take or potential remedy. This will require the Tribunal to be flexible and responsive in reordering the inquiry programme as and when claimant and Crown priorities change. Greater flexibility may also be required in determining and scheduling the issues to be heard and reported on within the inquiries.

11 The Tribunal will therefore keep the order of kaupapa inquiries under review and adjust it as appears appropriate, informing parties when it does so. The Tribunal will also consider applications by claimants or the Crown to amend the inquiry programme so as to make an earlier start on a listed kaupapa inquiry that focuses mainly on contemporary issues.

Inquiry topics and kaupapa issues

12 The April 2015 memorandum signalled the Tribunal's preference for the thematic topic set down for a kaupapa inquiry to have a broad scope so that related claim issues could be grouped for concurrent hearing, noting:

> This will help to promote efficiency in the conduct of kaupapa inquiries and to enable faster completion of the programme as a whole. It will reduce the fragmentation and duplication of effort by the Tribunal and the inquiry parties across multiple inquiries. It will also assist the Tribunal to consider all aspects of the issue, enabling an inquiry to consider related matters together and to deliver more comprehensive findings and recommendations.

13 The purpose of a kaupapa inquiry, however, is not to conduct a general exploration of all aspects of its thematic topic or of the totality of Māori experience of Crown actions and omissions. Rather, it is to investigate and make findings on the Treaty breaches and prejudice alleged by the claimants in respect of the kaupapa issue or issues of national significance that fall within the scope of that topic. Kaupapa issues may themselves be broadly or narrowly defined and may be given differing levels of priority by claimants.

Targeted inquiries into contemporary issues

14 The original programme of 11 inquiries was organised under broad thematic topics that grouped related issues set out in existing claims on the Tribunal's register. I also indicated, however, that the Tribunal would be prepared to take 'a more targeted approach where appropriate to the nature of the issue, to the grievances raised and remedies sought, or to circumstances requiring a fast inquiry process for particular claims.'

15 This targeted approach has since taken practical effect:

(a) The Housing Policy and Services inquiry was severed from the broader kaupapa inquiry into Social Services, Social Development and Housing claims, and proposed for early inquiry. The basis for doing so was that housing had become a major current issue in Crown policy and practice that affected Māori generally and significantly, and had been the subject of an application for urgency. The Tribunal has recently consulted affected claimants and the Crown on whether a separate inquiry should proceed.

(b) Claims about the Marine and Coastal Area (Takutai Moana) Act were given priority for a targeted kaupapa inquiry in view of the claimants' allegations that imminent prejudice would arise from the Crown's process for recognising Māori rights under this Act.

16 The Tribunal will continue to take a proactive approach to consulting affected claimants and the Crown on contemporary matters that may merit an early and rapid kaupapa inquiry. As indicated in the April 2015 memorandum, claimants or the Crown may also apply at any time for a targeted inquiry.

Prioritising issues within inquiries

17 Recent experience in kaupapa inquiries suggests an active interest on the part of many claimants and the Crown in dealing first with issues they consider to be pressing, in particular matters of current Crown policy and practice. This has led to Tribunal panels organising their inquiries into stages so as to give early attention to issues seen as important for early reporting by claimants and/or the Crown.

18 Exemplifying that approach, in the Health Services and Outcomes inquiry the Tribunal is hearing two national claims concerning primary healthcare in stage 1 and has signalled that it will hear claims concerning three health sectors (mental health; smoking, alcohol and substance abuse; and Māori with disabilities) in stage 2, before proceeding with other claim issues.

19 There may be kaupapa inquiries where a staged approach or early, selective reporting is not appropriate. In general, however, my expectation is that issues concerning current Crown policy and practice will be given priority where there is SUbstantial claimant support and readiness for early hearing and reporting, provided that doing so would remain relevant alongside any Crown-initiated policy development or inquiry process under way.

The updated kaupapa inquiry programme

20 As indicated above, five kaupapa inquiries are under way. Next to commence will be the Constitution, Self-government and Electoral System inquiry. This inquiry was delayed so as to minimise overlaps with the hearing of claims about constitutional issues, autonomy and tino rangatiratanga in the four active district inquiries, in particular the Te Paparahi o Te Raki inquiry, where hearings and closing arguments have now concluded.

21 The order of future inquiries is also adjusted so as to bring forward two that focus in part on major fields of current Crown policy and action and may require targeted inquiry processes should the parties propose particular issues to prioritise. They are:

(a) the Education Services and Outcomes inquiry; and

(b) the Social Services and Social Development inquiry.

22 22. These and other changes are listed in the updated inquiry programme (see Appendix B).

The updated kaupapa inquiry programme

23 The pace at which the kaupapa inquiry programme advances is necessarily conditioned by the resources available to progress Tribunal inquiries. As the Tribunal has many calls on its resources, the *Strategic Direction, 2014–2025* laid down a general framework of priority settings for balancing the allocation of such resources across its inquiry programme. It specified that resources are to be prioritised, in ranking order, to the hearing of:

(a) urgent inquiries, including remedies proceedings granted urgency;

(b) historical claims, principally completion of the final district inquiries;

(c) kaupapa inquiries; and
(d) contemporary claims not heard in other inquiries.

24 At present and for the next few years, the Tribunal's resources are likely to be heavily committed to urgent and district inquiries. Beyond the three kaupapa inquiries already under way and the two about to commence, the Tribunal's ability to progress the next inquiries in the kaupapa inquiry programme is accordingly limited.

25 Scheduling the start of a kaupapa inquiry will therefore depend in part on sufficient resources being available. Given current constraints, for any proposed new kaupapa inquiry the Tribunal will give priority to targeted, rapid inquiries into pressing contemporary issues concerning current Crown policy and action where the claimants can demonstrate their readiness to go to hearing.

Preparing for upcoming kaupapa inquiries

26 The April 2015 memorandum indicated that the first formal step in starting a kaupapa inquiry would be the appointment of a Presiding Officer and panel. This has been the Tribunal's standard practice for non-urgent inquiries.

27 Depending on the circumstances in each case, the standard practice may change. The Tribunal's experience in several kaupapa inquiries to date has been that extensive preparatory and consultative work has required a lengthy start-up phase. The two preliminary steps outlined below are intended to shorten the time required and prepare the way for the start of each inquiry listed in the inquiry programme. These steps will be initiated at the discretion and under the auspices of the Chairperson prior to the appointment of a Presiding Officer and panel to conduct the inquiry.

Claimants intending to participate

28 The first preliminary step concerns claimant participation. For a forthcoming kaupapa inquiry, the Tribunal will:

(a) distribute a provisional list of claims registered with the Tribunal that appear to relate to the inquiry's kaupapa issues and request the claimants to indicate whether they wish to participate in the inquiry; and
(b) request any claimants intending to participate:
    (i) to particularise or otherwise amend their claims; and
    (ii) to identify any issues that they consider the Tribunal should prioritise for early inquiry.

29 Once appointed, the Tribunal panel conducting the inquiry will undertake the formal aggregation and consolidation of claims as participants in the inquiry.

Exploratory scoping report

30 The second preliminary step is designed to assist the planning of the inquiry. For each inquiry listed in the inquiry programme, the Tribunal would commission an exploratory scoping report as a preliminary step. The precise terms of reference for the report would depend on the topic and context of the inquiry, but would normally be expected to provide:

- **(a)** a preliminary outline and analysis of statements of claim likely to fall within the scope of the inquiry and of the kaupapa issues to which they appear to relate;
- **(b)** an indication of whether and to what extent any such issues concern current Crown policy and practice; and
- **(c)** a brief description and select, annotated bibliography of the main evidential resources in the public domain that are likely to be relevant to the identified kaupapa issues.

31 The purpose of the scoping report would be to provide claimants, the Crown and, when appointed, the Tribunal panel with information that would help to expedite the planning of the inquiry and to identify principal issues.

Starting new unlisted kaupapa inquiries

32 Preliminary steps will also be taken for proposed new, unlisted kaupapa inquiries. The April 2015 memorandum provided for additions to be made to the kaupapa inquiry programme in circumstances:

- **(a)** where a kaupapa issue included in a future listed inquiry is severed and set down for an earlier targeted inquiry;
- **(b)** when claim issues emerge that cannot be accommodated within the inquiries listed in the programme, in particular:
  - (i) issues that a Tribunal kaupapa inquiry panel decides to exclude from the scope of its inquiry; and
  - (ii) new kaupapa issues for which the claimants request a separate inquiry.

33 Where an early start to a proposed new kaupapa inquiry is requested, the Tribunal will conduct a preliminary round of interlocutory proceedings under the auspices of the Chairperson to consult the affected claimants and the Crown. The purpose of the proceedings is to assist the Tribunal in determining whether the proposed inquiry should commence and if so, when, on which main issues and in what manner.

34 Matters that the Tribunal will take into consideration may include:

- **(a)** clarifying the range of issues that the claimants and the Crown propose to include in the kaupapa inquiry;
- **(b)** establishing whether the issue or issues satisfy the threshold test for starting a kaupapa inquiry (see below);

(c) identifying which claims the claimants want the Tribunal to hear, in particular any pressing contemporary claim issues concerning current Crown policy and practice;

(d) confirming claimant and Crown readiness to proceed, including claimant access to adequate resources to prepare their claims for hearing.

35 A decision to add and prioritise a new kaupapa inquiry may lead to delay for claims due to be heard later in the inquiry programme. The Tribunal will therefore take due account of any consequential impacts.

An inclusive approach to claimant participation

36 The April 2015 memorandum set out a three-part threshold test that must be met for each of the issues proposed for inclusion in a kaupapa inquiry:

> The kaupapa inquiry programme is designed to provide a pathway for the hearing of nationally significant claim issues that affect Māori as a whole or a section of Māori in similar ways. These thresholds – national significance, Māori widely affected, similarity of experience of the Crown policy or action complained of – must normally be met for a kaupapa inquiry to be constituted.

37 At the same time, it signalled an inclusive approach that was intended to 'enable claimants to bring before the Tribunal all eligible claims for which they seek a hearing on kaupapa issues'. The participation of claims raising specific and local issues in a kaupapa inquiry is further clarified below.

'Nationally significant claim issues'

38 The April 2015 memorandum states that the first part of the threshold test for starting a kaupapa inquiry is that a claim or claims raise one or more issues of national significance. This threshold may be met either by one or more national claims or by a group of claims about the same issue taken together.

39 Once the Tribunal is satisfied that the national significance threshold has been met, any claimant whose claim relates to the issue, including specific and local claims brought on behalf of individuals, whanau, hapu and other groups, may seek to participate in the subsequent kaupapa inquiry. Claims are not required to meet the threshold individually. If admitted to the inquiry, it should be clearly understood that the claims will be heard as part of the nationally significant kaupapa issue on which the inquiry will focus.

'Māori widely affected'

40 The second part of the threshold test for constituting a kaupapa inquiry concerns the extent to which claims that relate to the kaupapa issue in question are brought on behalf of Māori generally or the section of Māori affected by the issue.

41 At its simplest, this threshold may be met by a single claim brought on behalf of all Māori said to have suffered prejudice as a result, provided that the claimant is a member of the affected group. The threshold may also be met by a group of claims brought on their own behalf by individuals and groups that, taken together, can be regarded as representing most of the affected Māori, as was the case in the Māori Military Veterans inquiry.

'Similarity of experience of the Crown policy or action complained of'

42 The third part of the threshold test extends to the hearing of specific and local claims that relate to a kaupapa issue being heard in the inquiry. Such claims play an important role in kaupapa inquiries in providing local context, case examples and representative Māori experience of the national issue under examination.

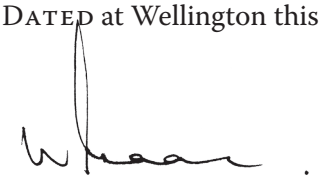
43 The focus of a kaupapa inquiry in which specific and local claims participate will be on the shared Māori experience of the kaupapa issue or issues concerned. The Tribunal will hear and report on such claims on the basis that the claimants assert that they have been affected in similar ways in respect of the Treaty breaches alleged.

Alternative inquiry options

44 Not all claimants whose grievances relate to a kaupapa issue may wish to have them heard in a kaupapa inquiry, in particular where they arise from distinct local circumstances. As indicated in the April 2015 memorandum, the Tribunal will provide alternative inquiry pathways for historical and contemporary claims that remain to be heard outside of the district and kaupapa inquiry hearing programme. A standing panel process for remaining historical claims has recently been started and a process for remaining contemporary claims will commence once the district inquiries have been completed. The Tribunal is committed to fulfilling its statutory obligation to inquire into all the claims before it.

The Registrar is to send this memorandum to the Crown and all claimants with registered claims and to place an electronic copy on the Tribunal's website for public information.

Dated at Wellington this 27th day of March 2019



Chief Judge W W Isaac
Chairperson
Waitangi Tribunal

APPENDIX C

District Inquiry Method

The Tribunal has 37 districts nationwide. The historical and contemporary claims arising in one or several districts are grouped for joint inquiry. To date, completed and active Tribunal district inquiries embrace more than 90 per cent of the country's land area.

Determining the extent of a district

In determining the extent of a particular inquiry district, the Tribunal balances a number of factors, including:

- the commonalities amongst claims (such as the Crown's actions or the resources to which claims relate);
- the geographical size of the district;
- the number of claims to be heard within the district; and
- the associations that tribes have with an area.

Although the final decision is the Tribunal's, the Tribunal invites the claimants and the Crown to make submissions on the structure of an inquiry district as they are proposed. Also, during hearings or preparation for hearings, the Tribunal may consider it necessary to review the extent of a district to accommodate tribal overlaps, ancestral associations, and historical movements.

The Tribunal does not generally commence hearings in an inquiry district until:

- all the principal issues raised by the claims have been identified (so far as it is possible to do so before hearings start);
- sufficient and adequate research covering all principal issues identified has been completed, filed, and entered on the Tribunal's record of inquiry; and
- it has compiled the research constituting the main evidential base for the inquiry into a casebook.

Note that:

- the Tribunal may decline to hear a particular claimant group that is ready to proceed until the research for other claims in the same inquiry district has been completed and compiled into the casebook for that district; and
- on receiving material for a casebook, the Tribunal may, if it considers that the research does not provide an adequate basis upon which to hear the claim or claims to which it relates, defer the hearing of the claim or claims while further research is undertaken.

Prioritisation process

In determining the order by which inquiry districts are to be brought on the hearing programme, the Tribunal has regard to:

- the priority that the Tribunal has accorded districts with a raupatu element;
- the readiness of claimants to proceed, including any research in progress via the Tribunal or the Crown Forestry Rental Trust or both;
- any overlaps with districts already under research or in hearing;
- the findings of the Rangahaua Whanui *National Overview* report regarding the comparative degree of land and resource loss, and when those losses occurred;
- the preference of the claimants to go through the Tribunal process (where that is known); and
- any other relevant factors.

APPENDIX D

Guidelines for Requesting a Site Visit

If it is intended that a site visit take place during the course of a hearing, the counsel or other claimant representative who is proposing the visit is to deliver to the Registrar, unless otherwise stated by the Presiding Officer, no later than 10 working days before the start of the relevant hearing a proposal detailing:

- the site(s) or area(s) to be visited;
- the purpose of the site visit and the benefits to the inquiry that it will bring;
- the length of the site visit;
- when the site visit will be timetabled in the course of the hearing;
- how the site visit will be conducted, including:
  - the method of transport;
  - how any commentary will be given and by whom; and
  - what, if any, breaks for meals or refreshments will occur.
- who is expected to attend the site visit;
- any costs of the site visit that the Waitangi Tribunal will be asked to meet or contribute to (with those costs sufficiently particularised);
- the contact person with whom Tribunal staff are to deal concerning arrangements for the site visit (that is, claimant counsel or a claimant contact and, if the latter, the name of the person);
- whether the site visit will be dependent on particular weather conditions and, if so, what is proposed if those conditions do not prevail;
- whether the site visit involves entering private land or other land that requires permission to enter and, if so, whether permission has been obtained;
- whether any pōwhiri will take place in the course of the site visit; and
- any other information that is relevant to the proposal.

On receipt of a proposal, the Tribunal will consider it and as soon as possible confirm whether it is willing to conduct the site visit as proposed. Discussion about particular matters may be necessary. If counsel fails to provide a proposal by the required time, it is likely that the Tribunal will not conduct the site visit.

APPENDIX E

Filing of Research Reports, Supporting Documents, and Other Material

This procedure applies to the filing of research reports, their supporting documents, and other evidential material by parties and other persons who are entitled to be heard. It does not cover the filing of submissions or their supporting documents.

Research reports and supporting document banks may not be able to be filed in electronic format alone. Those filing such documents should seek advice from the Registrar. All research reports and supporting documents are to be filed with the Registrar in unbound, single-sided paper format. All submitters are nevertheless encouraged also to file their reports in electronic file format.

The procedure for filing information in this category is:

- convert the electronic version of textual evidence or information into a PDF file; and
- provide the electronic versions of evidence unsuitable for PDF conversion in the following native file formats:
  - spreadsheets in Microsoft Excel format;
  - database tables or applications in Microsoft Access format;
  - slideshow presentations in Microsoft Powerpoint format;
  - images in jpg or tif format;
  - GIS mapping data in MapInfo or ArcView shape format;
  - audio and video material in a recognised digital format, if feasible;
  - any other suitable format.

The information should then be emailed to the Registrar via email or electronic link. Alternatively, a USB drive containing the information can be sent to the Registrar.

Submitters are advised to take particular care when transmitting electronic evidential documents to the Registrar by email as the large file size of some documents may jeopardise successful transmission.

Material that is unsuitable for presentation on paper, such as solid objects, large graphical displays or video recordings, should be filed in the most appropriate practicable format. Anyone intending to file such material should

consult the Registrar on the appropriate form for filing and storing the evidential material and for presenting it at hearing.

Supporting documents attached to research reports, or document banks filed separately, should be paginated, and indexed for ease of reference in proceedings. See *paragraphs 4.10–4.14* of the *Guide* regarding the indexing and pagination of document banks.

APPENDIX F

Procedure for Making Applications for Confidentiality

This procedure applies generally where parties seek confidentiality directions from the Tribunal in respect of documents that have been or are to be filed with the Tribunal generally because of the sensitive nature of the information. This protocol is distinct from disclosure process outlined at *paragraphs 5.18–5.27*.

The procedure also applies where the requestor seeks a confidential session at a hearing, or retrospectively asks for confidentiality directions in respect statements made by a witness in oral testimony.

To seek an order for confidentiality, the requestor should file an application for confidentiality outlining the reasons for the confidentiality sought. The application should:

- be filed well in advance of the relevant hearing, or otherwise at the earliest opportunity;
- where appropriate, accompany an unredacted version of the relevant document filed directly with the Registrar of the Tribunal and served on the Crown, and a redacted version served on the public distribution list;
- outline the specific restrictions sought over the documents; and
- outline how the information should be stored on the record of inquiry and the Tribunal after the hearing, and how requests to access such information should be dealt with.

The Tribunal may then provide the opportunities for parties to comment on the application for confidentiality directions and an opportunity for the applicant to reply to any submissions if appropriate.

The Tribunal will then determine of the application, outlining the relevant restrictions if the application is granted.

Where the Tribunal has directed that information should be treated as confidential:

- the confidential information should only be disclosed in accordance with the Tribunal's directions, unless otherwise stated;
- the public (redacted) version of the document shall be publicly available and placed on the record of inquiry; and

- The confidential information shall be placed on the record of inquiry as a confidential document appended to the public version and should not be publicly available. The document will appear on the public record of inquiry as a notice document notifying parties that the document is confidential.

Where the Tribunal has directed that information should be treated as confidential, unless the Tribunal directs otherwise:

- a witness whose identity is confidential or whose evidence is wholly confidential should have his or her evidence taken as read or give evidence in a closed session at a hearing;
- a witness whose evidence is subject to confidentiality in part may only, subject to any Tribunal directions, produce the confidential information in a closed session and the balance of the evidence in an open session; and
- counsel wanting to question a witness whose identity is confidential or whose evidence is wholly or partly confidential are to seek leave of the Presiding Officer. If the witness's evidence is being taken as read, counsel must file written questions for the witness prior to the relevant hearing. If the witness is giving evidence in a closed session, counsel will not be required to file written questions in advance. The witness must provide answers to any cross-examination written questions without identifying his or her identity. For example, it may be appropriate to use the claimant's initials. These descriptors should be used by parties throughout in documents.

For the avoidance of doubt:

- a confidentiality order only extends to the documents filed in the Tribunal for the purpose of a Tribunal inquiry and does not apply to copies of the same material independently held by individuals or organisations filing such material; and
- nothing in this Procedure restricts a party's ability to make their own confidential information public. However, if a party does make their own confidential information public, the party should notify the Tribunal as soon as practicable and the Tribunal will need to consider whether it is appropriate to maintain the confidentiality directions it has made.

Alternatively, and particularly in the case of oral testimony, where counsel may not appreciate until part way through that the evidence is of a sensitive nature, counsel may apply for access or use restrictions during the presentation, or at the end, of a claimant's evidence. Such an application is to include the grounds for the application, and the Tribunal may, if appropriate, seek submissions from counsel for affected parties or other affected persons who are entitled to be heard.

APPENDIX G

Applications that Land or Interest in Land Be No Longer Subject to Resumption

Section 8D of the Treaty of Waitangi Act 1975

General

1 The owner of land or an interest in land that is subject to resumption on the recommendation of the Waitangi Tribunal may apply to the Tribunal under section 8D of the Treaty of Waitangi Act 1975 for a recommendation that the whole or part of the land or interest in land be no longer subject to resumption.

2 The Tribunal's power to make a recommendation under section 8D is discretionary. The discretion may be exercised only if there is no claim in relation to the land or interest in land or, where there is a claim, only if all the parties to the claim have informed the Tribunal in writing that they consent to the making of a recommendation that the land or interest in land be no longer subject to resumption (see section 8D(1)(b)(ii) of the Treaty of Waitangi Act 1975).

3 There is no fee for making an application.

Form of application

4 Applications pursuant to section 8D of the Treaty of Waitangi Act 1975 should be addressed to:

The Registrar
Waitangi Tribunal
DX SX11237
Wellington

While section 8F of the Treaty of Waitangi Act sets out certain information that must be provided with an application, there are no prescribed forms of application. However, the attached forms 1 and 2 may serve as guides. A virgule (/) indicates an option. Options that do not apply should be deleted.

5 Where an application concerns an interest in land, the phrase 'interest in land' should be substituted for the word 'land' wherever it appears.

6 A separate application for each piece of land or each interest in land is required, but one application may serve for several titles where a building, farm, subdivision, or other enterprise is constituted on more than one title.

7 A general description of the land to assist lay identification should be provided (eg, Raupo Post Office or Murphy Station, Raupo).

8 A locality diagram or map is useful in all cases, and is essential where the tribal district is not known to the applicant. Many claims do not give precise legal descriptions of the areas of land that they cover, so the map should not only pinpoint the land but also indicate the wider locality.

9 A photocopy search of the title is preferred to a summarised manual search, with a copy of the title diagram showing closed roads and accretions. Any leases should be searched for purchase rights, and attention should be drawn to any deferred payment licences (see section 27B(2) of the State-Owned Enterprises Act 1986).

10 To enable the Tribunal to decide which persons may be adversely affected by the application, the applicant should provide information on:

- How the Crown acquired the land and, if it was from Māori, from whom and when this was done.
- Whether the land is 'closed road', has been the site of a native church or school, or was Crown land reserved for Māori.
- Any deed, instrument, statute, or ordinance whereby the Māori customary title purports to be extinguished.

Service and notice of the application

11 There are no prescribed forms of individual service or public notice, but the attached forms 3, 4, and 5 may serve as guides.

12 The application should be accompanied by a memorandum giving reasons for the directions considered appropriate. This memorandum should refer to the persons proposed for service and the newspapers proposed for public notice. It may be appropriate to serve notice on local Māori trust boards, local Māori committees of the New Zealand Māori Council, district Māori councils, Māori incorporations, Māori land trusts, runanga, marae committees, and other bodies representative of Māori hapu or iwi in the district of the land to which the application relates. Particulars of these may be obtained from Te Puni Kokiri (the Ministry of Māori Development) or the district office of the Māori Land Court. Generally, a small local newspaper and one major district newspaper should be suggested for the public notice. The Tribunal usually requires the public notice to be published once in the *Gazette* and twice

in each newspaper, with the second notice appearing not more than seven days after the first.

13 Any claims already submitted to the Tribunal that relate or that might relate to the land should be noted briefly in any public notice (see form 5). The note should quote the Wai number for the claim, the claimant or claimant group involved, and the name of the claim. For example:

> Wai 100, Hauraki Māori Trust Board, Hauraki claim

Applicants may request the Registrar to provide details of claims submitted to the Tribunal that relate or that might relate to the applicant's land.

14 If the supply of the above details would be overly onerous in a particular case, the applicant may omit them from the memorandum provided they draw the omission to the Tribunal's attention when the application is submitted. However, before it issues directions for notice and service, the Tribunal may direct that the applicant provide some or all of the information omitted.

Tribunal directions for service and notice

15 The Tribunal will send the applicant a copy of its directions for service and public notice of the application in accordance with sections 8F and 8G of the Treaty of Waitangi Act 1975. If the applicant wishes to make submissions on these directions, they should be filed with the Registrar within two weeks of the date of the directions. If possible, any questions about the directions should in the first instance be directed to the Registrar.

16 Service should be effected by registered post.

17 In a situation where service cannot be effected, the applicant should as soon as possible file with the Tribunal a memorandum seeking further directions. The memorandum should set out the steps that have been taken in respect of the particular service that could not be effected.

Final Tribunal consideration of the application

18 The Tribunal will notify the applicant of any claims relating to the application that have been received within the notice period or any advice received from existing claimants that their claim relates to the applicant's land or interest in land and, if it does, whether or not the claimants consent to the making of the recommendation sought.

19 If, at the end of the notice period, it appears to the applicant that there are no claims affecting the application and that the Tribunal may proceed to make a recommendation under section 8D of the Treaty of Waitangi Act 1975, the applicant should file with the Tribunal a memorandum

requesting that it make the recommendation. The memorandum should recite both the steps that have been taken to that date and the matters referred to in section 8D. Proof that service was made and notice given in accordance w ith the Tribunal' s directions should be provided by filing with the Tribunal an affidavit or declaration exhibiting *Gazette* and newspaper extracts showing the dates on which the public notice was published and receipts for the delivery of the private notice by registered mail.

20 On receipt of the memorandum referred to in paragraph 18, the Tribunal will decide whether or not to make the recommendation sought and shall cause a sealed copy of its decision and any recommendations to be served on:

- the applicant;
- the Minister of the Crown for the time being responsible for the administration of the Survey Act 1986;
- the Minister of Māori Affairs; and
- such other persons as the Tribunal thinks fit (see section 8H of the Treaty of Waitangi Act 1975).

21 The Minister responsible for the administration of the Survey Act 1986 will then issue a certificate to the effect that the land or interest in land is no longer subject to resumption and will lodge that certificate with the relevant District Land Registrar. (Where the land or the land in which the interest in land exists is not subject to the Land Transfer Act 1952 and instruments relating to the land or the interest in land are not registrable under the Deeds Registration Act 1908, the certificate will instead be lodged with the office of the chief surveyor.) The District Land Registrar or the Chief Surveyor, as the case may be, will then undertake the necessary steps to give effect to the certificate (see section 8E of the Treaty of Waitangi Act 1975).

22 No appearance is required for the formal consideration of an application unless the Tribunal directs otherwise.

23 This practice note replaces that issued on 5 September 1991 entitled 'State Enterprise and Education Lands'.

DATED at Wellington this 7th day September 1991

Deputy Chairperson

FORM 1

Application that Land or Interest in Land Be No Longer Subject to Resumption

The Registrar
Waitangi Tribunal
DX SP11237
Wellington

[*General description of land*]

I/WE [*Name of owner(s)*], APPLY

FIRSTLY, pursuant to section 8D(1) of the Treaty of Waitangi Act 1975, for a recommendation that the land or interest in land described in the schedule attached be no longer subject to resumption.

AND SECONDLY, pursuant to sections 8F and 8G of the Treaty of Waitangi Act 1975, for directions as to service and public notice.

I/WE SUBMIT THAT the following directions are considered appropriate:

- That a notice in the form marked 'A' attached* and a copy of the application be served on: [*List names and addresses of claimants to receive this notice*].
- That a notice in the form marked 'B' attached† and a copy of the application be served on: [*List names and addresses of persons to receive this notice*].
- That a notice in the form marked 'C' attached‡ be advertised in the *Gazette* and [*List names of newspapers in district and number of times application to be advertised in each newspaper*].

* Form 3, 'Private Notice to Claimants'

† Form 4, 'Private Notice to Māori Who May Have an Interest'

‡ Form 5 , 'Application that Land or Interest in Land be No Longer Subject to Resumption'

UPON THE GROUNDS that the land or interest in land described in the schedule attached has been:

- transferred from the Crown to a State enterprise under section 23 of the State-Owned Enterprises Act 1986 *or*
- vested in a State enterprise by a notice in the *Gazette* under section 24 of the State-Owned Enterprises Act 1986 *or*

Strike out those options that do not apply

Strike out those options that do not apply

- vested in a State enterprise by an Order in Council made under section 28 of the State-Owned Enterprises Act 1986 *or*
- transferred to an institution within the meaning of section 159 of the Education Act 1989 under section 207 of that Act *or*
- vested in such an institution by Order in Council made under section 215 of the Education Act 1989 *or*
- vested in a Crown transferee company pursuant to section 6 of the New Zealand Railways Corporation Restructuring Act 1990

and

- that the applicant is the owner of the land.

And upon the further grounds set out in the memorandum of [*Name of person submitting memorandum*] attached.

Dated at this day of 20

[Signature and name of solicitor or agent]
Solicitor/Duly authorised agent

FORM 1

Schedule of the Land or Interest in Land

Location (street address):

General description:

Land registry district:

Māori Land Court district:

Tribal district (if known):

Legal description:

THIS APPLICATION is filed by [*Name of solicitor or agent*], solicitor/agent for the applicant, whose address for service is [*Address for service, including telephone and fax numbers*].

(No backing sheet required)

FORM 2

WAITANGI TRIBUNAL

Memorandum

IN THE MATTER of an application pursuant to section 8D of the Treaty of Waitangi Act 1975 by [*Name of owner(s)*] for a recommendation that [*General description of land*] be no longer subject to resumption.

I am the solicitor/agent for [*Name of applicant*], who has applied for a Tribunal recommendation that land at [*Location of land*] be no longer subject to resumption under:

- section 27B of the State-Owned Enterprises Act 1986 *or*
- section 212 of the Education Act 1989 *or*
- section 39 of the New Zealand Railways Corporation Restructuring Act 1990.

[*State the reasons requiring the application to be made*]

Attached to this memorandum are:

- [*A photocopy of the title(s), where available*]
- [*A title diagram and locality plan*]

[*Advise whether any leases contain purchase rights, and draw attention to any deferred payment licences: see section 27B of the State-Owned Enterprises Act 1986*]

[*Advise whether any wahi tapu are recorded by the New Zealand Historic Places Trust, are disclosed on town plans, or are known to the applicant*]

The history of this land, as far as can be ascertained, is as follows:

- The land was acquired by the Crown by [State how land was acquired].
- A brief history of the land is [Set out history of land, noting major transfers].
- The land is in the area of a claim(s) to the Tribunal by [*Name of claimant(s)*], which is/are registered as Wai [*Claim number(s)*].

- [*Recite any other particulars that will enable the Tribunal to decide which persons may be adversely affected by the application*]

The directions set out in the application are appropriate for the following reasons:

[*Give reasons why named groups and persons should receive notice and why newspapers named have been chosen to advertise application*]

The services and notices suggested will be sufficient to bring the application to the attention of all persons who may be adversely affected.

Dated at this day of 20

Signed: [*Name of solicitor or agent*]
Solicitor/agent for the applicant

(No backing sheet required)

FORM 3

Private Notice to Claimants that Land or Interest in Land Be No Longer Subject to Resumption

The Treaty of Waitangi Act 1975
The State-Owned Enterprises Act 1986

This notice concerns land at [*Location of land*] and Māori claims under the Treaty of Waitangi Act 1975.

Read this notice carefully. It may affect your right to ask for the return of certain former Crown lands in settlement of a claim to the Waitangi Tribunal.

If you do not fully understand this notice, you should get legal advice or contact the Waitangi Tribunal at the address given below.

The land at [*Location of land*] is described in legal terms as [*Legal description of land*].

The land was once owned by the Crown. It was:

- transferred to a State enterprise under section 23 of the State-Owned Enterprises Act 1986 *or*
- vested in a State enterprise by a notice in the *Gazette* under section 24 of the State-Owned Enterprises Act 1986 *or*
- vested in a State enterprise by an Order in Council made under section 28 of the State-Owned Enterprises Act 1986 *or*
- transferred to an institution under section 207 of the Education Act 1989 *or*
- vested in an institution under section 215 of the Education Act 1989 *or*
- vested in a Crown transferee company under section 6 of the New Zealand Railways Corporation Restructuring Act 1990.

Strike out those options that do not apply

There is a special notice or 'memorial' on the certificate of title for the land which provides that, if the Waitangi Tribunal so recommends, the land shall be resumed by the Crown and returned to Māori ownership (see sections 27A and 27B of the State-Owned Enterprises Act 1986 *or* sections 212 and 213 of the Education Act 1989 *or* section 39 of the New Zealand Railways Corporation Restructuring Act 1990).

The current owner of the land, [*Name of current owner*], has applied to the Waitangi Tribunal to have this memorial removed. The application has been

made under section 8D of the Treaty of Waitangi Act 1975 and a copy of that application is attached.

You have a claim to the Waitangi Tribunal that may relate to this land. Its reference is Wai [*Relevant Wai number*].

You should notify the Registrar of the Waitangi Tribunal in writing before the day of 20 whether you are making a claim that relates to this particular land and, if so, whether you consent to the memorial being removed so that this land be no longer subject to resumption by the Crown and be no longer available for return to Māori ownership on the recommendation of the Waitangi Tribunal.

If you do not notify the Registrar before the day of 20 , the Tribunal may recommend that the land be no longer subject to resumption, upon which the memorial will be removed.

Advice that you are making a claim that relates to this land, or written consent to the removal of the memorial, should be posted to:

The Registrar
Waitangi Tribunal
DX SX11237
Wellington

or delivered to:

The Registrar
Waitangi Tribunal
Level 7
FujitsuTower
141 The Terrace
Wellington 6011

This notice has been sent to the following people, who may be affected by it:

[*Names of all persons to whom private notices in forms 3 and 4 have been sent*]

You may pass this notice on to any other Māori or Māori group that you consider may be affected.

For further information, contact the Tribunal Registrar at the address set out above, or phone 4 914 3000.

Signed: [*Signature of solicitor or agent*]

for: [Name of applicant]

Dated at this day of 20

Signed by: [*Name and contact address of solicitor or agent*]

FORM 4

Private Notice to Māori Who May Have An Interest

The Treaty of Waitangi Act 1975
The State-Owned Enterprises Act 1986

This notice concerns land at [*Location of land*] and Māori claims under the Treaty of Waitangi Act 1975.

Read this notice carefully. It may affect your right to ask for the return of certain ormer Crown lands in settlement of a claim to the Waitangi Tribunal.

If you do not fully understand this notice, you should get legal advice, or contact the Waitangi Tribunal at the address given below.

The land at [*Location of land*] is described in legal terms as [*Legal description of land*].

The land was once owned by the Crown. It was:

- transferred to a State enterprise under section 23 of the State-Owned Enterprises Act 1986 *or*
- vested in a State enterprise by a notice in the *Gazette* under section 24 of the State-Owned Enterprises Act 1986 *or*
- vested in a State enterprise by an Order in Council made under section 28 of the State-Owned Enterprises Act 1986 *or*
- transferred to an institution under section 207 of the Education Act 1989 *or*
- vested in an institution under section 215 of the Education Act 1989 *or*
- vested in a Crown transferee company under section 6 of the New Zealand Railways Corporation Restructuring Act 1990.

Strike out those options that do not apply

There is a special notice or 'memorial' on the certificate of title for the land, which provides that, if the Waitangi Tribunal so recommends, the land shall be resumed by the Crown and returned to Māori ownership (see sections 27A and 27B of the State-Owned Enterprises Act 1986 *or* sections 212 and 213 of the Education Act 1989 *or* section 39 of the New Zealand Railways Corporation Restructuring Act 1990).

The current owner of the land, [*Name of current owner*], has applied to the Waitangi Tribunal to have this memorial removed. The application has been made under section 8D of the Treaty of Waitangi Act 1975 and a copy of that application is attached.

If no claim about this land is made to the Registrar before the day of 20 , the Tribunal may recommend that the land be no longer subject to resumption and the memorial will be removed.

Any claim in relation to this land should be posted to:

The Registrar
Waitangi Tribunal
DX SX11237
Wellington

or delivered to:

The Registrar
Waitangi Tribunal
Level 7
Fujitsu Tower
141 The Terrace
Wellington 6011

Section 6 of the Treaty of Waitangi Act 1975 sets out the grounds for making a claim.

This notice has been sent to the following people who may be affected by it:

[*Names of all persons to whom private notices in forms 3 and 4 have been sent*]

You may forward this notice to any other Māori or Māori group that you consider may be affected.

For further information, contact the Tribunal Registrar at the address set out above, or phone 4 914 3000.

Signed: [*Signature of solicitor or agent*]

for: [*Name of applicant*]

Date:

Signed by: [*Name and contact address of solicitor or agent*]

FORM 5

Application that Land or Interest in Land Be No Longer Subject to Resumption

The Treaty of Waitangi Act 1975
The State-Owned Enterprises Act 1986

This notice concerns land at [*Location of land*] and Māori claims under the Treaty of Waitangi Act 1975.

The land at [*Location of land*] is described in legal terms as [*Legal description of land*].

The land was once owned by the Crown. It was:

- transferred to a State enterprise under section 23 of the State-Owned Enterprises Act 1986 *or*
- vested in a State enterprise by a notice in the *Gazette* under section 24 of the State-Owned Enterprises Act 1986 *or*
- vested in a State enterprise by an Order in Council made under section 28 of the State-Owned Enterprises Act 1986 *or*
- transferred to an institution under section 207 of the Education Act 1989 *or*
- vested in an institution under section 215 of the Education Act 1989 *or*
- vested in a Crown transferee company under section 6 of the New Zealand Railways Corporation Restructuring Act 1990.

Strike out those options that do not apply

There is a special notice or 'memorial' on the certificate of title for the land which provides that, if the Waitangi Tribunal so recommends, the land shall be resumed by the Crown and returned to Māori ownership (see sections 27A and 27B of the State-Owned Enterprises Act 1986 *or* sections 212 and 213 of the Education Act 1989 *or* section 39 of the New Zealand Railways Corporation Restructuring Act 1990).

The current owner of the land, [*Name of current owner*], has applied to the Waitangi Tribunal to have this memorial removed. The application has been made under section 8D of the Treaty of Waitangi Act 1975.

Any Māori person who considers that they, or any group to which they belong, has a claim to make to the Waitangi Tribunal about this land should submit their claim to the Tribunal before the day of 20 .

Section 6 of the Treaty of Waitangi Act 1975 sets out the grounds for making a claim. Claims may be posted to:

The Registrar
Waitangi Tribunal
DX SX11237
Wellington

or delivered to:

The Registrar
Waitangi Tribunal
Level 7
Fujitsu Tower
141 The Terrace
Wellington 6011

[*Add the following paragraph only if claims have already been submitted*]

The following claims have already been submitted to the Tribunal and may relate to this land: [*Provide 'Wai' number, name of claimant or claimant group, and name of claim*].

If no claim about this land is made to the Waitangi Tribunal before the day of 20 , the Tribunal may recommend that the land be no longer subject to resumption by the Crown and that it be returned to Māori.

Dated at this day of 20

Inserted by: [*Name and contact address of solicitor or agent*]