

IN THE WAITANGI TRIBUNAL

WAI 2575
WAI 3243

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND the Health Services and Outcomes Inquiry

AND a claim by Ms Grant-Mackie Hana Grant-Mackie on behalf of her whaanau, hapuu, iwi, whaanau whaanui, and whaangai

SUMMARY OF CLOSING SUBMISSIONS FOR WAI 3243

26 September 2024

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Waitangi Tribunal

26 Sept 24

Ministry of Justice
WELLINGTON



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1. These closing submissions are filed on behalf of the Wai 3243 claim made by Ms Tiaki Grant-Mackie, on behalf of her whaanau, hapuu, iwi, whaanau whanui and whaangai (“the Claimant”, “Ms Grant-Mackie”). These submissions address the issues underpinning the disability stage of this inquiry and what the Claimant considers has caused the Crown to be in breach of the principles of te Tiriti.

A. BACKGROUND

2. Ms Grant-Mackie is a young wahine Maaori who has had to navigate the complexities and dysfunction of the disability system to obtain necessary disability support for her son, Manurere (“Manu”). Manu is the youngest of Ms Grant-Mackie’s three children and has autism spectrum disorder, global developmental delay and PICA.
3. The claim concerns the challenges she has had to face under a health system that is uncaring of her circumstances, and unwilling to provide her the proper support she needed to care for Manu who has been identified as a high needs recipient of care.

B. EVIDENCE

4. The following Briefs of Evidence have been filed on behalf of the Wai 3243 claim:
 - (a) Brief of evidence of Tiaki Grant-Mackie;¹
 - (b) Third Brief of evidence of evidence of Tiaki Grant-Mackie.²

C. TREATY PRINCIPLES

5. The Treaty principles relevant to this claim are as follows; Equity;³

¹ Wai 2575 #K006.

² Wai 2575 #K023 & K023(a).

³ Waitangi Tribunal, He Maunga Rongo, vol 3, p1000 ; Waitangi Tribunal, Te Tau Ihu o te Waka a Maui, vol 3, p5; Waitangi Tribunal, The Stage 2 Report on the National Freshwater and Geothermal Claims, pp518–519, 550–551.

Partnership;⁴ Active Protection;⁵ Options;⁶ and Redress.⁷

D. Delays in Acquiring Housing Modifications

6. Counsel submit that Enable NZ has exhibited a profound lack of efficiency and responsiveness in addressing the needs of Ms Grant-Mackie and her whanau, including;
 - (a) complicating the process by making punitive demands regarding a portcabin on the property rather than adapting the modifications to meet the needs of the whanau
 - (b) Placing various limitations on the design of the safe play area which exacerbated matters and failed to accommodate the needs of the whānau;
 - (c) Delays in communication occurring solely between Occupational Therapist and Enable NZ unnecessarily prolonged the process; and
 - (d) It took nearly two years to secure approval for the safe play area, with a letter of approval finally received on 12 June 2023.

7. Counsel submit this prolonged process and the experiences of Ms Grant-Mackie highlight a systemic Crown failure to provide timely and effective support for Maaori families. It not only reflects systemic inefficiencies but also raises concerns about underlying biases, particularly towards Maaori whaanau. Such failures are unacceptable and indicate a significant deficiency in the health system and the Crown's commitment to equitable and culturally responsive care.

Appointment of the occupational therapist

8. Ms Grant-Mackie's evidence reveals a drawn out and protracted process between herself, the Occupational Therapist, and Enable NZ the Equipment

⁴ *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, pp663–664.

⁵ Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui*, vol 1, p4.

⁶ Hauora Report, at 35.

⁷ *Ngaa Maataapono*, at 78.

and Modification Services (“EMS”) provider.⁸

9. The dysfunction between the Crowns EMS organisations caused the process to be encumbered with unnecessary delays, misunderstandings, and drawn out processes that inhibited Ms Grant-Mackie and her whaanau from receiving timely care and support.⁹ Counsel submit this dysfunction Ms Grant-Mackie encountered stems from the siloed manner in which the Crown delivers its EMS services.¹⁰
10. The EMS prioritisation process¹¹ was not brought to the attention of Ms Grant-Mackie by the assessor or provider. Counsel submit it was a vehement failing of the Crown to not consider Ms Grant-Mackie’s request urgent or even disclose to her they have a mechanism for expediting the process while being aware Manu’s safety was at risk throughout their engagement.

E. Whaanau Perspectives Unnecessarily Suppressed

11. Counsel submits that the voices of whaanau are essential in shaping health services, particularly for families caring for autistic children due to their high needs. Engaging with whaanau ensures that services are culturally responsive and tailored to meet the unique needs of Maaori whaanau, consistent with the principles of partnership and active protection under the Treaty.
12. Throughout this process Ms Grant-Mackie’s voice appears to have been suppressed, and at other times completely ignored by both the EMS provider and assessor,¹²¹³ and in her engagement with a behavioral specialist.¹⁴ In her experience Ms Grant-Mackie found the providers to have a lack of understanding for Maaori cultural context and appeared to have a narrow view of care that overlooks the collective responsibility of the wider whaanau unit, where each whaanau member has a vested interest in the

⁸ Wai 2575, #K23.

⁹ See Exhibits to Wai 2575, #K23.

¹⁰ Wai 2575, #L28(f) at para 58.

¹¹ Wai 2574, #4.1.27 pg. 210 line 4.

¹² Wai 2575, #K6 at [49].

¹³ Wai 2575, #K6 at [33].

¹⁴ Wai 2575, #K6 at [31] to [38].

outcomes that affect the individual

13. In counsel's submission, integrating whaanau perspectives into health service provision is not just best practice; it is a fundamental obligation of active protection and is crucial for delivering effective, culturally competent care and system-wide change that properly incorporates the Maaori worldview.

F. Financial Barriers

14. Ms Grant-Mackie has encountered a number of financial barriers in accessing DSS and supports for Manu, including:

- (a) Where she requested specific modifications to meet the safety needs of Manu, she was advised by the Crown that approval would be dependent on her contributing to the costs;¹⁵

- (b) A Child Disability Allowance that would make little to no impact on her day-to-day expenses in caring for Manu;¹⁶

- (c) NASC funding of respite care not sufficient to meet the complex needs of Manu;¹⁷ and current funding structure required Ms Grant-Mackie to use respite hours for childcare shortfalls during work, creating inequity.

- (d) Ms Grant-Mackie relying on advocacy from her GP to obtain additional NASC funding;¹⁸

15. Counsel submit the systemic funding inadequacies and bureaucratic hurdles within the respite care and EMS system exacerbate the challenges faced by whaanau, undermining their ability to provide the necessary care for their loved ones and children.

G. Conclusion

¹⁵ Wai 2575, K23(a) at pages 23 – 30.

¹⁶ Wai 2575, #K6 at [57].

¹⁷ Wai 2575, #K6 at [58] to [59].

¹⁸ Wai 2575, #K6 at [61] to [64].

16. Ms Grant-Mackie’s evidence underscores a pressing need for reform in how disability services and modification services are delivered to Maaori and their whaanau. The systemic failures her whaanau encountered highlight the urgent need for streamlined processes, equitable funding, and culturally responsive practices in line with the values and principles of the Treaty.

H. Relief¹⁹

17. The claimant seeks general recommendations from the Tribunal as set out in the Wai 3243 Statement of claim.²⁰ At a more specific level, and drawing from the evidence in Ms Grant-Mackie’s first brief of evidence (care for her disabled son) the following recommendations would be appropriate:

- (a) The need for all healthcare professionals to have the requisite levels of cultural competency and understanding;
- (b) The need for tangata whaikaha to consistently be viewed in the context of their whaanau unit and to be treated accordingly;
- (c) A fresh look at how funding for essential disability equipment and home modifications is distributed including removing unnecessary obstacles, delays and ‘middle’ men that hinder the provision of those services;
- (d) A fresh look at how respite care is funded including ensuring there is access to consistent respite care and that the needs of the carer are taken at face value and do not require the additional advocacy of third party such as a GP.

DATED at Taamaki Makaurau this 26th day of September 2024



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Counsel for Wai 3243

¹⁹ Prejudice section can be found in the main closing submissions.

²⁰ Wai 3243, #1.1.001