
WAITANGI TRIBUNAL PRACTICE NOTE
**GUIDE TO THE PRACTICE AND PROCEDURE
OF THE WAITANGI TRIBUNAL**

AUGUST 2018

Amendments

Section 2.5 was substituted on 12 November 2004
and 28 May 2012

Section 3.3 was substituted on 7 April 2009

Section 3.4 was substituted on 7 April 2009

Section 4.5 was substituted on 17 May 2004

Section 4.6 was substituted on 9 May 2006

All occurrences of the Waitangi Tribunal's address
were updated on 13 September 2013

All references to the Waitangi Tribunal's former PO Box
number were removed on 20 August 2018

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WAITANGI TRIBUNAL PRACTICE NOTE

GUIDE TO THE PRACTICE AND PROCEDURE

OF THE WAITANGI TRIBUNAL

1. INTRODUCTION

The Waitangi Tribunal inquires into claims by Māori relating to the Treaty of Waitangi and its principles. Its jurisdiction is unique within New Zealand and it has no close parallel anywhere else in the world. It functions not as an adversarial court but as a commission of inquiry that makes recommendations relating to the practical application of the Treaty. To that end, the Tribunal is required to have regard to the Treaty'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 the Treaty as embodied in the two texts and to decide issues raised by the differences between them.*

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, 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.

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 and the Treaty of Waitangi Act 1975, and the various enactments giving effect to Treaty claim settlements.

2. GENERAL PROCEDURE

2.1 Procedure by way of inquiry

The Waitangi Tribunal is a specialist body whose members are appointed for their 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.

* The two texts are set out in the second schedule to the Treaty of Waitangi Act 1975.

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 other persons from being similarly affected in the future. The Tribunal considers that any claim, once admitted to the register, is a claim under inquiry.

The Tribunal has 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 report that will provide a sufficient base for a lasting settlement to be sought. 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.

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.

2.2 Biculturalism

The Waitangi Tribunal functions as a bicultural body. It comprises both Māori and Pākehā members, who are appointed with regard to 'the partnership between the 2 parties to the Treaty' 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.* At any one time, therefore, about half the members are Māori and half are Pākehā, and at any sitting of the Tribunal, at least one Māori member must be present. Where it is practicable and desired, the Tribunal hears Māori evidence and submissions according to Māori protocols. Evidence and submissions may be given in Māori.

2.3 District inquiries and the casebook method

The Tribunal groups claims for concurrent inquiry within geographical areas called inquiry districts.† However, generic claims (being claims that are not specific to a particular inquiry district) or claims that are granted urgency may be heard in separate inquiries.

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;

* See the Treaty of Waitangi Act 1975, s 4(2A)

† These districts are set out in the Tribunal's *Business Strategy*, copies of which can be obtained from the Tribunal's administration.

- ▶ 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 inquiry districts as they are proposed. Also, in the course of 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.

2.4 Priorities for district inquiries and generic claims

The Tribunal, with staff advice, projects and annually reviews how it will allocate research and other resources to claims and inquiry districts. This information is published each year in the Tribunal's *Business Strategy*. This allocation may affect the order in which claims are heard, but it does not necessarily determine that order since claimants may obtain resources elsewhere to prepare for hearings. The Tribunal reserves its discretion to amend its priorities as circumstances require, or after hearing claimant groups seeking an adjustment of the priority that the Tribunal has given them.

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.

In determining the order by which generic claims are to be brought on the hearing programme, the Tribunal has 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 district inquiries; and
- ▶ any other relevant factors.

Claimants who seek an adjustment of the priority that the Tribunal has given 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.

2.5 Applications seeking urgent Tribunal consideration

There are two circumstances in which parties may apply for urgent Tribunal consideration:

- ▶ **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; or
- ▶ **Applications for an urgent remedies hearing:** Where the Tribunal has determined that a claim is well-founded but has deferred its decision on 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 the Treaty that the Tribunal has found to be established.

(1) Criteria for applications seeking urgent Tribunal consideration

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 hearing only in exceptional cases and only once it is satisfied that adequate grounds for according priority have been made out. Such hearings will inevitably delay programmed hearings already in train, and the claims of those seeking priority must be balanced against the numerous claims involved in inquiries in hearing and in preparation. Deferral of an existing hearing is often the practical effect of a Tribunal decision to grant an urgent hearing.

(a) Applications for an urgent inquiry

In deciding an urgency application, the Tribunal has regard to a number of factors. Of particular importance is whether:

- ▶ 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;
- ▶ there is no alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise; and
- ▶ the claimants can demonstrate that they are ready to proceed urgently to a hearing.

Other factors that the Tribunal may consider include whether:

- ▶ the claim or claims challenge an important current or pending Crown action or policy;
- ▶ 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
- ▶ any other grounds justifying urgency have been made out.

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

(b) Applications for an urgent remedies hearing

The Tribunal will consider an application for an urgent remedies hearing only if the applicants have a report of the Tribunal in which their claim or claims have been determined to be well-founded.

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 is whether:

- ▶ 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;
- ▶ there is no alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise; and
- ▶ the claimants can demonstrate that they are ready to proceed urgently to a hearing.

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*, namely:

- ▶ the size of the group represented by the claimants, and whether the claimants can show clear support for their application from this group;
- ▶ the connection between the remedy or remedies sought to be awarded and the original Treaty 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
- ▶ 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 remedy or remedies sought are addressed by the negotiations, and 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.*

Where any claimants apply for the Tribunal to exercise its binding powers under sections 8A to 8HJ of the Treaty of Waitangi Act 1975 as a remedy for their well-founded claim or claims, the Tribunal shall have particular regard to whether, if urgency is not granted for a remedies hearing, the Tribunal's jurisdiction to hear the claimants on remedies is likely to be removed by imminent legislation.

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

(2) Procedure for applications seeking urgent Tribunal consideration

(a) Application requirements

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).†

There is no prescribed form of application. However, an application shall set out the following information:

- ▶ the specific reasons why an urgent inquiry or urgent remedies hearing is sought;
- ▶ the facts applicable to the factors listed above of particular relevance to determining an urgency or remedies application;
- ▶ 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 a group of claims;
- ▶ whether the claimants are ready to be heard or whether any research first needs to be carried out or completed and, if research is required, the nature and extent of that research;

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

† The address for service on the Crown is: Treaty Issues and International Law Team, Crown Law Office, PO Box 2858, Wellington 6140; facsimile: (04) 470 4407; email: treaty.issues@crownlaw.govt.nz.

- ▶ any people or bodies that the claimants believe should be notified by the Tribunal because they are affected by the application; and
- ▶ any other information that is relevant to the application.

(b) Tribunal consideration of an application

Following the receipt of an application seeking an urgent Tribunal hearing, the chairperson or deputy chairperson will manage the procedure to be followed. The chairperson or deputy chairperson may determine the application or the chairperson may delegate consideration of the application to a Tribunal member or Tribunal panel. 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.

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.

(c) Where an application is granted

(i) *Urgent inquiries*: 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. 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.

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

- ▶ strict timetables for the filing of all evidence and submissions before hearings start;
- ▶ strictly prescribed hearing time;
- ▶ taking as read all briefs of evidence and submissions filed before the hearing; and
- ▶ cross-examination only with advance notice and by leave of the Tribunal.

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 summary in its content than a report on a non-urgent claim and will focus more starkly on the outcome of the Tribunal's inquiry, including any recommendations the Tribunal may make.

(ii) *Urgent remedies hearings*: Where an urgent remedies hearing is granted, the procedure to be followed will be determined by the Tribunal panel.

(3) *Production of documents in urgent inquiries*

The production 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.

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:

- ▶ After input from the parties, the Tribunal produces a statement of issues.
- ▶ 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.
- ▶ Enough time is made available to ensure that:
 - 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
 - the documents are put into folders and each page is consecutively and uniquely numbered for easy location and identification, especially at the hearing.
- ▶ 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.
- ▶ After the parties have undertaken inspection, the parties whose documents have been inspected will furnish to the Tribunal a copy of all documents that the parties have requested, together with any other documents that the Tribunal may seek.
- ▶ The parties file briefs of evidence.

Counsel will coordinate their efforts sensibly to ensure that the process of discovery is not unnecessarily complicated or prolonged. Where, for any reason, an urgent inquiry proceeds under a particularly tight timeframe, it may not be possible to follow the process of discovery outlined here, and a truncated version will be agreed.

Parties may claim privilege for documents on the well-established bases. In addition, parties may argue for confidentiality on the basis that it would be appropriate for the Tribunal to treat certain material as confidential for reasons particu-

lar to this jurisdiction. The categories of confidentiality are not closed, and the Tribunal will always endeavour to be sensitive to context.

2.6 Mediation

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. These provisions require that the whole of a claim be referred to mediation and that the parties to the mediation be the claimants and the Crown. 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 decline to refer a claim to mediation if it considers the existing record of inquiry to be inadequate, or it may commission further research before so doing. Where the Tribunal refers a claim to mediation under these provisions, the mediator's duty is to use her or his best endeavours to bring about a settlement of the claim.

It is also possible for a party to propose a private mediation concerning any aspect of a claim. Indeed, 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 but 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.

2.7 Settlement negotiations

In the main, claims are settled through direct negotiation between the claimants and the Crown.* The Waitangi Tribunal is not involved in those negotiations, although any report it has issued that relates to the claim or group of claims under negotiation may form a basis upon which the negotiations take place.

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

Where it appears to the Tribunal that a claim is well founded, it may recommend that the Crown and the claimants enter into negotiations in respect of all

* The Office of Treaty Settlements, which is part of the Ministry of Justice, negotiates for the Crown in the settlement of historical claims. Further information about the settlement process can be obtained from the office at PO Box 919, Wellington.

or part of a claim. It may make such a recommendation on the application of a party to the claim or on its own motion. Generally, the Tribunal will make such a recommendation only after reporting findings of fact and interpretation, unless it is satisfied that the completed research provides an adequate basis upon which a settlement could be made.

Either counsel for the Crown or counsel for the claimants, with the signed acknowledgement of the other, shall advise the Tribunal by written memorandum if a settlement of a claim has been reached and a deed of settlement entered into. The memorandum shall include the terms of the settlement, where that is practicable, and, in the case of a partial settlement, it shall advise whether an inquiry is sought with regard to the balance.

2.8 General recommendations and binding recommendations

Where the Tribunal makes general recommendations, they do not bind the Crown or any other party. In limited instances, however, the Tribunal may recommend the return or the resumption of certain lands and these recommendations can become binding on the Crown. The lands in relation to which the Tribunal may make a binding recommendation are:

- ▶ Crown forest land that is subject to a Crown forestry licence; and
- ▶ memorialised lands, being land or an interest in land:
 - 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;
 - 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
 - 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.*

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.

* The Tribunal is not aware of any land that exists in this category.

2.9 Deferral of an inquiry

Where a claimant or the Crown seeks to defer any inquiry by the Tribunal for the purpose of negotiation, or for any other reason, they are to notify the Tribunal as soon as possible.

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

- ▶ the attitudes of the other parties to the proposal;
- ▶ the expected length of time of any deferral;
- ▶ the state of research commissioned by the Tribunal or the parties;
- ▶ the urgency of the claim; and
- ▶ the extent of notice that has been given to the other parties and the Tribunal (if a hearing date has been set).

2.10 Withdrawal of a claim

A claimant may withdraw a claim at any stage by advising the registrar in writing. Where part of a claim is to be withdrawn, the claimant shall file an amended statement of claim or advise the Tribunal in writing of the part to be withdrawn.

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.

2.11 Tribunal staff

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 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.

2.12 Right to appear

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

- ▶ has an interest in the inquiry apart from any interest in common with the general public; or

- ▶ may be adversely affected by evidence before the Tribunal (see section 4A of the Commissions of Inquiry Act 1908).

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).

In general, therefore, the Tribunal encourages any person who may be able to assist it to appear or to make submissions. This includes representatives of local and regional government and non-Government land and resource-using groups, such as recreational groups, that might be affected by a claim. 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.

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 of Māori Affairs, any other Minister notifying a wish to be heard, and any other Māori with an interest in the inquiry.* 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. The landowners may, however, sometimes be heard on strictly factual matters relating to the land.

2.13 Appearance by counsel or other representative

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.

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 legal issues. In order to promote the orderly management of claims throughout an inquiry, the Tribunal encourages separate claimants or claimant groups to be represented by the same counsel wherever that is possible and appropriate. Where the Tribunal is to meet the expense of claimant-commissioned research, counsel should be in

* See the Treaty of Waitangi Act 1975, ss 8C, 8HD, 8HJ

place first, in order that the researcher might work to counsel and the research made more issues directed.

Once counsel has been appointed to represent 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.

The registrar is to be advised if there is any appointment or change of solicitor or counsel, or any change of address for service.

The Tribunal may, under clause 7A(1) of the second schedule to the Treaty of Waitangi Act 1975, appoint counsel to assist it in respect of any proceedings before the Tribunal.

2.14 Authority of solicitor or counsel

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.

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.

2.15 Legal aid

Claimants to the Waitangi Tribunal may apply for civil legal aid to assist them to meet legal costs. The prescribed application forms can be obtained from the Wellington Regional Legal Aid Unit (PO Box 24 149, Wellington). The registrar of the Waitangi Tribunal also holds application forms for legal aid.

2.16 Powers of the Tribunal

Although the Waitangi Tribunal does not have the power to award costs, it has all the other powers that a commission of inquiry has 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:

- ▶ may issue a summons requiring the attendance of a witness before the Tribunal;
- ▶ may require the production of documents and other records for examination;
- ▶ has the same powers of a District Court, in the exercise of its civil jurisdiction, to conduct and maintain order at the inquiry;
- ▶ may adjourn hearings and defer hearing time for a particular claimant group;

- ▶ may decide not to hear particular evidence; and
- ▶ 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.

The Tribunal has no power to issue injunctions.

3. MAKING A CLAIM

3.1 What is a claim?

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 the 6th day of February 1840; or
 - (b) By any regulations, order, proclamation, notice, or other statutory instrument made, issued, or given at any time on or after the 6th day of February 1840 under any ordinance or Act referred to in paragraph (a) of this subsection; 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 the 6th day of 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.

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.

3.2 Who may bring a claim?

The Treaty of Waitangi Act 1975 entitles any Māori to submit a claim to the Tribunal. There is no rule requiring prior tribal consensus; indeed, the Tribunal may be obliged to hear a claim of any individual, or of a whanau or hapu, despite opposition from other individuals, whanau, or hapu.

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

always 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.

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 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.

3.3 Submitting a claim

(1) Procedure

Claimants may submit a contemporary claim at any stage. Legislation requires all historical claims to have been submitted on or before 11:59:59 pm, 1 September 2008.

Claims are to be sent to the registrar of the Tribunal. They may be sent by post, email, or fax. Claims must be signed by the claimants or their legal counsel.

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 registrar can provide claimants or their counsel with further information and guidance about submitting a claim.

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

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 and does not imply anything about the substance of the claim or the representative capacity of the claimants to bring it.

(2) Definition of 'submit'

The Tribunal considers a claim to be 'submitted' once the Tribunal receives the claim. A claim is not submitted until the Tribunal receives it.

Only historical claims that were received by the Tribunal on or before 11:59:59 pm, 1 September 2008, are historical claims submitted in accordance with

section 6AA of the Treaty of Waitangi Act 1975. The Tribunal may inquire into only those historical claims that fulfil this requirement.

(3) Definition of 'historical claim' and 'contemporary claim'

Section 2 of the Treaty of Waitangi Act 1975 defines 'historical Treaty claim' as:

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.

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, or an act done or omitted by or on behalf of the Crown, after 21 September 1992.

3.4 Amendments and additions to a claim

The Tribunal may grant claimants leave to amend or add to the claim that they have submitted, at any time before hearing. For claims aggregated or consolidated in a district inquiry, statements of claim are substantially redrafted during the pre-hearing phase. This ensures that all issues are before the Tribunal in a final statement of claim before hearing.

A contemporary claim may be amended only to include contemporary particulars. Historical claims submitted in accordance with section 3.3 may be amended to include either historical or contemporary particulars.

Where a claim has been submitted on or before 1 September 2008 and the Tribunal decides it is unclear whether the claim is a historical or contemporary Treaty claim, the Tribunal will consider the claim to be both historical and contemporary. Such a claim may be amended to include further historical particulars. Where it is clear that a claim is wholly contemporary in nature, even if it has been submitted on or before 1 September 2008, no historical particulars may be added to the claim (see the definition of 'historical Treaty claim' and 'contemporary Treaty claim' in section 3.3(2) and (3)).

Unless authority to prosecute the claim has been duly transferred by the original claimant or claimants, the Tribunal will generally register an addition or an amendment to a claim only if it has been signed by the same individual or individuals who submitted the original claim. Where a claimant dies and it is not clear who has authority to prosecute the claim, the Tribunal will work with claimant groups to identify new named claimants, on a case-by-case basis.

3.5 Claims in relation to private land

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.

However, 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 section 2.8) the Tribunal may not recommend:

- ▶ the return to Māori ownership of any private land; or
- ▶ the acquisition by the Crown of any private land.

3.6 Relief or compensation

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.*

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

- ▶ '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
- ▶ '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*]'.¹

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

4. CLAIM DOCUMENTATION

4.1 Research phase

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 to support 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. The trust is a principal funder of claimant research. The

* See the Treaty of Waitangi Act 1975, ss 8A–8HJ

trust, which receives the rental proceeds from licensees of Crown forest land, exists to assist Māori to prepare, present, and negotiate claims to the Waitangi Tribunal.*

- ▶ 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.

Members of the Tribunal's research staff assess the research needs of claims, and of inquiry districts generally, liaise with claimants and with agencies conducting research, and provide advice to the Tribunal as to the research that it should commission. 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. In particular, however, when determining whether to commission research, the Tribunal will wish to satisfy itself that a need for the research has been demonstrated, 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 costs and timeframes for the completion of the research are acceptable. Sometimes, the Tribunal will first commission a scoping report to assist it in the assessment of these matters.

Before commissioning research, the Tribunal's practice is to invite the relevant claimants and the Crown to comment on the proposed commission for the purpose of:

- ▶ avoiding the duplication of research by enabling the parties to draw the Tribunal's attention to other research projects; and
- ▶ seeking input from the parties on the scope and content of the proposed commissions.

On the completion of a research report that the Tribunal has commissioned, the report will pass through the Tribunal administration's quality-control procedures. If the report meets the terms of the commission, and if it is adequate in terms of its breadth and depth, the Tribunal will issue a direction to release it.

Although the Tribunal aims to have 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.

4.2 Document banks

The Waitangi Tribunal receives two types of document bank as evidence in its inquiries. The first is a general document bank, which is a compilation of the

* For information about the trust and how it may assist claimants, contact it at PO Box 2219, Wellington.

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.

The second type of document bank is called a source document bank and comprises a selection of the critical unpublished papers upon which a research report is based. These papers are not to be annexed to evidence or submissions but shall be compiled into a separate document bank accompanying the research report to which they relate. Published material (such as extracts from the *Appendices to the Journals of the House of Representatives* and statutes) is not to be included in a source document bank.

Every document bank shall contain an index showing the title of each document, a description of its contents, and its source or location. Documents are to be photocopies, not originals. Where a document is not clear, a typed copy shall also be filed. To avoid any possibility of papers being assembled out of sequence, each document is to be clearly numbered on the top right-hand side of each page.

A document bank is entered on the record of inquiry of the claim or claims to which it relates. However, where a document bank is very large, the Tribunal's registry may, rather than distributing it automatically to affected parties and those persons entitled to be heard, advise them that it is entered on the record of inquiry and provide copies on request or make arrangements for them to access it. Alternatively, the registry may distribute the index to a document bank so as to advise parties and persons entitled to be heard of its contents.

Once a document bank is entered on the record, parties and persons entitled to be heard shall not, in their evidence or submissions, file copies of any document reproduced in the bank but shall instead refer to the document, giving sufficient information that the document and the bank in which it is located can be readily identified.

4.3 Maps

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.

4.4 Casebooks

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 casebook is distrib-

uted to counsel representing the main claims in an inquiry in order to facilitate the presentation of evidence at hearings. The Tribunal may provide to counsel for discrete, single-issue or site-specific claims, or to claimants without counsel, only the volume or volumes of the casebook that relate to their claims. All the documents that are to be included in a casebook are entered on the record of inquiry and distributed to affected parties, and to other persons entitled to be heard, as they are filed. However, where evidence to be included in a casebook is filed very close to the expected distribution of the casebook, the registry may decide not to distribute it separately from the casebook if that will not create any appreciable delay.

Normally, at the start of an inquiry a casebook contains:

- ▶ the statements of claim that the Tribunal will inquire into;
- ▶ the research reports that the claimants intend to rely on;
- ▶ 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 at that stage (eg, a list of memorialised or land-banked properties).

Where, in exceptional cases, a casebook is distributed without particular claimant evidence having yet been filed, the Tribunal will, if necessary, direct when that evidence must be filed.

Where the Crown has submitted research reports in advance, these may also be included in the casebook compiled for the first hearing. A Tribunal member conducting a conference or the presiding officer of an inquiry will determine the point at which the Crown is to file any further research reports or material, which will be included in subsequent volumes of the casebook.

Casebooks do not normally include documents to which the Tribunal has directed there be restricted access. Nor do they include bulky document banks, although specific items in a document bank (such as maps) may be reproduced.

A Tribunal member will determine when sufficient and adequate research has been completed and filed with the Tribunal so that a casebook can be compiled and the claims to which it relates can proceed to a hearing. The Tribunal staff will prepare the casebook in consultation with affected counsel and claimants without counsel.

4.5 Record of inquiry

The Tribunal maintains a record of inquiry for each claim to show the essential papers relating to the conduct of the Tribunal's inquiry and the information that the Tribunal has before it. Documents on the record are indexed systematically.

Part I of the record, the record of proceedings, 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 or additions, Tribunal memoranda, research commissions, memoranda of counsel, transcripts, translations, and public notices.

Part II, the record of documents, contains the documents on which the Tribunal may rely, any documents and other evidential material received, and any other documents that Tribunal members may choose to consult in making their inquiries. The record of documents thus informs parties and others of the data that the Tribunal has before it.

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

- ▶ subseries 1 lists the various statements of claim and any amendments or additions, 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 submissions in reply;
- ▶ 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.

Documents on the record of documents are categorised in alphanumeric subseries in the following way: A1, A2, A3 . . . ; B1, B2, B3 . . . ; and so on. Each successive letter refers to a period, usually between the end of one hearing and the end of the next. Subseries A lists all the documents received up to the completion of the casebook. Subseries B lists all documents received between the completion of the casebook and the end of the first hearing. Thereafter, subseries C lists all documents received between the close of the first hearing and the close of the second hearing, and so on.

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'. The Tribunal's current approach to hearing claims on a district basis means that most

claims will be heard as part of a combined inquiry, the principal exceptions being claims on generic issues and claims granted an urgent hearing.

Once hearings are scheduled or are in progress, the Tribunal's registry periodically circulates copies of the index to the record of inquiry to parties and other persons entitled to be heard, who may request copies of any document not already in their possession and in which they have an interest.

Counsel and others not represented by counsel should familiarise themselves with the Tribunal's procedure regarding the filing and service of documents, which is outlined in the *Guide to Practice and Procedure of the Waitangi Tribunal*, October 2000.

4.6 Filing and service of documents

(1) General filing procedures and timetables

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 district 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.

The timetable for the filing and service of documents, and any other 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.

Unless the Tribunal directs otherwise, documents are to be filed in the Tribunal's registry by 12 noon on the day that they are due.

Where a party or other person entitled to be heard does not meet a filing deadline in respect of any document, the Tribunal may direct that party or person to serve the document on any or all parties and other affected persons with an interest in it.

Where the Tribunal directs a party or other person to supply all the data 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 index list of the documents concerned, with an archival reference for each item, enabling those involved in the inquiry to decide which material they require.

(2) Service of documents for claims not in hearing or not scheduled for hearing

Until a claim, or the inquiry district in which it is to be heard, becomes active and commences conferences, the Tribunal will copy and distribute to affected claimants, the Crown, and to other affected persons who are entitled to be heard, all documents entered on the record of inquiry in which they have an interest.

(3) Filing and service of documents for claims in inquiry districts scheduled for conferencing and hearing

This procedure applies to the filing of submissions, and does not cover the filing of evidence, such as research reports.

A. For counsel able to convert documents into Acrobat PDF files:

1. Sign the document, manually or electronically;
2. Convert the signed document into PDF files;
3. Email the signed PDF version to the registrar (wt.registrar@justice.govt.nz), to arrive by the time and date set for the filing of submissions;
4. Copy the email containing the document to:
 - ▶ the claims co-ordinator and the inquiry facilitator assigned to the inquiry;
 - ▶ all other parties in the Tribunal's email distribution list for the inquiry.

B. For counsel unable to convert documents into Acrobat PDF files:

1. Email the unofficial electronic version of the document in Word format to the registrar (wt.registrar@justice.govt.nz);
2. Copy the email containing the document to:
 - ▶ the claims coordinator and the inquiry facilitator assigned to the inquiry;
 - ▶ all other parties in the Tribunal's email distribution list for the inquiry;
3. Sign the document and send it in hard copy to the registrar by hand, post, courier, or fax, to arrive by the time and date set for the filing of submissions.

C. For parties and other persons who are entitled to be heard who do not have legal representation:

1. For parties able to send electronic documents as Acrobat PDF files, use procedure (3)A;
2. For parties able to send electronic documents only as Word files, use procedure (3)B;
3. For parties unable to send electronic documents, sign the document and send it in hard copy to the registrar by hand, post, courier, or fax, to arrive by the time and date set for the filing of submissions.

D. For all parties filing submissions:

1. Parties should ensure that all paragraphs of the submission are clearly numbered for ease of reference;

2. All submissions filed in Waitangi Tribunal proceedings must be filed with the registrar (wt.registrar@justice.govt.nz);
3. The registrar will record a submission as received when either a paper or a valid electronic version is filed. If faxed, it is the faxed document that will be entered on the record of inquiry;
4. Parties are encouraged to circulate courtesy electronic copies of their submissions, whether as PDF or Word files, to all parties in the Tribunal's email distribution list for the inquiry.

E. Electronic documents:

1. For the purposes of electronic filing, only documents that are signed and converted to PDF files or authenticated by some other means will be officially received by the Tribunal;
2. Electronic documents filed unsigned and/or not otherwise authenticated in other file formats will not be entered on the record of inquiry;
3. Parties filing any documents in electronic form should ensure that the documents are free of viruses. In order to pass the Ministry of Justice's firewall, no single email together with its attached document(s) may exceed five megabytes in size. Electronic documents larger than this must be subdivided into parts and each attached to a separate email;
4. Where a document contains annexures, the party will normally be expected to provide an electronic version of those annexures except where they were not created in electronic form by the party filing the document. If annexures are not provided in electronic format, this is to be brought to the attention of the registrar and of other parties to the proceedings.

(4) Filing of research reports, their supporting documents, and other evidential 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 filed in electronic format alone. 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.

A. For counsel able to convert documents into Acrobat PDF files:

1. Convert the electronic version of textual evidence into a PDF file;
2. Provide the electronic versions of evidence unsuitable for PDF conversion in the following native file formats:
 - ▶ spreadsheets in MS Excel format;

- ▶ database tables or applications in MS Access format;
 - ▶ slideshow presentations in MS 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;
3. Burn the electronic document(s) to CD and print out a master copy;
 4. Send two duplicate CDs to the registrar by hand, post, or courier, to arrive by the time and date set for filing. Those unable to burn CDs may instead email their electronic documents provided that the size limit of five megabytes per email is observed;
 5. One hard copy must also be filed, except where an electronic format is the only practicable means, such as large-sized spreadsheet tables.

B. For counsel unable to convert documents into Acrobat PDF files:

1. Send three paper copies, at least one of which is to be unbound to the registrar by hand, post, or courier, to arrive by the time and date set for filing;
2. For any electronic evidential material, use procedure (4)A.

C. For parties and other persons who are entitled to be heard who do not have legal representation:

1. For parties able to send electronic documents as Acrobat PDF files, use procedure (4)A;
2. For parties unable to send electronic documents as Acrobat PDF files, use procedure (4)B.

Submitters are advised to take particular care when transmitting electronic evidential documents to the registrar by email. This is primarily due to the fact that the large file size of some documents may jeopardise successful transmission. In particular, many research reports and supporting documents exceed the maximum size of five megabytes permitted by the Ministry of Justice firewall. It may also be necessary for the files to be subdivided after receipt in order to store and distribute them effectively.

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 appropriate media for filing and storing the evidential material and for presenting it in hearing.

Supporting documents attached to research reports, or document banks filed separately, should be paginated and indexed for ease of reference in proceedings.

(5) Documents produced at conferences and hearings that have not been filed earlier

This procedure applies to submissions or other documents produced at conferences and hearings that have not been filed earlier. When a party or other person entitled to be heard, whether represented by counsel or not, provides documents that have not been filed earlier, they are to provide:

- ▶ a copy for each Tribunal member;
- ▶ two copies for the Tribunal's record of inquiry;
- ▶ a copy for each member of the Tribunal's staff; and
- ▶ a copy for each counsel or claimant representative attending.

Parties and other persons entitled to be heard who intend to file documents during conferences or hearings should give advance notice to the registrar, if possible, and should liaise with the Tribunal's administration on the number of copies required for each conference or hearing.

(6) Distribution of documents by the Tribunal

For each active inquiry, the Tribunal will distribute a copy of the index to the record of inquiry, at regular intervals, to parties and people entitled to be heard on the Tribunal's email distribution list for the inquiry.

Provided filing deadlines are met, the Tribunal's administration will:

- ▶ electronically distribute a numbered copy of each document received to those parties or people entitled to be heard that are on the Tribunal's email distribution list for the inquiry who are able to receive electronic documents; and
- ▶ distribute by post a numbered hard copy of each document received to those parties or people entitled to be heard that are not on the Tribunal's email distribution list for the inquiry.

Those parties or people entitled to be heard that receive documents electronically will not be sent a hard copy of the documents. While smaller documents will normally be distributed by email, large documents, in particular research reports and their supporting documents, may be posted on CD.

The Tribunal's administration will upload to the document store on the Tribunal's web-based extranet all research reports and other evidential material entered on the record of inquiry for each active inquiry. The extranet is accessible by password under 'Inquiries' on the Tribunal's website (www.waitangitribunal.govt.nz). Other electronic documents filed with the Tribunal may also be uploaded to the document store for the applicable inquiry.

4.7 Restricting access to, or use of, sensitive evidence**(1) Applications**

A party or a person entitled to appear may seek the protection of particular sensitive evidence by applying to the Tribunal for a direction restricting access to it

or the use of it (or both). In considering an application for such directions, the Tribunal must have regard to the rules of natural justice and clause 5A of the second schedule to the Treaty of Waitangi Act 1975.*

The Tribunal itself is not constrained by a direction it makes to restrict access to or the use of evidence, and 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. 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, although protections apply in such proceedings as to how material relating to the proceedings can be used.

(2) Procedure for making applications

Where restrictions on access or use are sought in advance, then, in order that the Tribunal may assess whether such restrictions are appropriate, a brief of the evidence, together with a memorandum setting out the grounds for the application, shall be filed with the Tribunal, and contemporaneously with counsel for affected parties, and counsel for other persons who are affected by the application, at least 20 working days before a hearing. Where restrictions are sought in advance for oral evidence, a memorandum describing the nature of the evidence to be given is to be submitted to the Tribunal.

Counsel who have been served with an application and who wish to make submissions on it shall file their submissions with the Tribunal at least 10 working days before the hearing. Where possible, the Tribunal will issue a decision within five working days of the start of the hearing. Counsel who receive any evidence that is the subject of an application to restrict access or use must keep the content of that evidence strictly confidential until the Tribunal directs what, if any, restrictions are to be placed on it.

If restrictions are sought for part only of the evidence, that part is to be highlighted in the application.

If the Tribunal refuses to restrict access or use, or both, the witness may then elect to withdraw the evidence.

Alternatively, and particularly in the case of oral testimony, where counsel may not appreciate until part way through that the evidence is of a culturally 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.

* 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.

4.8 Public access to documents on the record of inquiry

Members of the public may access and copy a document entered on the record of inquiry, subject to any Tribunal directions restricting use of and access to documents (see sec 4.7), the provisions of the Copyright Act 1994, and any other statutory provision or rule of law.

Parties to a claim, and others who are entitled to be heard, will be served copies of documents in accordance with the procedure for service of documents above (see sec 4.6). A claimant seeking access to a document entered on the record of inquiry of a claim to which she or he is not a party will be treated initially as a member of the public.

4.9 Disclosure of documents

Unlike the general courts, there is no formal discovery 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. Particularly for historical claims, documentation is usually disclosed by the filing of document banks that are compiled in conjunction with research reports. 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.

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

5. 5. CONDUCTING THE INQUIRY

5.1 Conferences

The Tribunal convenes conferences of claimants, the Crown, and such others as the Tribunal considers necessary or desirable to case-manage closely its inquiry process. Before hearings start in an inquiry, conferences may be called for a variety of purposes, including:

- ▶ the issuing of research commissions or directions related to research;
- ▶ the marshalling of material for the casebook;
- ▶ the management of issues related to the appropriate representation of tribal groups, tribal boundaries, or overlaps, and the order in which different claimant groups or interested persons will be heard;

- ▶ the timetabling of formal claim documentation from the claimants and the Crown;
- ▶ the determination of the point or points at which the claimants or the Crown should respond to material on the record of inquiry, or submit research material;
- ▶ the identification of points in issue;
- ▶ whether matters might be referred to mediation or whether the parties will agree to direct negotiations; and
- ▶ other issues relating to the conduct of the inquiry.

In addition, the Tribunal may convene conferences throughout the course of an inquiry. These may be called for a variety of purposes, including:

- ▶ to ensure that research for claims is proceeding in a coordinated manner and according to a reasonable timeframe (a timetable for the completion and filing of research may be established);
- ▶ to consider which issues are to be the main focus of the inquiry and whether parties can agree on particular facts and issues;
- ▶ to discuss and settle upon procedural arrangements for the running of an inquiry or a particular hearing (such as the order in which claims are to be heard, the amount of hearing time parties and others require, hearing dates, the order in which submissions are to be made, timetables for filing documents, arrangements for interpreters, etc);
- ▶ to determine the length of time that should elapse between the distribution of a casebook (or further volumes of it) and the commencement (or recommencement) of hearings; and
- ▶ to hear submissions on applications (such as an application that an aspect of an inquiry be granted urgency or an application to adjust an inquiry district).

Conferences may be conducted by the presiding officer of a particular inquiry or otherwise by the chairperson or a member acting with the authority of the chairperson. Other members may also assist at a conference.

Conferences are open to the public, unless otherwise notified. However, 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.

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.

5.2 Scheduling hearing time

The Tribunal schedules hearing time for claims. In doing so, it consults with the counsel or other representatives concerned, or directly with the parties and with persons entitled to be heard if they are not represented. While the Tribunal accommodates the reasonable needs of parties and persons entitled to be heard, everyone appearing before the Tribunal has a responsibility to use hearing time efficiently and effectively. For example, while it may be necessary to corroborate particular evidence, the undue repetition of evidence is to be avoided. Before setting hearing dates, the Tribunal may require information about the nature of the evidence to be presented and how it differs from evidence already presented (if any), and an outline of proposed witnesses.

The registrar will inform persons who are not parties but who are entitled to be heard when the Tribunal has scheduled time to hear them.

A party or a person who is entitled to be heard may file written evidence and submissions in lieu of making a personal appearance.

The Tribunal is to be advised immediately of any change of circumstance affecting scheduled hearing time.

5.3 Hearing venue

Although all the claims that relate to a particular inquiry district are generally heard in the course of one inquiry, 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. The Crown is also able to propose an appropriate venue for the hearing of its own evidence and submissions. In all cases, however, the Tribunal retains a 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.

Hearings are normally open to the public. However, the Tribunal 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.

5.4 Hearing agenda

The party to be heard at a particular hearing shall prepare and file with the Tribunal a proposed agenda for the hearing (see section 4.6 for filing timetable). A party preparing an agenda shall liaise with Tribunal staff about starting and fin-

ishing times for the hearing. Where more than one party is to be heard, the parties may need to coordinate with each other in preparing the agenda. A proposed agenda shall include:

- ▶ the names of witnesses who will be giving evidence, the evidence to which they will refer, an estimate of the time that each will require (including an allowance for cross-examination), and the order in which they will appear;
- ▶ the times that counsel will require for submissions;
- ▶ the times, if any, allocated for site visits; and
- ▶ the times, if any, allocated for powhiri, poroporoaki, or other ceremonies.

The Tribunal may, at its discretion, require changes to be made to a proposed agenda.

5.5 Hearings on marae

Marae proceedings generally follow the protocol of the marae. The Tribunal has no objection to Crown or claimant counsel being seated with advisory kaumatua and encourages that course.

5.6 Initial and later hearings

It is open to claimants and their counsel or other claimant representative to determine how to present a particular claim. However, the Tribunal often finds it useful if a district inquiry starts with a coordinated overview, presented by claimant counsel, in which the principal issues that are expected to arise in the inquiry are succinctly set out. At this stage, the Crown may also wish to make a preliminary presentation. Subsequently, at hearings of separate claims (and particularly for large tribal claims), it is generally useful if a broad overview is first presented to the Tribunal before detailed evidence is led.

Tribunal inquiries have generally proceeded according to the following order. However, the order is indicative only and may change, depending on the circumstances of the particular inquiry.

(1) Phase 1: Hearing the claimants

1. *Opening submissions of claimant counsel*
2. *Claimant witnesses present evidence and answer questions*

All claimants are normally heard before moving to the next phase.

Representatives of parties who have an interest in, or are affected by, the claims of another group should be present to hear that group's evidence, raise points, or ask questions.

After hearing each group, it may be necessary to arrange a joint hearing to hear submissions relating to particular issues.

At the end of the claimants' evidence, and unless the issues are apparent in the claim as filed or redefined, the parties will likely be invited to submit a list of the issues involved. Following a conference of parties, the Tribunal may tabulate the issues that need to be addressed by the Crown in its response.

The Tribunal is not bound to the issues as agreed to by counsel. For the purpose of completing its inquiry and report, the Tribunal may indicate that it intends to call into question other matters as well, or that it does not necessarily accept any matters of fact or opinion on which counsel are agreed.

(2) Phase 2: Hearing other persons who are entitled to be heard

3. *Counsel for other persons who are entitled to be heard present opening submissions*
4. *Witnesses for other persons present evidence and answer questions*

(3) Phase 3: Hearing the Crown's response

5. *Opening submissions of Crown counsel*
6. *Crown witnesses present evidence*
7. *Claimants' response to the Crown position*

In some cases, the Crown may be required to make a response earlier than this phase. For example, an earlier response may be required following the receipt of a research report, or if it appears that the data on the record are such as to shift to the Crown a responsibility for replying at an earlier stage on the whole or any part of the case.

In addition, at this stage, or at an earlier stage, the Tribunal itself may commission further research or make further inquiries, or it may commission an overview opinion on the research and evidence to that point.

(4) Phase 4: Closing

8. *Closing submissions by claimants, and then the Crown, on the proof of the claim*
9. *Claimant submissions in reply to the Crown's position*

5.7 Findings – remedies

In some inquiries, the Tribunal may issue an interim report at an intermediate stage in the proceedings, either while the balance of the proceedings continues or while the proceedings are adjourned.

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 Tribunal may make recommendations at that stage, or further research and hearings on remedies may be necessary before the Tribunal makes detailed recommendations.

5.8 Presentation of evidence

At hearings, kaumatua may affirm their written statements, then speak generally to the matters raised in them. Written forms should not hinder kaumatua giving evidence. Where witnesses use rough notes as a guide, the notes may be provided to the Tribunal to assist with any transcriptions.

Expert witnesses are expected to summarise, or speak to, their reports, rather than to read them verbatim. The Tribunal may impose a time limit for the presentation of such summaries and for other witnesses' evidence.

5.9 Interpreters and translators

The Tribunal normally requires that oral evidence given in te reo Māori is interpreted into English, and that written evidence in te reo Māori is accompanied by a written translation.

Often, it works best for witnesses who give evidence in Māori to interpret their own statements into English, if that is appropriate. If an interpreter is necessary, it is best for the claimants to arrange a suitably qualified person for the task. The Tribunal will require, in advance of the hearing, details of the proposed interpreter's ability and experience in te reo Māori, but it does not necessarily insist on formal qualifications or certification in interpreting. Whoever is proposed should have the confidence of the witnesses and be familiar with local idiom, history, custom, and tradition. It is useful if interpreters can explain as well as interpret, and the Tribunal does not object to 'discussions' between the witness and the interpreter where this clarifies the witness's intention. Nor does the Tribunal object to others intervening to assist the interpreter or to challenge the interpretation.

Experience within the Tribunal has shown that an interpretation at the end of a witness's evidence is effective only where the evidence is brief. In other cases, the Tribunal prefers consecutive interpreting whereby the speaker stops after each sentence or paragraph to give the interpreter time to interpret. This allows the evidence to be fully and properly understood. Interpreters may themselves give evidence.

Interpreters' costs may be charged to the Tribunal's administration provided that that is arranged with Tribunal staff before the hearing. In paying any costs, the Tribunal will be guided by the Witnesses and Interpreters Fees Regulations 1974.

5.10 Cross-examination

Cross-examination in the Waitangi Tribunal is to be used to serve the inquisitorial process. The extent of cross-examination will depend on each situation and counsel are to be mindful and respectful of the forum in which question-

ing occurs. Extensive oral examination may not assist the resolution of complex historical issues, and, where historical research is in contention, it may be better addressed by the submission of an alternative research opinion. 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.

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. 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.

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.

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.

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

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

5.11 Chair

The presiding officer may ask different members of the Tribunal to chair different parts of a hearing. A Māori member may chair Māori sessions, a historian the presentation of historical evidence, a lawyer the legal argument, and the like.

5.12 Recording the proceedings

The Tribunal records all hearings on audio tape. Parties and other persons who are entitled to be heard may, by arrangement, access these tapes at the Tribunal's office and they may make a copy at their own expense. The Tribunal's staff keep tape minute books, and these may be used to locate the part of the proceedings required.

The Tribunal may also video parts of proceedings, and the same procedures for access and copying these tapes apply.

For reasons of cost, the Tribunal does not automatically transcribe its proceedings. Transcripts by the Tribunal are made only at the direction of the presiding officer and, then, only that part of the evidence that is essential is transcribed. Except where a transcript is made at the direction of the Tribunal, parties or other persons entitled to be heard who seek transcripts are to make their own arrangements at their own cost. A transcript made by direction of the Tribunal will be entered on the record of inquiry and, subject to any directions restricting its access or use, distributed to affected parties and persons entitled to be heard. Where a party or a person entitled to be heard has made a transcript, it may be filed with the Tribunal so that it can be entered on the record of inquiry and, subject to any directions restricting its access or use, distributed in the normal way.

Parties may use tape recorders or video cameras to keep their own, private record of the proceedings, but they must advise the Tribunal in advance of any intention to do so. Where claimants intend to broadcast or publish their recordings, they must first make a request to the presiding officer in the same manner as media representatives (see sec 5.14).

The Tribunal does not usually record powhiri or poroporoaki. However, in the course of a hearing, a party or other person entitled to be heard may address a matter that was raised in a powhiri or poroporoaki if it is of relevance to the claim.

5.13 Site visits

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 pa sites and wahi tapu. 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 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 (ie, 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 powhiri 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.

5.14 Media

The Tribunal allows the media to record and broadcast proceedings for normal news and current affairs programmes and articles on the following basis:

- ▶ the presiding officer must give prior approval before any recording by a media person is made.
- ▶ a request to record proceedings is to be submitted to the presiding officer, either through the registrar or through the Tribunal staff in attendance at the proceedings, at least one working day before the date on which the recording is to be made. The request may be made orally or in writing.
- ▶ the request must sufficiently particularise the purpose and extent of the proposed recording.
- ▶ the recording must comply with all relevant Tribunal directions, including any directions that limit the use of, and access to, particular evidence or submissions.
- ▶ 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.
- ▶ 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.
- ▶ witnesses may object to having their image or their testimony, or both, recorded. If necessary, the objection will be determined by the presiding officer.
- ▶ the live broadcasting of proceedings is not generally permitted.

While those involved in proceedings may make statements to the media in the course of the proceedings, the Tribunal urges caution and restraint where that is done, so as not to inflame what often are, or can become, sensitive situations surrounding Tribunal inquiries.

Dated at Wellington this 5th day of October 2000

A handwritten signature in black ink, appearing to read 'J. Williams', written over a horizontal line.

Chief Judge Joseph V Williams
Deputy chairperson
Waitangi Tribunal

WAITANGI TRIBUNAL PRACTICE NOTE

SCHEDULE

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)

WAITANGI TRIBUNAL PRACTICE NOTE
INDEX TO THE RECORD OF INQUIRY

WAITANGI TRIBUNAL
INDEX TO THE WAI [NO] RECORD OF INQUIRY
THE [NAME OF CLAIM]

PART I: 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. 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

WAITANGI TRIBUNAL PRACTICE NOTES

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

INDEX TO THE RECORD OF INQUIRY

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
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WAITANGI TRIBUNAL PRACTICE NOTE

**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 commit-

tees 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 with 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.

APPLICATIONS THAT LAND BE NO LONGER SUBJECT TO RESUMPTION

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

Dated at Wellington this 7th day of September 1997

A handwritten signature in black ink, consisting of a series of fluid, connected strokes that form a stylized name.

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
Fujitsu Tower
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 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.

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]*