

Briefing

Advice for the production of documents for urgent claims with the Waitangi Tribunal

Date due to MO:	N/A	Action required by:	N/A
Security level:	IN CONFIDENCE	Health Report number:	H2024035985
To:	Hon Dr Shane Reti, Minister of Health Hon Casey Costello, Associate Minister of Health		
Consulted:	Health New Zealand: <input type="checkbox"/> Māori Health Authority: <input type="checkbox"/>		

Contact for telephone discussion

Name	Position	Telephone
John Whaanga	Deputy Director-General, Māori Health	S9(2)(a)
Bernard Te Paa	GM Māori-Crown Relations, Māori Health	S9(2)(a)

Minister's office to complete:

- | | | |
|---|------------------------------------|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Decline | <input type="checkbox"/> Noted |
| <input type="checkbox"/> Needs change | <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn | |

Comment:

Advice for the production of documents for urgent claims with the Waitangi Tribunal

Security level: IN CONFIDENCE **Date:** 14 February 2024

To: Hon Dr Shane Reti, Minister of Health
Hon Casey Costello, Associate Minister of Health

Purpose of report

1. This briefing provides you with advice about the production of documents for the Wai 3307 Māori Health Authority (Wai 3307) and Wai 3315 Smokefree Aotearoa (Wai 3315) urgent Inquiry applications and seeks your direction regarding this matter.

Summary

2. The Crown has opposed applications for urgent hearings for both Wai 3307 and Wai 3315.
3. The Crown has opposed the application for the production of documents in Wai 3315.
S9(2)(h) [REDACTED]
4. Another claim has been lodged with the Tribunal, Wai 3324, that is similar to, and will be considered alongside, Wai 3315.

5. S9(2)(h) [REDACTED]

6. [REDACTED]

7. [REDACTED]

Recommendations

We recommend you:

- a) S9(2)(h) [REDACTED] Yes/No

b) **Note** that the Tribunal has not yet made a determination to hear the urgent claims. **Noted**

c) S9(2)(h) [Redacted] **Noted**

d) **Note** that the Crown has opposed the application for production of documents in Wai 3315 and has challenged the relevance of the request of some of the documentation. **Noted**

e) S9(2)(h) [Redacted] **Noted**

f) **Agree** to active communication about the Crown's ongoing commitment to Māori health and Smokefree goals in particular. **Yes/No**



Dr Diana Sarfati
Director-General of Health
Te Tumu Whakarae mō te Hauora
Date: 14 February 2024

Hon Dr Shane Reti
Minister of Health
Date:



John Whaanga
Deputy Director-General Māori Health
Māori Health
Date: 13th February 2024

Hon Casey Costello
Associate Minister of Health
Date:

Advice for the production of documents for urgent claims with the Waitangi Tribunal

Context

1. You have been previously advised of the urgent hearing applications for, Wai 3307 Māori Health Authority and Wai 3315 Smokefree Aotearoa [H2023034056 and H2024035587 refers respectively]. Wai 3315 included an application for the production of documents.
2. The Crown has opposed both of the urgent hearing applications. However, the Tribunal has already found that the claimants for Wai 3307 have met the criteria for urgency. The Tribunal is likely to hold an urgent hearing before the introduction of the Pae Ora (Disestablishment of Maori Health Authority) Amendment Bill.
3. The Tribunal has not yet made a determination for the Wai 3315 urgent application.
S9(2)(h) [REDACTED]
4. S9(2)(h) [REDACTED]

Wai 3315 Smokefree Aotearoa application for the production of documents

5. On 8 February 2024, a memorandum of counsel for the Crown was filed with the Tribunal that included opposing the application to produce documents (**Appendix One**).
6. The Crown has opposed the application to produce documents for certain documents due to the lack of relevance of the documents to the allegations in the applicants' statement of claim. The memorandum also indicated that the Crown is currently assessing documents against the remaining criteria listed by the applicants.
7. The Cabinet material (*Options to repeal amendments to the Smokefree Environments and Regulated Products Act 1990 and associated regulations* and CAB-23-MIN-0500) and briefings (H2023033250 and H2023033378) are intended to be proactively released on 28 February 2024.¹

Wai 3307 Māori Health Authority

8. On 19 January 2024, the Tribunal found that the claimants have satisfied the criteria for an urgent hearing. However, also agreed with the Crown that the prejudice against Māori should be assessed against the Crown's alternative plans. The Tribunal directed the Crown to file a further memorandum that outlined the Crown's alternative plans, its

¹ This is following current Cabinet direction for the proactive release of Cabinet material CO (23) 4: Proactive Release of Cabinet Material: Updated Requirements

intention for engagement with Māori and the Treaty compliance of the Government's alternative plans.

9. The Crown filed this further memorandum on 31 January and provided the claimants opportunity to respond to the Crown's memorandum.
10. Claimants for Wai 3307 have not filed an application for the production of documents. However, if an urgent hearing is pursued by the Tribunal, it is highly likely that the Tribunal will order the Crown to produce documents that are relevant to the scope of Wai 3307.
11. This is likely to include Cabinet material and associated papers. It may also include other advice received by the Ministers regarding primary and community health care, the Hauora Māori Advisory Committee, and Iwi-Māori Partnership Boards.
12. The Ministry of Health (the Ministry) is intending to proactively release documents related to the disestablishment of the Māori Health Authority once the Bill is introduced to the House.

Claimant responses to the Crown's memorandums opposing the applications for urgency

13. Claimants for Wai 3307 and Wai 3315 have filed memoranda responding to the Crown's memorandums opposing the applications for urgency.
14. Key themes of the claimants' memoranda are:
 - a. There is an unacceptable level of uncertainty and profound lack of regard by the Crown
 - b. The Crown is operating in bad faith
 - c. There will be a loss of trust in a constantly changing system, and
 - d. The lack of consultation and engagement with Māori will continue to perpetuate prejudice against Māori.

S9(2)(h)



Active communications that may mitigate some of the reputational risks

22. It is recommended that an active approach of communicating the Government's ongoing commitment to Māori health, including achieving Smokefree 2025.
23. This could include highlighting the wider system settings of the Pae Ora (Healthy Futures) Act 2022, such as the Government Policy Statement on Health, the Hauora Māori Strategy, and the continuance of existing funding for the provision of effective stop smoking services and stop smoking and vaping social marketing campaigns.

Next steps

24. The Ministry will await your direction and provide you with any further advice you may request.
25. If you agree, the Ministry will begin developing communications according to the proposed approach.

ENDS.

Minister's Notes

PROACTIVELY RELEASED