

The Crown
represented by the Ministry of Health

and the

**Stage One claimants to the Waitangi
Tribunal's Health Services and Outcomes
Kaupapa Inquiry (Wai 2575)**

Heads of Agreement

March 2020

RECEIVED Waitangi Tribunal
Ministry of Justice WELLINGTON

1. Parties

- 1.1. The Ministry of Health represents the Crown in its response to the Waitangi Tribunal's report '*Hauora - Report on Stage 1 of the Health Services and Outcomes Kaupapa Inquiry*' (2019) (***Hauora Report***).
- 1.2. The Stage One claimants are certain Māori primary health organisations and service providers who brought claims to the Waitangi Tribunal:
- 1.2.1. The named claimants in the Māori Primary Health Organisation and Providers claim (WAI 1315) are:
- Taitimu Maipi, on behalf of himself and Raukura Hauora o Tainui Trust, Papakura Marae Health and the claimants in the Wai 1818 Ngāti Paretekawa claim
 - Tureiti Lady Moxon, on behalf of herself and a coalition of health care organisations including Te Kohao Health Limited, Te Rūnanga o Kīrikiriroa, Taumarunui Community Kōkiri Trust, Hauraki Primary Health Organisation, and Waikato District Health Board Iwi Māori Council
 - Hakopa Paul, on behalf of himself and Te Kupenga a Kahu
 - Janice Kuka, on behalf of herself and Ngā Mataapuna Oranga, Te Manu Toroa, Turuki HealthCare and Piripi Hikairo
- 1.2.2. Henare Mason and Simon Tiwai Royal are the named claimants, and act on behalf of, the National Hauora Coalition claim (WAI 2687).

2. Background

Māori health

- 2.1. As a population group, Māori have on average the poorest health status of any ethnic group in New Zealand. Despite reforms introduced in the New Zealand Public Health and Disability Act 2000, Māori health inequities have persisted since this Act was introduced.¹
- 2.2. The Waitangi Tribunal found, and the parties concur, that the poor state of Māori health outcomes is unacceptable.²

¹ Waitangi Tribunal, *Hauora - Report on Stage 1 of the Health Services and Outcomes Kaupapa Inquiry* (2019), (***Hauora Report***), page xii.

² *Hauora Report*, page xii.

Health Services and Outcomes Kaupapa Inquiry – Stage One

- 2.3. In Stage One of the Health Services and Outcomes Kaupapa Inquiry, the Waitangi Tribunal inquired into the Wai 1315 and Wai 2687 claims concerning the legislative and policy framework for the primary health care system.
- 2.4. In the *Hauora Report*, the Tribunal found that the primary health care system “does not recognise and properly provide for tino rangatiratanga and mana motuhake of hauora Māori”,³ and that it breaches the principles of the Treaty of Waitangi (as set out in full in the *Hauora Report*).
- 2.5. *Overarching recommendations:* The Waitangi Tribunal recommended that:
- 2.5.1. The Crown ensure that the legislative and policy framework of the New Zealand primary health care system recognises and provides for the Treaty of Waitangi and its principles;⁴ and
- 2.5.2. The Crown commit itself and the health sector to achieving equitable health outcomes for Māori.⁵
- (Referred to as **overarching recommendations**).
- 2.6. *Treaty of Waitangi principles:* The Waitangi Tribunal recommended that the following Treaty principles be adopted for the primary healthcare system:⁶
- 2.6.1. The guarantee of tino rangatiratanga, which provides for Māori self-determination and mana motuhake in the design, delivery and monitoring of primary health care;
- 2.6.2. The principle of equity, which requires the Crown to commit to achieving equitable health outcomes for Māori;
- 2.6.3. The principle of active protection, which requires the Crown to act, to the fullest extent practicable, to achieve equitable health outcomes for Māori. This includes ensuring that it, its agents and its Treaty partner are well informed on the extent, and nature of, both Māori health outcomes and efforts to achieve Māori health equity;
- 2.6.4. The principle of options, which requires the Crown to provide for and properly resource kaupapa Māori primary health services. Furthermore, the Crown is obliged to ensure that all primary health care services are provided in a culturally appropriate way that

³ *Hauora Report*, page xv.

⁴ *Hauora Report*, page 162.

⁵ *Hauora Report*, page 164.

⁶ *Hauora Report*, page 163.

recognises and supports the expression of hauora Māori models of care;

2.6.5. The principle of partnership, which requires the Crown and Māori to work in partnership in the governance, design, delivery and monitoring of primary health services. Māori must be co-designers, with the Crown, of the primary health system for Māori.

2.7. *Interim recommendations requiring report back:* The Waitangi Tribunal made the following interim recommendations (**interim recommendations**), and directed that it be updated on progress on two of those recommendations by 20 January 2020:

An independent Māori health authority

2.7.1. The Crown commit to exploring the concept of a stand-alone Māori health authority;⁷

2.7.2. [T]he Crown and representatives of the Wai 1315 and Wai 2687 claimants design a draft term of reference to explore the possibility of a stand-alone Māori health authority. The Tribunal considered that if a draft term of reference is agreed upon, it should then go out for consultation and discussions with the wider Māori primary health sector;⁸

2.7.3. The Crown fund the process and provide the necessary secretariat support;⁹

Funding

2.7.4. [T]he Crown and representatives of the Wai 1315 and Wai 2687 claimants agree upon a methodology for the assessment of the extent of underfunding of Māori primary health organisations and providers. The methodology should include a means of assessing initial establishment and ongoing resource underfunding since the commencement of the Act;¹⁰

2.7.5. The Crown fund the process and provide the necessary secretariat support;

⁷ *Hauora Report*, page 165.

⁸ *Hauora Report*, page 166. The Tribunal observed it had made its recommendation naming the claimant representatives so that process could start somewhere before broader engagement and not be delayed by failure to agree upon who should be involved.

⁹ *Hauora Report*, page 166.

¹⁰ *Hauora Report*, page 167.

- 2.8. *Other recommendations:* The Tribunal made further recommendations in its report. These include recommendations that the Crown conduct an urgent and thorough review of the funding for primary health care, to better align it with the aim of achieving equitable health outcomes for Māori and that the Crown review current partnership arrangements, strategy and action plans, accountability settings as well as the research agenda for primary health issues;¹¹
- 2.9. The Crown's internal processes for considering its initial responses to the *Hauora Report* took longer than claimants anticipated, and accordingly it has been necessary to extend the time for engagement beyond 20 January 2020.

3. Principles of Stage One claimants

- 3.1. The Stage One claimants enter into this agreement on the basis that the *Hauora Report* is the foundation for engagement between the parties.
- 3.2. The Stage One claimants also approach the engagement on the basis of the following principles which they advanced in the course of the Stage One inquiry:
- 3.2.1. *Hauora:* the concept of holistic health and wellbeing intrinsic to Māori people;
- 3.2.2. *Mana motuhake:* the right to Māori self-determination in the policy and governance of Māori primary health and the provision of services;
- 3.2.3. *Kaupapa Māori models of care:* Māori have a right to be cared for by Māori providers through kaupapa Māori models of care;
- 3.2.4. *Te Tiriti o Waitangi:* the Treaty partnership between Māori and the Crown, according to the principles outlined in clause 2.5.

4. Crown principles

- 4.1. The Crown:
- 4.1.1. Accepts the findings made by the Waitangi Tribunal in the *Hauora Report*;
- 4.1.2. Commits to engagement on the concept of a stand-alone Māori health authority;

¹¹ *Hauora Report*, pages 167-170.

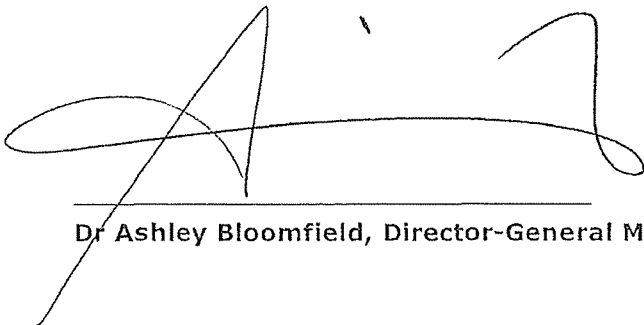
- 4.1.3. Commits to engagement on a methodology for assessing the extent of underfunding of Māori primary health organisations and providers;
- 4.1.4. Agrees not to make final decisions on the interim recommendations without considering and reflecting the views of the Stage One claimants in any recommendations made by officials to Crown decision-makers.

5. Agreement

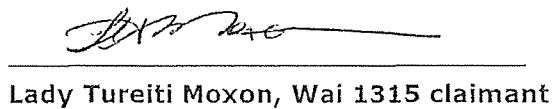
- 5.1. The parties agree to engage in good faith, and in accordance with the principles of the Treaty of Waitangi as articulated by the Waitangi Tribunal in the Hauora Report, on the interim recommendations requiring report back.
- 5.2. The parties agree to establish processes and timeframes to engage on how to both progress the other recommendations and to have regard to any other overlapping work programmes reviewing primary health care arrangements.
- 5.3. Terms of engagement to support the agreement in 5.1 above:
 - 5.3.1. The process will commence in January 2020 and this stage will be completed by 31 May 2020, or such other date as the parties agree;
 - 5.3.2. By 31 May 2020, the parties will review this agreement in order to agree on further engagement required to progress the Waitangi Tribunal's recommendations;
 - 5.3.3. The engagement will be conducted at the most senior levels inside the Ministry of Health, rangatira to rangatira, with at least monthly meetings held between the Deputy Director-General of Health (Māori Health) and the Stage One claimants, and additional meetings with the Associate Minister of Health (Maori Health) and the Director-General/Chief Executive Ministry of Health will be requested as needed.
 - 5.3.4. The proposed work programme and timeframes are set out in Appendix One;
 - 5.3.5. While this heads of agreement is in place, communications with the media in relation to the engagement of the Crown and claimants and progress in addressing the recommendations will only be made with the agreement of both parties, subject to obligations owed by the Ministry of Health under the Official Information Act 1982;

- 5.3.6. Once signed, this Heads of Agreement will be filed with the Tribunal to update it on progress.
- 5.4. The parties acknowledge that it will be necessary to consult with the Māori primary health sector, iwi, and other relevant Māori organisations, in relation to the concept of a stand-alone Māori health authority. This consultation should start as soon as possible, and a consultation process will be required once the draft term of reference is developed.
- 5.5. The Crown agrees to fund:
- 5.5.1. Each of the Stage One claimant groups for the reasonable costs and disbursements of participating in the engagement agreed in 5.1 above;
- 5.5.2. The reasonable and agreed costs of consultation with the Māori primary health sector, iwi, and other relevant Māori organisations on the concept of a stand-alone Māori health authority.

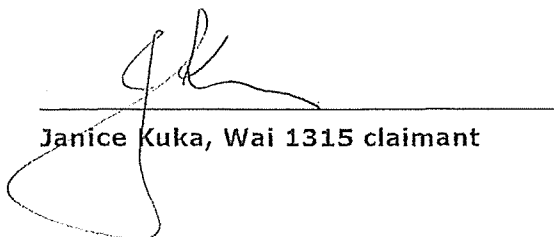
Signed on 20th March 2020



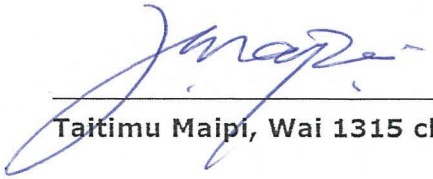
Dr Ashley Bloomfield, Director-General Ministry of Health



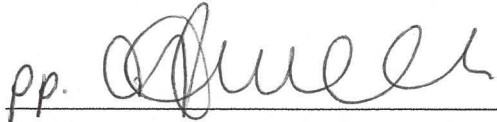
Lady Tureiti Moxon, Wai 1315 claimant



Janice Kuka, Wai 1315 claimant

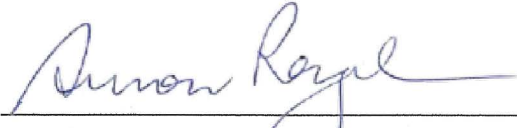


Taitimu Maipi, Wai 1315 claimant

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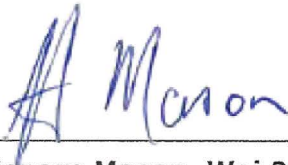
Hakopa Paul, Wai 1315 claimant

Joyce maipi - proxy for Hakopa Paul.



Simon Royal, Wai 2687 claimant

Chief Executive, National Hauora Coalition



Henare Mason, Wai 2687 claimant