
BEFORE THE WAITANGI TRIBUNAL

WAI 2500

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF the Military Veterans Kaupapa Inquiry

FURTHER MEMORANDUM OF CROWN COUNSEL REGARDING
REVIEW OF VETERANS' SUPPORT ACT 2014

30 June 2017

CROWN LAW
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MAY IT PLEASE THE TRIBUNAL:**Introduction**

1. This memorandum:
 - 1.1 follows up on matters proposed by Crown counsel by memorandum dated 15 June 2017 relating to an independent statutory review being undertaken concerning the operation of the Veterans' Support Act 2014 (the Act); and
 - 1.2 updates the Tribunal and parties on matters relating to Crown assistance with access to relevant evidential material held by the Crown and sought by the researchers commissioned by the Tribunal for this Inquiry.

Provision of relevant material on the Wai 2500 record of inquiry to reviewer undertaking independent statutory review of the Act

2. By memorandum dated 15 June 2017, Crown counsel:
 - 2.1 notified the Tribunal and claimants that the Chief of Defence Force had commissioned an independent statutory review into the operation of the Act;
 - 2.2 provided the terms of reference for the review;
 - 2.3 noted that evidence concerning the operation of the Act and Veterans' Affairs New Zealand (Veterans' Affairs) was heard during the oral hearing phase of the Wai 2500 inquiry; and
 - 2.4 suggested a process for ensuring relevant material on the Wai 2500 record of inquiry is available to the reviewer.
3. In memorandum-directions dated 28 June 2017 the Presiding Officer directed the Crown to provide the list of relevant evidence from the Wai 2500 record of inquiry to the Tribunal and parties by 5pm, Friday 30 June 2017.¹

¹ Wai 2500, #2.5.54.

4. Crown counsel provide as **Appendix 1** to this memorandum a list of evidence from the Wai 2500 record of inquiry that Crown counsel has identified as potentially relevant and appropriate to provide to the reviewer.
5. As the Tribunal, claimants and claimant counsel will appreciate, there is a significant amount of material on the Wai 2500 record of inquiry. Crown counsel has therefore identified material potentially relevant to the review largely through a series of key word searches.² Crown counsel note the Tribunal has provided an opportunity for claimants and claimant counsel to provide submissions on the list.³
6. As the terms of reference state, this review is being carried out in accordance with s 282 of the Act and by an independent reviewer. The terms of reference clearly state the purpose and scope of the review. Crown counsel propose providing material from the Wai 2500 record of inquiry for the reviewer's consideration. Whether or not the reviewer considers that material is within the scope of the review is for him to determine.

Provision of relevant material on the Wai 2500 record of inquiry to government agencies

7. Where evidence is filed with the Tribunal that raises concerns, comment or claims about a government agency, it is standard practice for Crown counsel to ensure that the relevant agency is provided with copies of that evidence. Veterans' Affairs is aware of relevant evidence on the Wai 2500 record of inquiry.

Access by Tribunal commissioned researchers to evidential material held by the Crown

8. The Crown has previously signalled to the Tribunal its intention to cooperate in order to progress the Tribunal's commissioned research projects, to the extent appropriate. To that end, the Solicitor-General has written to a number of agencies seeking their cooperation to enable the Tribunal-commissioned research projects to proceed expeditiously and with appropriate access to the official information required.

² Crown counsel note the key search terms used were: "Veterans' Affairs", "VANZ", "Veterans' Support Act"; and "VSA".

³ Wai 2500, #2.5.54 at [5].

9. An example of the Solicitor General's letter is provided as **Appendix 2**. The letter has been sent to the following agencies, identified as relevant in cooperation with Tribunal staff:

- 9.1 Archives NZ
- 9.2 Department of Prime Minister and Cabinet
- 9.3 Ministry of Justice
- 9.4 Statistics NZ
- 9.5 Ministry of Social Development
- 9.6 Te Puni Kōkiri
- 9.7 Ministry of Health
- 9.8 Ministry of Foreign Affairs and Trade
- 9.9 New Zealand Police
- 9.10 Ministry of Defence
- 9.11 New Zealand Defence Force

10. Today, the letter was also sent to the Ministry for Culture and Heritage.

30 June 2017



R Ennor / C McKay
Counsel for the Crown

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

APPENDIX 2

16 June 2017

Michelle Hippolite
Chief Executive
Te Puni Kōkiri
PO Box 3943
WELLINGTON 6140

Beverly Penjueli
Chief Legal Advisor
Te Puni Kōkiri
PO Box 3943
WELLINGTON 6140

Dear Michelle and Beverly

Access to official records for commissioned research purposes
Our Ref: DFO037/332

1. As you may be aware, the Waitangi Tribunal is currently inquiring into claims of Māori military veterans (Wai 2500). The Tribunal has commissioned three substantial research projects for the inquiry's evidential casebook. The Crown has signalled to the Tribunal its intention to cooperate in order to progress this research, to the extent appropriate. This letter seeks your support to promote the efficient provision of relevant evidential material to the Tribunal.

Tribunal is a Commission of Inquiry

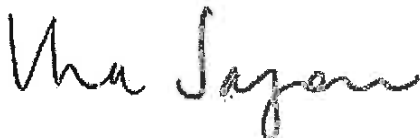
2. Under the Treaty of Waitangi Act 1975, the Tribunal is a standing commission of inquiry with all the rights and obligations of a commission of inquiry as regards evidential matters. The powers of a commission of inquiry differ from considerations under the Official Information Act. For your reference, the relevant powers are set out in an **Appendix** to this letter. In brief, a Commission of Inquiry has powers similar to those of a Court to order production of evidence. Those powers are subject to the same privileges as witnesses have in the general Courts.

Access to government files

3. Those commissioned by the Tribunal to undertake research are all professional researchers. They are subject to the Waitangi Tribunal Unit's Code of Practice (**attached**) and are operating under commissions from the Tribunal to undertake the research (**also attached**).
4. In discussions between Crown counsel and Tribunal staff, procedures have been proposed to increase the efficiency of the research process where appropriate and to minimise government agency workload where possible. The judge presiding over the Wai 2500 Tribunal inquiry, Chief Judge Isaac, Chairperson of the Waitangi Tribunal, has instructed Tribunal staff to offer administrative assistance if required.
5. Your agency may be asked to make decisions on access to restricted files that are, or may be, relevant to the commissioned research. Such access, if approved, would be on the

- assurance that the commissioned researchers are fully aware of their obligations in providing evidence to a Commission of Inquiry and will treat sensitive information – such as the personal details of individuals – with appropriate care (see the Code of Practice attached).
6. A necessary aspect of the initial stages of research is undertaking a wide sweep of files to determine relevance. For the purposes of this inquiry, the commissioned researchers have agreed, to the extent possible, to confine their requests to relevant and necessary information in order to streamline the work for agencies. Researchers will welcome constructive conversation with agencies to achieve efficiencies wherever possible. However, the determination of relevance to the inquiry ultimately sits with the researcher, not the Crown. Any files ultimately identified as relevant by the researcher will need to be assessed by your agency in the normal manner. In some circumstances, this may involve requests for a large number of files.
 7. As stated above, commissions of inquiry generally have powers to access information, subject to the usual privileges witnesses have in the general courts. These broad powers of access are accompanied by responsibilities in how the information, once accessed, can be used. Agreements relating to the appropriate access to, and use of, particularly confidential or sensitive material can be discussed between your agency and the Tribunal-commissioned researcher. Where agreement cannot be reached, Crown counsel can assist. Where necessary, such matters may be referred to the Tribunal and Courts.
 8. If you consider it useful and appropriate, Tribunal staff and/or Crown counsel are happy to meet with you to develop further high-level filters or processes to assist efficiency and reduce resource requirements on your agency arising from requests especially at the stage of determining relevance.
 9. We look forward to your cooperation in enabling this Tribunal-directed research to proceed expeditiously and with appropriate access to the official information essential to fulfilling its purpose in assisting the Military Veterans inquiry. If they have not already, Tribunal-commissioned researchers will likely be in touch shortly. Please don't hesitate to contact my team at Crown Law to discuss any matters arising (Jason Gough 04 494 5956 or Caitlin McKay 04 494 5659).

Nāku noā, nā
Crown Law



Una Jagose QC
Solicitor-General

APPENDIX

Treaty of Waitangi Act 1975

Schedule 2 Provisions relating to the Waitangi Tribunal

8 Tribunal to be a Commission of Inquiry

- (1) The Tribunal shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and, subject to the provisions of this Act, all the provisions of that Act, except sections 11 and 12 (which relate to costs), shall apply accordingly.
- (2) The Chairperson of the Tribunal, or any other person, being the presiding officer at a sitting of the Tribunal or a member of the Tribunal purporting to act by direction or with the authority of the Chairperson,— [...]
 - (b) may issue summonses requiring the attendance of witnesses before the Tribunal, or the production of documents; or
 - (c) may do any other act preliminary or incidental to the hearing of any matter by the Tribunal.

Commissions of Inquiry Act 1908

4C Powers of investigation

- (1) For the purposes of the inquiry the Commission or any person authorised by it in writing to do so may—
 - (a) inspect and examine any papers, documents, records, or things;
 - (b) require any person to produce for examination any papers, documents, records, or things in that person's possession or under that person's control, and to allow copies of or extracts from any such papers, documents, or records to be made;
 - (c) require any person to furnish, in a form approved by or acceptable to the Commission, any information or particulars that may be required by it, and any copies of or extracts from any such papers, documents, or records as aforesaid.
- (2) The Commission may, if it thinks fit, require that any written information or particulars or any copies or extracts furnished under this section shall be verified by statutory declaration or otherwise as the Commission may require.
- (3) For the purposes of the inquiry the Commission may of its own motion, or on application, order that any information or particulars, or a copy of the whole or any part of any paper, document, or record, furnished or produced to it be supplied to any person appearing before the Commission, and in the order impose such terms and conditions as it thinks fit in respect of such supply and of the use that is to be made of the information, particulars, or copy.
- (4) Every person shall have the same privileges in relation to the giving of information to the Commission, the answering of questions put by the Commission, and the production of papers, documents, records, and things to the Commission as witnesses have in Courts of law.