
**KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA
I TE TIRITI O WAITANGI**

BEFORE THE WAITANGI TRIBUNAL

WAI 2575

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF the Health Services and Outcomes
Kaupapa Inquiry

**CROWN INITIAL STATEMENT OF RESPONSE TO CONSOLIDATED
CLAIMS IN STAGE TWO OF THE WAITANGI TRIBUNAL'S HEALTH
SERVICES AND OUTCOMES INQUIRY**

8 Paenga-whāwhā 2020



CROWN LAW

TE TARI TURE O TE KARAUNA

Pouaka Poutāpeta PO Box 2858

TE WHANGANUI-Ā-TARA WELLINGTON 6140

Waea Tel: 04 472 1719

Waea Whakaahua Fax: 04 473 3482

Whakapā mai: Contacts:

Craig Linkhorn – Barrister instructed / Geoffrey Melvin

Craig.Linkhon@cliftonchambers.co.nz / Geoffrey.Melvin@crownlaw.govt.nz

CONTENTS

Introduction	1
Stage reached in health services and outcomes kaupapa inquiry.....	1
Preliminary decisions about claims eligible for inquiry in this stage of the kaupapa inquiry.....	1
Crown statement of response an initial response, subject to further refinement.....	2
A note on the language of pleadings used in this initial response.....	6
Claims proposed for consolidation and inquiry.....	7
Claims that are more appropriately aggregated rather than consolidated for inquiry.....	7
Claims that are more appropriately consolidated rather than aggregated for inquiry.....	7
Thomas claims (Te Roopu Taurima) – Wai 2734	7
Initial Crown response to claims presently proposed for consolidation.....	8
Wai 2109, Tibble claims – Ngāti Kapo	8
Wai 2143, Pointon and Wilson claims – Ngāti Turi	13
Wai 2672, Washbrook claims	17
Wai 2894, Kingi claims.....	23
Claims proposed for aggregation and inquiry	29
Claims that may be inquired into in part as aggregated claims if further particulars of material facts alleged are provided.....	29
Wai 682, 1544, 1677.....	29
Wai 762 – the Waimiha River Eel Fisheries (King Country) Claim	29
Wai 884, 1460, 1941, 2179	29
Wai 996 – the Ngāti Rangitahi Inland and Coastal Land Blocks Claim	29
Wai 1464, 1546	30
Wai 1531 – Land Alienation and Wards of the State (Harris) Claim	30
Wai 1589 – the descendants of Turongo (Native Lands Act) Claim	31
Wai 1781 - the Ngai Tama Haua (Biddle) Claim.....	31
Wai 2005 – Te Mahurehure (Egen) Lands Claim.....	31
Wai 2006 – Priscilla Sandy.....	31
Wai 2624 – the Alcohol Healthcare Claim.....	31
Wai 2644 – the Māori Health (New Zealand Māori Council) Claim.....	32
Wai 2682 – the Medical Practitioners Racial Prejudice Claim.....	32
Wai 2713 – the Māori Nurses Claim	32
Wai 2736 – the Māori Stroke Sufferers Claim	32
Wai 2743, 2863	33

Wai 2869, 2893	33
Wai 2910 – the Health Services and Outcomes (Moxon) Claim	33
Wai 2912 – the Health Services and Outcomes (Te Puna Ora o Mataatua) Claim.....	33
Wai 2619 – the Māori Disabled Claim.....	34
Wai 1176 – Te Paatu Land and Resources claim	34
Wai 2943 – The National Hauora Coalition claims	34
Claims for inquiry other than in part of stage two of this kaupapa inquiry.....	34
Wai 179, 2623, 2704, 2849	34
Wai 861	35
Wai 1341, 2476	35
Wai 1886 - the Ngāti Tara (Gabel) Claim.....	35
Wai 2003 –the Ngati Korokoro, Ngati Wharara and Te Pouka (Turner and Others) Resource Management Claim	35
Wai 2494 - the Racism Against Māori Claim	36
Wai 2728 - the Mental Health Services (Campbell) Claim.....	36
Wai 2756 - the Descendants of Ani Ngapera and Whānau Claim.....	36
Wai 745 and 1308.....	36

Introduction

Stage reached in health services and outcomes kaupapa inquiry

1. The Tribunal is part-way through the Wai 2575 kaupapa inquiry into claims about health services and outcomes. The kaupapa inquiry has been split into stages, in part to ensure it is manageable.
2. The first part of the second stage of the inquiry has been reached. This is when the Tribunal will inquire into a number of claims made by or on behalf of persons with lived experience of disability, where the claims:
 - 2.1 relate wholly or partly to the scope of this kaupapa inquiry concerned with health services and outcomes in Aotearoa; and
 - 2.2 qualify for inclusion in a kaupapa inquiry.

Preliminary decisions about claims eligible for inquiry in this stage of the kaupapa inquiry

3. The Tribunal has released a preliminary list of registered claims for consolidation and aggregation on the basis of an initial assessment of whether each claim pleaded is entirely about disability and health services and outcomes (claims within registered Wai numbers proposed to be consolidated) or is partly about disability and health services and outcomes (claims proposed to be aggregated and partly inquired into).
4. The preliminary list is the subject of a submissions process so that the inquiry participants can be heard on whether statements of claims do wholly or partly relate to disability and health services and outcomes.
5. It is also necessary to consider whether claims are appropriately inquired into as part of the Wai 2575 kaupapa inquiry into nationally significant issues concerning health services and outcomes, or whether they should be heard in other Tribunal inquiries. This may mean that although some claims may raise some issues about disability and health services and outcomes, they are not inquired into as part of this kaupapa inquiry.
6. Finally, preliminary decisions about which claims to inquire into must take account of jurisdictional limits on the Tribunal's ability in at least two respects. First, there are limits on the Tribunal's ability to continue to

inquire into claims that have been settled by legislation. Secondly, care is required to ensure that claims are not inquired into that impermissibly raise historical issues.

7. In the time available to prepare this initial statement of response the Crown has attempted to identify jurisdictional issues arising. At this point the Crown formally reserves its position on these issues on the basis that more information is required in a number of circumstances and because they will require a determination by the Tribunal in due course.

Crown statement of response an initial response, subject to further refinement

8. In addition to reservations about jurisdictional issues, this response is labelled an initial statement of response for two other reasons.
9. The first of these is that many of the claims within the statements of claim fail to set out adequately the claims being made, let alone particularise these to an appropriate level of detail.
10. The Tribunal can expect that amended claims, particularly those prepared with the help of solicitors, will disclose both the causes alleged that underpin why the claimant says they have a well-founded claim and the material facts relied upon.
11. The Tribunal, and the Crown in responding, can expect to receive proper notice of the claims made. Proper notice includes being informed of the essential factual planks on which the causes of action or claims are based. The crucial importance of identifying material facts during the process of drafting amended statements of claims is to ensure that the matters put in issue are defined fairly and with reasonable precision.
12. In seeking to respond to claims made, the Crown wants to be able to identify what is said to have gone wrong and to affirm or deny that with confidence. This will allow a refinement of the matters that remain in contention between claimants and the Crown by the time the Tribunal comes to inquire into remaining live issues in the claims it decides to inquire into as part of this kaupapa inquiry.

13. Claims should set out material allegations. Although it is not necessary to particularise evidence that will be relied on, it is important that the various claims made within the statements of claim set out in sufficient detail the events and legislative instruments the claimant seeks to put in issue.
14. Section 6 of the Treaty of Waitangi Act 1975 (“the Act”) requires a document setting out a claim or claims to identify events – the acts, omissions, policies and practices the section lists – and any legislative instruments said to be inconsistent with Treaty principles and that have caused prejudice to the claimant. Allegations about events and legislative instruments are required to move beyond inference¹ or abstraction and into concrete claims against the Crown in terms of the requirements set by s 6 of the Act.
15. While the Tribunal, as an institution, is an inquiring body this does not mean that there is any relaxed requirement to identify precisely the claims made: the Tribunal’s jurisdiction is to inquire into claims submitted to it. Over time the Tribunal has used conventional tools in civil litigation to identify and refine the live issues that must be decided. There are efficiency and effectiveness reasons for this in terms of focusing the inquiry on matters remaining in contention. But the fundamental requirement for clearly articulated claims stems from s 6 of the Act – the statute conferring jurisdiction – rather than simply as a matter of case management discipline in civil litigation or an exercise of discretion.
16. The Crown seeks a meaningful inquiry by the Tribunal into claims about actual lived experience of disability by Māori that relate to health services and outcomes. To be meaningful, the Crown respectfully suggests, the inquiry will have to examine issues in greater detail than the present secondary literature reporting generically on public health and disability sector issues that arise for Māori with lived experience of disability.
17. Like other countries, there has been significant change in Aotearoa in how disability is perceived by the State and within society. Models that recognise

¹ See *FMA v Warminger* [2016] NZHC 1193 at [13] and cited by the authors of *McGechan on Procedure* (Thomson Reuters looseleaf) at the point of their commentary describing the need for a claim document to tell the party responding what allegations must be answered, so they are not left to guess and can affirm or deny with confidence.

that society is disabling of some of its members are replacing earlier thinking that conceived of people as disabled. There is considerable activity at present and in the very recent past that might occupy the majority of the inquiry resources for this part of stage two of the Wai 2575 kaupapa inquiry.

18. Health and disability services and outcomes are significant issues in thinking about lived experience of disability. It is appropriate that this kaupapa inquiry look at changes in the public health and disability sector in addressing lived experience of disability along with possible future changes that will assure the partners to the Treaty of Waitangi that the Crown's Treaty obligations are being addressed appropriately in relation to health and disability services.
19. Although this kaupapa inquiry has been styled as a health services and outcomes inquiry, it is important to recognise that the scope of the inquiry includes disability support services provided by the public health and disability sector. Because lived experience of disability extends to many aspects of life and interactions with the State, it is necessary to identify the subset of disability services that are provided by the public health and disability sector.
20. A purpose of the New Zealand Public Health and Disability Act 2000 ("the NZPHD Act") is to provide for publicly funded and provided disability support services. This purpose is to achieve the promotion of the inclusion and participation in society and independence of people with disabilities as well as the best care or support for those in need of services (s 3(1)). The NZPHD Act relates to and reorganises the public health and disability sector (s 5(1)).
21. The NZPHD Act defines services and disability support services (s 6). This provides a relevant indication of a likely extent to which the scope of this kaupapa inquiry should remain concerned with the public health and disability sector rather than, through a domino effect, move into adjacent areas where those with lived experience of disability also receive publicly funded supports or services.

22. The Crown has prioritised providing a response to the four claims documents that the Tribunal has proposed should be consolidated. It is important to identify that scope issues arise even for these claims. The claims made in the amended claims documents go beyond the health sector and the health and disability services and outcomes it is responsible for.
23. Work is still underway to attempt to appreciate the extent to which claims proposed for aggregation do in fact relate to the health sector and the health and disability services and outcomes it is responsible for, and the extent of such relationship. Where possible the Crown has indicated in this document its initial appraisal of such relationship.
24. The Crown suggests that the most appropriate pathway from here is discussion with claimant lawyers with a view to refinement, where necessary, of the statements of claim documents setting out the various claims made under s 6(1), an updated Crown response (including in response to clearly identified parts of aggregated claims that are within scope of this inquiry) and joint work by claimant and Crown counsel on identifying issues arising from the particularised claims into which a kaupapa inquiry is sought. All of this should occur before the Tribunal considers settling the issues, the order of claims and the hearing time required to inquire into the claims it will decide to inquire into.
25. The second reason why this response is labelled an initial response is because work on this inquiry by health sector officials is being interrupted to some extent by work and events connected with responses to the COVID-19 pandemic which is overtaking the normal course of business within the health sector. The Crown recognises that at this time communities, including claimant communities and whānau with disabilities, will be focused on keeping well and addressing the impacts of the pandemic as a priority. This is a significant burden and the necessary response to the pandemic has interrupted mahi and projects, such as this inquiry, across Aotearoa. It is too soon to know whether the broader timeframes for this stage of the health services and outcomes kaupapa inquiry will be disrupted by the pandemic. This is a topic that the Crown has taken up with claimant

co-ordinating lawyers in advance of the memorandum on inquiry planning due to be filed with the Tribunal by 9 April 2020.

26. In the short term, some disruption can be expected to this interlocutory phase of the first part of stage two of this kaupapa inquiry. However, as much of the work in this interlocutory phase can be carried out without requiring in-person meetings or events, it should be possible to continue to progress this work even if it occurs more slowly than was earlier anticipated. For the Crown, resourcing may be reduced due to having to divert people and resources to the COVID-19 pandemic response.

A note on the language of pleadings used in this initial response

27. In the responses initially provided below to the various claims made within the four registered statements of claim that are proposed for consolidated inquiry the Crown has used language that is conventionally used in civil litigation pleadings (claims and defence/response documents filed in legal disputes).
28. To non-lawyers this language can seem abrupt, even discourteous. The language used follows certain legal conventions to categorise allegations and responses to allegations.
29. Broadly, these categories mean that allegations are admitted/accepted or denied/not accepted.
30. An allegation is a material fact relied on as a foundation for a cause of action in civil litigation, including Waitangi Tribunal inquiries. Before the Waitangi Tribunal there is in effect a single cause of action possible; that an event or legislative instrument has breached Treaty principles with prejudice resulting.
31. Where an allegation is accepted there is no need for inquiry into that or for hearing time to be spent on that allegation. It is not in dispute.
32. Where this response document states that a matter will be addressed in legal submissions this is intended to indicate that the contents of the paragraph raise legal issues rather than material allegations. To the extent any factual

allegations remain, these are denied generally out of caution and in order to keep the issues live before the Tribunal's inquiry.

33. The Ministry of Health, as the Ministry of the Crown responsible for the stewardship of the public health and disability sector in Aotearoa, is responding to this claim on behalf of the Crown. References to the pronoun "it" in response paragraphs in this document are to the Ministry of Health.

Claims proposed for consolidation and inquiry

Claims that are more appropriately aggregated rather than consolidated for inquiry

34. The Crown notes that two of the four claimants who have filed claims that the Tribunal proposed be consolidated for inquiry have requested those claims not be consolidated but instead be aggregated for partial inquiry.² This is so that the claims made about matters beyond the public health and disability sector can be inquired into in other inquiries. The Crown supports this in principle and expects that there will be further matters of detail to consider about the scope and boundaries of this inquiry once the Tribunal makes a final decision as to which of the claims made within those two statements of claim are to be included in this inquiry.

35. Generally, the Crown suggests that what should occur next in this inquiry is first that such scope and boundary issues could be resolved by discussion occurring between the claimants and the Crown. Followed by further particularisation of the claims made to more clearly identify the events and legislative instruments that the claimants contend are in breach of Treaty principles and should be inquired into as part of this kaupapa inquiry. The Crown would then provide an updated response to those further particularised/amended claims.

Claims that are more appropriately consolidated rather than aggregated for inquiry

Thomas claims (Te Roopu Taurima) – Wai 2734

36. If a repleading occurred for the Wai 2734 claims so that material facts are alleged rather than generalised statements made, the Crown would support

² Claims by Mr Tibble (Wai 2109) and by Ms Pointon and Mr Wilson (Wai 2143).

inclusion of Wai 2734 in the list of those claims for consolidation and inquiry. Te Roopu Taurima is a significant provider of services for whānau with disabilities across the motu and can bring a unique voice to this inquiry.

37. Inquiry into the Wai 2734 claims could be a route for the Tribunal to look at the experience of a disability support services provider for a significant number of whānau with experience of disability.

Initial Crown response to claims presently proposed for consolidation

Wai 2109, Tibble claims – Ngāti Kapo

38. The Crown reserves its position on two legal issues arising in the Wai 2109 claims:

38.1 whether Mr Tibble can make historical claims by reason of being a member of one or more groups whose historical claims have been comprehensively settled by legislation; and

38.2 whether any of the claims made in the Wai 2109 claims document were first made to the Tribunal after 1 September 2008 concerning events before 21 September 1992 and are thus historical Treaty claims that the Tribunal cannot inquire into under s 6AA of the 1975 Act.

39. The first jurisdictional issue turns on understanding the settled groups to which Mr Tibble affiliates.

40. The second jurisdictional issue turns on when historical Treaty claims were first submitted to the Tribunal by Mr Tibble or on his behalf. From preliminary work on this issue it appears that the first documents submitted to the Tribunal in the set of claims that have come to be organised under the Wai 2109 registration number did not set out historical Treaty claims but rather indicated an intention to make such claims in future about a range of subjects.³ To the extent that such claims have since been made after 1 September 2008, there is no jurisdiction for the Tribunal to inquire into those claims.

³ See Wai 2109 #1.1.001 27 August 2008.

41. In response to the amended statement of claims dated 12 December 2019:
- 41.1 It admits paragraph 1.1, insofar as it was filed for Mr Tibble and Kapo Māori Aotearoa/New Zealand Incorporated, but states further it has insufficient knowledge of and therefore denies that the claims have been filed on behalf of all Kapo Māori and their whanau.
 - 41.2 It admits paragraph 1.2.
 - 41.3 It admits paragraph 1.3.
 - 41.4 It admits paragraph 1.4.
 - 41.5 It admits paragraph 1.5.
 - 41.6 It is not required to address paragraph 1.6 but will be making submissions on whether historical claims may be included within this statement of claims.
 - 41.7 It has insufficient knowledge of and therefore denies paragraph 2.1.
 - 41.8 It has insufficient knowledge of and therefore denies paragraph 2.2. It states further that it has been noted by researchers that there is a paucity of evidence about pre-contact attitudes to disability within Māori society.
 - 41.9 It has insufficient knowledge of the acts and omissions the claimant seeks to put in issue and therefore denies paragraph 2.3. It notes that pleaded claims should set out material allegations along with appropriate particulars of events or legislative instruments that the claimant seeks a Tribunal inquiry into.
 - 41.10 It is not required to respond to the foreshadowing and explanations set out in paragraphs 2.4-2.5 the claim but will instead respond to the subsequent causes of action about each of these issues.

- 41.11 It will address paragraph 3.1–3.4 in legal submissions.
- 41.12 It will address paragraph 4.1 in legal submissions.
- 41.13 It admits paragraph 4.2 of the claim.
- 41.14 It has insufficient knowledge of and therefore denies paragraph 4.3(a)–(d). It asks the claimant to set out allegations of material facts and supporting particulars relating to these paragraphs and subsequent paragraphs where the Crown response indicates insufficient knowledge of exactly what the claimant is referring to.
- 41.15 It has insufficient knowledge of and therefore denies paragraph 4.3(e), however it acknowledges the points made at (e)(i) and (ii) are correct.
- 41.16 It has insufficient knowledge of and therefore denies paragraph 4.3(f)–(j).
- 41.17 It has insufficient knowledge of and therefore denies paragraphs 4.4–4.6.
- 41.18 It has insufficient knowledge of and therefore denies paragraph 4.7. It states further that providers with multiple funding streams have more compliance obligations.
- 41.19 It will address paragraph 5.1 in legal submissions.
- 41.20 It denies paragraph 5.2.
- 41.21 It has insufficient knowledge of and therefore denies paragraphs 5.3–5.4.
- 41.22 It denies paragraph 5.5 of the claim and states further that it acknowledges there have been limitations in data collection concerning tangata whaikaha, including kapo Māori.
- 41.23 It denies paragraph 5.6(a)–(d).

- 41.24 It has insufficient knowledge of and therefore denies paragraph 5.7.
- 41.25 It denies paragraph 5.8 and seeks particulars of the omissions alleged.
- 41.26 It has insufficient knowledge of and therefore denies paragraph 5.9(a)-(c)(i).
- 41.27 It has insufficient knowledge of and therefore denies paragraph 5.9(c)(ii). It notes that matters put in issue in this paragraph go beyond health services and outcomes. However, it notes and accepts as a contextual factor that in the 1900s legislation made education compulsory, including for Kapo Māori.
- 41.28 It has insufficient knowledge of and therefore denies paragraph 5.9(c)(iii)–(v), while admitting as general context that the 1980s and 1990s saw a number of instances of devolution and decentralisation of functions previously undertaken by the Crown.
- 41.29 It has insufficient knowledge of and therefore denies paragraph 5.9(d).
- 41.30 It has insufficient knowledge of and therefore denies paragraph 5.9(e) while admitting that Māori have a higher prevalence of disability and unmet need than non-Māori.
- 41.31 It has insufficient knowledge of and therefore denies paragraph 5.9(f), noting that some issues raised here are beyond the scope of health services and outcomes. However, it admits the statement in the first sentence of 5.9(f)(ii) that for an extended period of time whānau carers may not have been funded by the Ministry, and states further that funding generally for family carers was made available in 2013.
- 41.32 It has insufficient knowledge of and therefore denies paragraphs 5.10-5.11.

- 41.33 It has insufficient knowledge of and therefore denies paragraph 5.12 while admitting (see 5.10(a)) that in some DHB districts there are no Māori-owned and governed disability support providers.
- 41.34 It will address paragraph 6.1 in legal submissions.
- 41.35 It admits the first sentence of paragraph 6.2. However, it has insufficient knowledge of and therefore denies the second sentence of paragraph 6.2. Material factual allegations and further particulars are sought.
- 41.36 It has insufficient knowledge of and therefore denies paragraphs 6.3-6.4.
- 41.37 The matters listed as particulars at paragraph 6.5 are denied on the basis these general statements are not linked to identified material facts.
- 41.38 It will address paragraph 7.1 in legal submissions.
- 41.39 It admits the repeated paragraph numbered 7.1 under the heading “Health Status” on the basis that there are broad determinants of health status for a population including those mentioned at paragraph 7.6.
- 41.40 It admits paragraphs 7.2-7.3.
- 41.41 It admits the general points made in paragraph 7.4 and states further there is some ambiguity about the comparator group intended by this allegation as well as issues arising about intra-group status for the population of those Māori living with disability.
- 41.42 It denies paragraph 7.5 on the basis that this issue should be the subject of evidence and remain a live issue before the Tribunal.
- 41.43 It admits paragraph 7.6.

- 41.44 It admits the first part of paragraph 7.7 up to and including the words “socioeconomic indicators” but denies the remainder of paragraph 7.7 on the basis that this issue should be the subject of evidence and remain a live issue before the Tribunal.
- 41.45 It admits paragraph 7.8(a).
- 41.46 In response to paragraph 7.8(b):
- 41.46.1 it has insufficient knowledge of and therefore denies the opening words of paragraph 7.8(b);
- 41.46.2 it admits paragraph 7.8(b)(i)-(iii); and
- 41.46.3 it has insufficient knowledge of and therefore denies paragraph 7.8(b)(iv)-(vii).
- 41.47 It has insufficient knowledge of and therefore denies paragraph 7.8(c). It seeks further particulars on allegations about whānau support.
- 41.48 It has insufficient knowledge of and therefore denies paragraph 7.8(d) while admitting that the factors listed are significant in a general way. It seeks further particulars of these impacts on those on whose behalf these claims are made.
- 41.49 It has insufficient knowledge of and therefore denies paragraph 7.9 and notes that the adequacy of steps taken to address issues experienced let alone disparities will require identification of what steps have been taken in allegations setting out material facts.
- 41.50 For the purposes of responding to these claims it admits the generalisation made at paragraph 7.10 of the claim about Māori wellbeing.
- 41.51 It will address paragraphs 8.1-9.1 in legal submissions.

Wai 2143, Pointon and Wilson claims – Ngāti Turi

42. The Crown reserves its position on two legal issues arising in this claim:

- 42.1 whether Mr Wilson and Ms Pointon can make historical claims by reason of being a member of one or more groups whose historical claims have been comprehensively settled by legislation; and
- 42.2 whether any of the claims made in the Wai 2143 claims document were first made to the Tribunal after 1 September 2008 concerning events before 21 September 1992 and are thus historical Treaty claims that the Tribunal cannot inquire into under s 6AA of the 1975 Act.
43. The first jurisdictional issue turns on understanding the settled groups to which the claimants affiliate.
44. The second jurisdictional issue turns on when historical Treaty claims were first submitted to the Tribunal by Ms Pointon and Mr Wilson or on their behalf. From preliminary work on this issue it appears that the first documents submitted to the Tribunal in the set of claims that have come to be organised under the Wai 2143 registration number did not set out historical Treaty claims but rather indicated an intention to make such claims in future about “various Acts, actions and omissions of the Crown”.⁴ To the extent that such claims have since been made after 1 September 2008, there is no jurisdiction for the Tribunal to inquire into those claims.
45. In response to the amended statement of claims dated 17 December 2019:
- 45.1 It admits paragraph 1 up to and including the words “their claim”, but has insufficient knowledge of and therefore denies the remainder of paragraph 1.
- 45.2 It admits paragraph 2.
- 45.3 It will address paragraphs 3-5 in legal submissions.
- 45.4 It admits paragraph 6.
- 45.5 It admits paragraph 7.

⁴ See Wai 2143 #1.1.001 12 August 2008.

- 45.6 While acknowledging these contextual factors, it does not respond to paragraphs 8-16 of the claim at this time on the basis these paragraphs deal with institutionalisation and education issues rather than health services and outcomes issues.
- 45.7 While acknowledging that reliance on access to interpreters can affect access to health services (noted at paragraph 22 of the claim), it does not respond to paragraphs 17-22 at this time on the basis these paragraphs deal with access to interpreters rather than health services and outcomes.
- 45.8 While acknowledging sign language education as a contextual issue, it does not respond to paragraphs 23-29 at this time on the basis these paragraphs deal with education issues rather than health services and outcomes issues.
- 45.9 It admits paragraphs 30-31.
- 45.10 It denies paragraph 32.
- 45.11 It admits paragraph 33.
- 45.12 It denies paragraph 34.
- 45.13 To the extent paragraph 35 relates to health services and outcomes it has insufficient knowledge of and therefore denies paragraph 35. In other respects, it does not respond to paragraph 35 at this time on the basis the paragraph deals with issues beyond health services and outcomes.
- 45.14 In answer to paragraph 36:
- 45.14.1 it does not respond to issues relating to services other than health services and outcomes at this time;
- 45.14.2 at this time it has insufficient knowledge of and therefore denies paragraph 36(e)-(k) with the exception of the second sentence of paragraph 36(h), which is admitted;

- 45.14.3 it admits paragraph 36(l);
- 45.14.4 at this time it has it has insufficient knowledge of and therefore denies paragraph 36(m)-(p) but notes that relevant to this issue are cross-agency supports; and
- 45.14.5 it considers that further particularisation is required from the claimants about issues with health services and outcomes experienced by the claimants, or those on who behalf the claims are made, before the Crown could formulate a response.
- 45.15 It will address paragraph 37 in legal submissions.
- 45.16 It admits paragraph 38 so far as the allegations in that paragraph relate to the public health and disability sector.
- 45.17 It has insufficient knowledge of which events the claimants are attempting to put in issue and therefore denies paragraph 39. It considers that further particularisation is required from the claimants about issues experienced by the claimants, or those on whose behalf the claims are made, before the Crown could formulate a response.
- 45.18 It admits paragraph 40.
- 45.19 It denies paragraphs 41-42.
- 45.20 It has insufficient knowledge of which events the claimants are attempting to put in issue and therefore denies paragraph 43. It considers that further particularisation is required from the claimants about issues experienced by the claimants, or those on whose behalf the claims are made, before the Crown could formulate a response.
- 45.21 It denies paragraph 44.
- 45.22 It denies paragraph 45.

- 45.23 It admits the first sentence of paragraph 46 but has insufficient knowledge of and therefore denies the second sentence of paragraph 46 of the claim.
- 45.24 It has insufficient knowledge of what accountability mechanisms the claimants seek to put in issue and therefore denies paragraph 47.
- 45.25 In answer to paragraph 48:
- 45.25.1 it has insufficient knowledge of what variation the claimants seek to put in issue in the first part of the sentence; and
- 45.25.2 it denies the second part of the sentence (absence of minimum standards).
- 45.26 It admits paragraph 49 while reserving its position on whether the percentage figure given in this paragraph is accurate.
- 45.27 While acknowledging sign language legislation and governance as a contextual issue, it does not respond to paragraphs 50-54 at this time on the basis these paragraphs deal with issues other than health services and outcomes.
- 45.28 It will address paragraph 55 in legal submissions.
- 45.29 It is not required to respond to paragraph 56 (recommendations sought).

Wai 2672, Washbrook claims

46. In response to the amended statement of claims dated 17 December 2019:
- 46.1 It admits paragraph 1.
- 46.2 It admits the first two sentences of paragraph 2. It has insufficient knowledge of and therefore denies the last sentence of paragraph 2.

- 46.3 It admits paragraph 3. It states further that the information relied on is not from the current action plan but from the first action plan.
- 46.4 It admits paragraph 4. It states further that the information relied on is not from the current action plan but from the first action plan.
- 46.5 It admits paragraph 5. It states further that the information relied on is not from the current action plan but from the first action plan.
- 46.6 It is not required to respond to paragraph 6 and notes that some issues identified go beyond health services and outcomes.
- 46.7 The personal experience of the claimant, the claimant's son and the claimant's whānau is not something that the Crown has knowledge of at this time and will receive evidence about in due course. For the purposes of a response document like this, the Crown therefore denies the material facts in paragraph 7 of the claim so that the matters remain live issues in this inquiry. This response is not intended to show any lack of respect for the experiences that the claimant will in time bring evidence before the Tribunal about.
- 46.8 In response to paragraph 8:
- 46.8.1 it admits paragraph 8(a); and
- 46.8.2 it will address paragraph 8(b) in legal submissions.
- 46.9 It will address paragraphs 9-10 in legal submissions.
- 46.10 It denies paragraphs 11-13. It considers that further particularisation, beyond the matters set out at paragraphs 14-20, is required from the claimant about issues with health and disability support services and outcomes experienced by the claimant, or those on who behalf the claims are made, before the Crown could formulate a more detailed response.

- 46.11 It admits paragraph 14, while noting that the source relied on by this and subsequent paragraphs covers the period 2000-2005. It also notes that the quotation relied on in this paragraph is prefaced by "both Māori and non-Māori are impacted on by disability and much work is required to provide support to both groups".
- 46.12 In answer to paragraph 15:
- 46.12.1 it has insufficient knowledge of and therefore denies the first sentence of paragraph 15; and
- 46.12.2 it admits the second sentence of paragraph 15.
- 46.13 It admits paragraph 16.
- 46.14 It denies paragraph 17.
- 46.15 It admits the first sentence but denies the second sentence of paragraph 18.
- 46.16 It admits paragraph 19 and notes further that the 2001 survey is based on data that is approximately 20 years old so needs to be treated with care.
- 46.17 In answer to paragraph 20, so far as the publicly funded health and disability system is concerned:
- 46.17.1 it admits that there is evidence of Māori inequality in accessing disability support services within the public health system;
- 46.17.2 it states that there have been efforts to identify distinct Māori disability support needs nationally;
- 46.17.3 it states that there have been efforts to action a strategy to address those needs;
- 46.17.4 it admits that co-ordination levels can be improved and the need for this is widely acknowledged within the public health system;

- 46.17.5 it otherwise denies paragraph 20 while noting that the allegations in this paragraph go beyond the health sector.
- 46.18 It will address paragraphs 21-22 in legal submissions.
- 46.19 It will address paragraphs 23-24 in legal submissions.
- 46.20 It denies paragraphs 25-26. It considers that further particularisation, beyond the matters set out at paragraphs 27-44, is required from the claimant about issues with health services and outcomes experienced by the claimant, or those on who behalf the claims are made, before the Crown could formulate a more detailed response.
- 46.21 It admits paragraph 27.
- 46.22 It admits paragraph 28. It states further that the information relied on is not from the current action plan.
- 46.23 It admits paragraph 29.
- 46.24 It admits paragraph 30 as reflecting findings from the source this paragraph relies on while noting both that the source information dates from 2000 to 2005 and that the issues this relates to go beyond health services and outcomes.
- 46.25 In answer to paragraph 31, it admits that the implication identified in this paragraph is one possible implication. It states further that this implication is not necessarily the only implication for whānau.
- 46.26 It admits paragraph 32 while noting that income support issues are beyond the scope of this stage of the health services and outcomes inquiry.
- 46.27 It denies paragraph 33.
- 46.28 It admits paragraph 34 as reflecting findings from the source this paragraph relies on and notes that the source relied on dates from 2000-2005.

- 46.29 It admits paragraph 35 as reflecting findings from the sources this paragraph relies on while noting that the matters raised in this paragraph will also be addressed in legal submissions.
- 46.30 It is not required to respond to paragraph 36 as this paragraph does not contain an allegation or identify material facts.
- 46.31 It admits paragraphs 37-38 while noting that the source referenced should read 2002 rather than 2012.
- 46.32 It denies paragraph 39 and states further that the population-based funding formula is not the sole determinant of funding or its allocation.
- 46.33 It admits paragraphs 40-44.
- 46.34 It denies paragraphs 45-46.
- 46.35 It will address paragraph 47 in legal submissions.
- 46.36 It denies paragraph 48. It considers that further particularisation, beyond the matters set out at paragraphs 49-53, is required from the claimant about issues with health services and outcomes experienced by the claimant, or those on who behalf the claims are made, before the Crown could formulate a more detailed response.
- 46.37 It admits paragraphs 49-51. It states further that the information relied on is not from the current action plan.
- 46.38 It has insufficient knowledge of and therefore denies paragraph 52.
- 46.39 It has insufficient knowledge of the instances referred to in paragraph 53 and therefore denies paragraph 53.
- 46.40 It will address paragraphs 54-56 in legal submissions.
- 46.41 It will address paragraphs 57-60 in legal submissions.
- 46.42 It denies paragraphs 61-63.
- 46.43 It admits paragraph 64.

- 46.44 It admits the first part of paragraph 65 (up to the semi-colon), but it has insufficient knowledge of the instances referred to and therefore denies the remainder of paragraph 65.
- 46.45 It admits paragraph 66.
- 46.46 It has insufficient knowledge of the experience of health services by the claimant's son and therefore denies paragraphs 67-72 of the claim on the basis that these issues will need to be addressed in evidence to the Tribunal.
- 46.47 It will address paragraphs 73-76 in legal submissions.
- 46.48 It will address paragraphs 77-78 in legal submissions.
- 46.49 It denies paragraphs 79-81 and will further address these paragraphs in legal submissions.
- 46.50 It will address paragraphs 82-85 in legal submissions.
- 46.51 It admits paragraph 86.
- 46.52 It admits paragraph 87.
- 46.53 It admits paragraph 88 and will further address this paragraph in legal submissions.
- 46.54 It admits paragraph 89.
- 46.55 It admits paragraph 90 and will further address this paragraph in legal submissions.
- 46.56 It denies paragraphs 91-92 and will further address these paragraphs in legal submissions.
- 46.57 It will address paragraphs 93-94 of the claim in legal submissions.
- 46.58 It admits paragraph 95.
- 46.59 It denies paragraph 96 and will further address this paragraph in legal submissions.

46.60 It will address paragraphs 97-100 in legal submissions.

46.61 It is not required to respond to paragraphs 101-102 (relief).

Wai 2894, Kingi claims

47. In response to the amended statement of claims dated 12 December 2019:

47.1 It admits paragraph 1.

47.2 It admits paragraph 2.

47.3 It will address paragraph 3 of the claim in legal submissions.

47.4 It is not required to plead to paragraph 4 as it does not allege a material fact.

47.5 It will address paragraph 5 – 30 in legal submissions.

47.6 It will address paragraph 31 of the claim in legal submissions.

47.7 In answer to paragraph 32:

47.7.1 it admits the first sentence of paragraph 32 so far as this relates to the health sector; and

47.7.2 it has insufficient knowledge of and therefore denies paragraph 32 (so far as the first sentence relates to matters beyond the health sector as well as the second sentence of paragraph 32 concerning the people on whose behalf the claim is brought).

47.8 It admits paragraph 33.

47.9 It admits paragraph 34.

47.10 It has insufficient knowledge of and therefore denies paragraph 35.

47.11 It denies paragraph 36.

47.12 It will address paragraph 37 in legal submissions.

- 47.13 It admits paragraph 38 in relation to disability support services funded through the health sector. It otherwise denies paragraph 38.
- 47.14 It denies paragraph 39, and says that the Ministry of Health uses the following definition "...a *physical, intellectual or sensory disability* (or a combination of these) that is likely to continue for a minimum of six months and result in a reduction of independent function to the extent that ongoing support is required." (Emphasis added.)
- 47.15 It admits paragraph 40 and states further that if a person needed home-based supports they would go through Needs Assessment and Service Coordination services ("NASC") or, for assistive equipment for mobility support needs, they would go through Equipment and Modification services ("EMS") specialised assessment process.
- 47.16 It denies paragraph 41 and states further that assessments are undertaken by a NASC assessor, who is not necessarily a medical practitioner.
- 47.17 It has insufficient knowledge of and therefore denies paragraph 42.
- 47.18 It has insufficient knowledge of and therefore denies paragraph 43.
- 47.19 It will address paragraph 44 in legal submissions.
- 47.20 It admits paragraph 45.
- 47.21 It admits paragraph 46.
- 47.22 It admits paragraph 47.
- 47.23 It has insufficient knowledge of and therefore denies paragraph 48.
- 47.24 It has insufficient knowledge of and therefore denies paragraph 49.
- 47.25 It admits paragraph 50, and states further that Funded Family Care has been available since 2013.

- 47.26 It denies paragraph 51.
- 47.27 It admits paragraph 52 and states further that if a person needed home-based supports they would go through NASC. But if they also needed access to, for example, assistive equipment for mobility support needs, they would go through EMS and its separate specialised assessment process.
- 47.28 It has insufficient knowledge of and therefore denies paragraph 53.
- 47.29 It does not respond to paragraphs 54-82 on the basis that income support allegations are not within the scope of this health services and outcomes kaupapa inquiry.
- 47.30 It will address paragraph 83 in legal submissions.
- 47.31 It admits paragraph 84, but states further that the cited reference does not make the connection between socio-economic deprivation of rural Māori and poorer health outcomes.
- 47.32 It admits paragraphs 85-87.
- 47.33 It will address paragraphs 88-89 in legal submissions.
- 47.34 It admits paragraphs 90-94.
- 47.35 It has insufficient knowledge of and therefore denies paragraph 95, and states further that the source quoted is a single anecdote.
- 47.36 It has insufficient knowledge of and therefore denies paragraph 96. It asks that the claimants provide particulars on the type of missing “resourcing”, and that the cited reference specifically says “The scope of rural practice is so wide and the demands are so varied that there is an increased need for ongoing training and Continuing Medical Education.”
- 47.37 It has insufficient knowledge of and therefore denies paragraph 97, and states further that attracting GP’s to rural areas is a challenge in general and is caused by a range of factors.

- 47.38 It denies paragraph 98, and states further that not all rural health professionals and practices are under major stresses.
- 47.39 It has insufficient knowledge and therefore denies paragraph 99. It states further that the cited reference refers to healthcare professionals' commute time as the reason why they may have less time available for patient contact.
- 47.40 It has insufficient knowledge and therefore denies paragraph 100.
- 47.41 It has insufficient knowledge and therefore denies paragraph 101.
- 47.42 It will address paragraphs 102-106 in legal submissions.
- 47.43 It denies paragraph 107 and states further that formal consultation is not always a requirement.
- 47.44 It admits paragraph 108, but states further that the Court of Appeal was quoting from the High Court judgment in this case.
- 47.45 It has insufficient knowledge of and therefore denies paragraph 109. It requests the claimant identify the decisions he seeks to put in issue.
- 47.46 It will address paragraph 110 in legal submissions.
- 47.47 It has insufficient knowledge of and therefore denies paragraph 111-117. It requests the claimant identify the decisions he seeks to put in issue.
- 47.48 It will address paragraph 118 in legal submissions.
- 47.49 It admits paragraph 119.
- 47.50 It admits paragraph 120.
- 47.51 It admits paragraph 121 but says the source notes the mainstreaming approach occurred until as late as the 1990s, not "until the late 1990s".

- 47.52 It admits the first sentence of paragraph 122 while noting that more than health services have been within the scope of Whānau Ora operations to date. It denies the second sentence of paragraph 122 in relation to cultural framing of disability support services in the health sector.
- 47.53 It admits paragraph 123 while noting that the material quoted does not appear to refer to “empowered leaders”.
- 47.54 It admits paragraphs 124-133 while reserving its position for now on whether the DHBs listed at paragraph 132 do not have Māori disability support service providers in their districts.
- 47.55 It admits paragraphs 134-135.
- 47.56 It has insufficient knowledge of and therefore denies paragraph 136 while noting the research finding cited.
- 47.57 It will address paragraph 137 in legal submissions.
- 47.58 It denies paragraph 138.
- 47.59 It will address paragraph 139 in legal submissions. It admits there is no legal requirement that any DHB board members be disabled and states further that this does not address whether persons with lived experience of disability have been appointed to DHB boards.
- 47.60 It denies paragraph 140-141 and requests material facts be provided or further and better particulars relating to the claimant or the persons on whose behalf the claim is brought.
- 47.61 It admits the first sentence and denies the factual components of the second sentence of paragraph 142. It will address in legal submissions the legal issues raised by the second sentence of paragraph 142.
- 47.62 It denies paragraph 143.

- 47.63 It has insufficient knowledge of and therefore denies paragraphs 144-145 and requests the claimant provide particulars of how the workforce issue raised here affects those on whose behalf the claims are made.
- 47.64 It admits paragraph 146 while noting that the data relied on is from 2007 and 2009 workforce profiles.
- 47.65 It has insufficient knowledge of and therefore denies paragraph 147 and requests the claimant provide particulars of how the workforce issue raised here affects those on whose behalf the claims are made.
- 47.66 It has insufficient knowledge of and therefore denies paragraphs 148.
- 47.67 It has insufficient knowledge of and therefore denies paragraph 149-152 while noting the contextual relevance of this issue to an examination of an inquiry into the lived experience of disability. It notes further that the cited source says "Explanations for the shortage of indigenous and ethnic minority health professionals refer to the complex mix of social, demographic, cultural, academic and financial barriers" and that 2018 NCEA level 3 achievement results are available.
- 47.68 It denies paragraphs 153-154.
- 47.69 It will address paragraph 155 in legal submissions.
- 47.70 It apprehends that paragraphs 156-184, while based on research, do not disclose material facts experienced by the claimant or those on whose behalf the claim is brought. Further particulars are sought of either the points made in these paragraphs or the two allegations made in paragraphs 183-184.
- 47.71 It will address paragraph 185 in legal submissions.
- 47.72 It has insufficient knowledge of and therefore denies paragraph 186-193.

47.73 It will address paragraph 194 in legal submissions.

47.74 It denies paragraphs 195–200.

47.75 It will address paragraph 201–204 in legal submissions.

Claims proposed for aggregation and inquiry

48. The Crown accepts that the following claims could be in part inquired into in this stage of the health services and outcomes kaupapa inquiry to the extent they allege material facts about disability issues within the scope of the inquiry's focus on public sector health and disability services.

Claims that may be inquired into in part as aggregated claims if further particulars of material facts alleged are provided

Wai 682, 1544, 1677

49. In order to be able to respond to these claims, the Crown requests material facts are identified along with particulars that identify the experience of disability by those on whose behalf these claims are made. At present the claims are described generically in the claims documentation.

Wai 762 – the Waimiha River Eel Fisheries (King Country) Claim

50. Most of the claims made in Wai 762 are the same as the claims in Wai 2894 (which has been proposed for consolidation and inquiry). The different paragraphs are 55-60 and 80-83 which relate to the specific claimants. The Crown requests particulars about the claimants' experience in order to be able to respond.

Wai 884, 1460, 1941, 2179

51. These claims concern autism spectrum disorder issues. Some parts of the claims could relate to the present part of stage two of this inquiry. However, the Crown requests further and better particulars about the lived experience of the claimants or those on whose behalf the claims are made in regard to disability support services received.

Wai 996 – the Ngāti Rangitibi Inland and Coastal Land Blocks Claim

52. Wai 996 raises some issues about harm caused by chemicals resulting in disability, injury and birth defects (see paragraphs 16.3(h - r)). In addition, and similarly to other claims filed for claimants by these solicitors, the

claims document mentions marginalisation and lack of access to services for disabled members of whānau. However, on either issue no material facts are alleged about instances of such outcomes connected with the provision of health and disability services. If the claimants wish to pursue these issues the Crown requests particulars about the claimants' experience in order to be able to respond.

Wai 1464, 1546

53. Parts of these claims relate to disability issues in the public health and disability sector. To engage meaningfully with the claim the Crown requests further and better particulars along with the material facts alleged about what exactly has gone wrong and as a result of what events or legislative instruments.
54. The Crown formally reserves its position on these issues on the basis that more information is required as to the extent that these claims have already been heard as part of the Wai 1040 - Te Paparahi o Te Raki Inquiry.

Wai 1531 – Land Alienation and Wards of the State (Harris) Claim

55. Most of the claims made in Wai 1531 are the same as the claims in Wai 2894 (which has been proposed for consolidation and inquiry). The different paragraphs are 93 - 106, 123 - 124, 162 – 175, 206 – 208, 210 – 215 which relate to the specific claimants. The Crown requests particulars about the claimants' experience in order to be able to respond.
56. A number of the allegations in Wai 1531 appear to concern accident and injury systems and operations rather than the health sector's disability support systems. The Crown is proceeding on the basis that claims about the New Zealand's accident and injury prevention and rehabilitation systems and operations are not within the scope of this part of stage two of the health services and outcomes kaupapa inquiry
57. The Crown formally reserves its position on these issues on the basis that more information is required as to the extent that this claim has already been heard as part of the Wai 1040 - Te Paparahi o Te Raki Inquiry.

Wai 1589 – the descendants of Turongo (Native Lands Act) Claim

58. The second and third claims made in Wai 1589 relate to disability issues in the public health and disability sector. To engage meaningfully with these claims the Crown requests further and better particulars along with the material facts alleged about what exactly has gone wrong and as a result of what events or legislative instruments.

Wai 1781 - the Ngai Tama Haua (Biddle) Claim

59. Some of the claims in Wai 1781 relate to disability issues in the public health and disability sector (see paragraphs 28-38, 43-51, 52-58, 74-81, 94-95, 103-108). To engage meaningfully with the claim the Crown requests further and better particulars along with the material facts alleged about what exactly has gone wrong and as a result of what events or legislative instruments.

Wai 2005 – Te Maburebure (Egen) Lands Claim

60. One of the claims made in Wai 2005 appears intended to be about alleged “Inadequate delivery of disability support to rural Māori.” The Crown requests particulars about the claimants’ experience in order to respond.

Wai 2006 – Priscilla Sandy

61. A number of the allegations in Wai 2006 appear to concern accident and injury systems and operations rather than the health sector’s disability support systems. The Crown is proceeding on the basis that claims about the New Zealand’s accident and injury prevention and rehabilitation systems and operations are not within the scope of this part of stage two of the health services and outcomes kaupapa inquiry.

62. At this point the Crown requests discussion with the claimants’ lawyers or further particulars about paragraphs 11-16 of the claim to the extent that they are concerned with disability support services provided by the health system.

Wai 2624 – the Alcohol Healthcare Claim

63. Part H of these claims concern foetal alcohol syndrome causing disability, and the prevalence of alcohol abuse among disabled people (see paragraphs 84-104). An issue arises about whether these issues, the second in

particular, are better examined in this part of the inquiry or in a subsequent part about alcohol. At this point due to lack of particulars, the Crown has not responded to the Part H claims.

Wai 2644 – the Māori Health (New Zealand Māori Council) Claim

64. If further particulars were provided about events and material facts inquiry could be possible into claims about access to disability support services and possible integration of services (see paragraphs 3-4). At this point due to lack of particulars, the Crown has not attempted to respond.

Wai 2682 – the Medical Practitioners Racial Prejudice Claim

65. Some of the claims made in Wai 2682 relate to health and disability services in the health sector. The Crown requests further particulars of matters outlined generically at paragraphs 11-13 and 14(e) before it attempts to respond.

Wai 2713 – the Māori Nurses Claim

66. Wai 2713 originally concerned the experience of Māori nurses. The amended claims document has added claims about disabled Māori, including disabled Māori in prison. It alleges that the Crown does not adequately collect data on Māori disabled in prison, and thus cannot monitor the experiences of these people properly (see paragraphs 28-31 and 16(a)-(c)).

67. While noting that the prison health service is separate from the rest of the health system, the Crown requests particulars from the claimants about lived experience of health services and outcomes for Māori disabled in prison said to be in breach of Treaty principles before responding.

Wai 2736 – the Māori Stroke Sufferers Claim

68. Wai 2736 could relate to disability in terms of disability resulting from stroke and disability support services provided through the public health sector. See the second and third claims made (government support and access and lack of recognition). At this point the Crown has not attempted to respond.

Wai 2743, 2863

69. Many of the claims in Wai 2743 and 2863 are substantially the same as Wai 2894, which has been proposed to be consolidated and inquired into. However, the allegations at paragraphs 31-77 are different. These concern accident and injury systems and operations rather than the health sector's disability support systems. The Crown is proceeding on the basis that claims about New Zealand's accident and injury prevention and rehabilitation systems and operations are not within the scope of this part of stage two of the health services and outcomes kaupapa inquiry.
70. At this point the Crown requests discussion with the claimants' lawyers or further particulars about the later parts of the claim that may be concerned in parts with disability support services provided by the health system.

Wai 2869, 2893

71. These claims are substantially the same as Wai 2894 which has been proposed to be consolidated and inquired into. The Crown seeks further particulars and pleadings clearly setting out material facts showing the experience of the claimants or those on whose behalf the claims have been made so far as the public health and disability sector is concerned.

Wai 2910 – the Health Services and Outcomes (Moxon) Claim

72. The Wai 2910 claims may contain allegations about providers of disability support services but the Crown seeks discussion with the claimant's lawyers about further and better particulars before responding.

Wai 2912 – the Health Services and Outcomes (Te Puna Ora o Mataatua) Claim

73. While the focus on the Wai 2912 claims appears to be on DHB funding decisions around contracts, the claim may be able to be inquired into if it concerns issues arising for a provider of disability support services. The Crown is unclear on the extent to which the Tribunal may wish to inquire into contracting issues in this context and has not provided a response to these claims. At this point, the Crown proceeds on the understanding that the kaupapa inquiry's focus is on disability support services in the health sector rather than on the Crown's responses to accidents and injuries that may result in disability.

Wai 2619 – the Māori Disabled Claim

74. Parts of the claim in Wai 2619 relate to disability issues in the public health and disability sector. To engage meaningfully with the claim the Crown requests further and better particulars along with the material facts alleged about what exactly has gone wrong and as a result of what events or legislative instruments. At this point the Crown has not attempted to respond.

Wai 1176 – Te Paatu Land and Resources claim

75. Parts of the claim in Wai 1176 relate to disability issues in the public health and disability sector. To engage meaningfully with the claim the Crown requests further and better particulars along with the material facts alleged about what exactly has gone wrong and as a result of what events or legislative instruments. At this point the Crown has not attempted to respond.

Wai 2943 – The National Hauora Coalition claims

76. If further particularisation was provided for these claims, the Crown would support inclusion of the Wai 2943 claims in the list of those claims for consolidation and inquiry.

77. Inquiry into the Wai 2943 claims could be a route for the Tribunal to look closely at the legislative, strategy and policy framework for disability services provided in the public health and disability sector.

Claims for inquiry other than in part of stage two of this kaupapa inquiry

78. The Crown opposes inclusion of the following claims in this part of stage two of the health services and outcomes kaupapa inquiry.

Wai 179, 2623, 2704, 2849

79. The Crown opposes aggregation of these claims on the basis that while they make mention of a generic issue about disability,⁵ no material facts are alleged about events or legislative instruments:

⁵ Each of these claims contains the following phrase: “In addition, the Claimants say that their disabled whānau members have to endure some of the worst consequences of the marginalisation of Māori within the current health care system. A particular focus for disabilities issues is the marginalisation, invisibility and lack of access to services which their disabled whānau members face. The disabled are themselves a marginalised group, being Māori means they are doubly affected.”

- 79.1 Wai 179 – the Māori Affairs Act and Burials and Cremations Act Claim;
- 79.2 Wai 2623 – the New Zealand Māori Council Health Claim;
- 79.3 Wai 2704 – the ACC Service Delivery Claim; and
- 79.4 Wai 2849 – the Health Services and Outcomes (Lawrence) Claim.

Wai 861

- 80. The Crown opposes aggregation of Wai 861 on the basis that the claim is not principally concerned with the health sector and is therefore outside of the scope of the health services and outcomes kaupapa inquiry.

Wai 1341, 2476

- 81. The Crown opposes aggregation of these claims on the basis they allege no material facts about events or legislative instruments concerning experience of disability:
 - 81.1 Wai 1341 – the Ngāti Rehia Hapū Claim; and
 - 81.2 Wai 2476 – the Tohunga Suppression Act (Te Hira) Claim.
- 82. Instead, these claims are focussed on outcomes for Māori in the health system in general. Disability is mentioned twice in the claims in that the Crown has failed to appropriately and adequately recognise and provide for the needs of Māori living with disabilities; and that the claimant intends to lead evidence about disability issues.

Wai 1886 - the Ngāti Tara (Gabel) Claim

- 83. While the wording of this claim is very similar to a claim proposed for consolidation (Wai 2894), the Crown opposes aggregation of Wai 1886 as it does not contain any allegations of material facts relating to disability.

Wai 2003 – the Ngāti Korokoro, Ngāti Wharara and Te Pouka (Turner and Others) Resource Management Claim

- 84. The Crown opposes aggregation of Wai 2003 as it does not relate to disability. Instead, this claim is focused on funding for health services generally and the operation of a district-specific scheme.

85. The Crown also formally reserves its position as to whether this claim has already been heard as part of the Wai 1040 Te Paparahi o Te Raki inquiry.

Wai 2494 - the Racism Against Māori Claim

86. The Crown opposes aggregation of Wai 2494 as it does not contain any allegations of material facts relating to disability. This is despite paragraphs 28-32 of the claims document discussing disability in a general way.

Wai 2728 - the Mental Health Services (Campbell) Claim

87. The Crown opposes aggregation of Wai 2728 as it does not contain any allegations of material facts relating to disability.

Wai 2756 - the Descendants of Ani Ngāpera and Whānau Claim

88. The Crown opposes aggregation of Wai 2756 as it does not contain any allegations of material facts relating to disability.

Wai 745 and 1308

89. The Crown has not been served with claims under Wai numbers 745 or 1308. Therefore it opposes aggregation of these claims.

This initial statement of response is filed by Geoffrey Melvin, solicitor for the Crown in the Wai 2575 health services and outcomes kaupapa inquiry.⁶

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

⁶ Disability is mentioned once at paragraph 10(b) which states “Māori are more likely to be disabled”. The claim should be excluded from the Disability sub-stage because it does not raise any matters that specifically relate to disability experienced by claimant or those on whose behalf claims are made.