

**IN THE WAITANGI TRIBUNAL  
KEI MUA I TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI**

**WAI 2575  
WAI 1176**

**IN THE MATTER OF** the Treaty of Waitangi Act 1975

**AND** the Health Services and Outcomes Inquiry

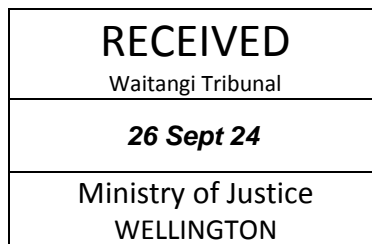
**AND** a claim by Te Karaka Karaka on behalf of himself, his whanau, the direct descendants of Te Karaka and on behalf of the autonomous hapuu Te Paatu

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**SUMMARY OF CLOSING SUBMISSIONS FOR TE PAATU HAPUU**

**Dated 26 September 2024**

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## **I. INTRODUCTION**

1. These closing submissions are filed on behalf of the Wai 1176 claim made by Te Karaka Karaka, on behalf of himself, his whanau, the direct descendants of Te Karaka and on behalf of the autonomous hapuu Te Paatu (“the Claimant”). The Claimant is a descendant of the Ngaati Kahu hapuu, Te Paatu Hapuu. The customary rohe of Te Paatu covers an extensive area in the far north Muriwhenua district.

## **II. CAUSES OF ACTION**

2. The Claimant’s Amended Statement of Claim sets out the following causes of action: Lack of recognition of Claimant’s Tino Rangatiratanga; Breach of Partnership; Inadequate Crown Commitment to eradicating and reducing Māori Health Inequalities; Lack of access to quality health care; Lack of protection and support for Maaori with lived experiences of disability.

## **III. EVIDENCE**

3. The following evidence has been presented in support of the Wai 1176 claim; Brief of Evidence of Natasha Clarke;<sup>1</sup> Brief of Evidence of Dr. Makarena Dudley;<sup>2</sup> Brief of Evidence of Prof. Denise Wilson.<sup>3</sup>
4. While the Wai 1176 evidence focused on kaumatua and dementia mate wareware care, counsel note that it intersects with a number of key issues or themes arising from this inquiry.<sup>4</sup>

## **IV. TE TIRITI O WAITANGI PRINCIPLES**

5. Without limiting Te Tiriti o Waitangi or the Claim counsel submits the following principles of Te Tiriti are relevant: Tino Rangatiratanga, Partnership, Active Protection, Equity and Options.

## **V. Hapuu are Disempowered to Develop and Provide their Own Models of Health and Disability Care**

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<sup>1</sup> Wai 2575 #K016.

<sup>2</sup> Wai 2575 #K020, #K020(a), K020(b) and K020(c).

<sup>3</sup> Wai 2575 #K019.

<sup>4</sup> Tribunal Statement of Issues, Wai 2575 #1.4.002 at 1.6, 4.6.13, 4.6.14, 2.2 and 2.6.1.

6. Counsel submit the Crown has failed to protect Te Paatu customs and perspectives around health and wellbeing, and the Claimants' ability to exercise and utilise maatauranga and custom in accordance with their tino rangatiratanga, which are protected under te Tiriti. This is attributable to the Crowns broader failures in regard to Te Paatu, including; the failure to eradicate socio-economic deprivation and health disparities; ensuring provision of health and disability services to rural regions; lack of initiatives or specific funding of hapuu and marae-based services, undermining Te Paatu tino rangatiratanga.

**VI. Lack of access to quality disability services and providers in Northland and Far North**

7. Counsel submit the Crown has breached the principles of equity, options and active protection by failing to undertake reasonable steps to address the lack of disability services in rural regions. Despite Claimant evidence illustrating the lack of services in the Northland region<sup>5</sup> and the Crown acknowledging the significance of rural accessibility issues,<sup>6</sup> the Crown's schemes and policies intending to address the issue have fallen short.
8. The Crown is failing to meet its obligations under the UNCRPD,<sup>7</sup> and Counsel submit tangata whaikaha maaori are particularly affected by the Crowns failure to eliminate rural accessibility issues as they must weigh up access to services against remaining in their homes and on their whenua.

**VII. Failure to provide culturally competent dementia and kaumatua care services**

9. A key consideration of this Inquiry has been the extent to which Disability service models are centred on tikanga Maaori and Te Ao Maaori perspectives or approaches. The Claimant's evidence illustrated this through the issue of maaori whaanau underutilising Crown subsidised aged care facilities ("ARC").<sup>8</sup>

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<sup>5</sup> Wai 2575 #K016 at para 63; and Wai K019 at Para 24 and 29.

<sup>6</sup> Wai 2575 #L029(h) at para 82.

<sup>7</sup> United Nations Convention on the Rights of Persons with Disabilities, Article 9 – Accessibility.

<sup>8</sup> Wai 2575 K016, para 25; and Wai 2575, K020 at para 34.

10. The underutilisation of ARC by Maaori whaanau is attributable to the differences in Te Ao Maaori and Tikanga Maaori based care compared to the western medical paakeha models of care ARC facilities operate under. This reflects the Crown's failure to provide culturally appropriate and competent mainstream services, and to resource and develop services to meet the specific needs of kaumatua Maaori and Maaori with mate wareware.

**VIII. Inadequate Funding and Support for Whaanau Caring for Kaumatua with Mate Wareware**

11. Maaori are prejudiced by caring for kaumatua with mate wareware according to their cultural practices and tikanga due to the Crown's failure to adequately resource whaanau carers. The Crown is cost-saving on Maaori aged care due to the underutilisation of ARC by kaumatua Maaori as this has not necessarily been offset by an increase in funding for home based services.
12. It is discriminatory of the Crown to stratify funded HCSS services by age and this is exacerbated by the differences in HCSS provided to kaumatua Maaori by Te Whatu Ora compared to Whaikaha funded HCSS, as kaumatua Maaori cannot directly pay or employ their whaanau carers.<sup>9</sup> Crown evidence on the employment of whaanau carers through Te Whatu Ora HCSS providers has failed to demonstrate any practical or substantive mechanisms for funding whaanau carers under this scheme.

**IX. Lack of Data Invisibilises Māori with Lived Experience of Disability**

13. Crown evidence and responses in this inquiry demonstrates their failure to collect sufficient data specific to tangata whaikaha Maaori, including population health, which has invisibilised tangata whaikaha Maaori and hindered their ability to monitor and design services that meet the needs of tangata whaikaha Maaori.

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<sup>9</sup> Wai 2575 #L028(f) at para 56; Wai 2575 L028(f) at para 79; and Wai 2575 #L028(f) at para 24.

14. Counsel submit that while the Crown has made concessions regarding the inadequacy of their collection in regard to tangata whaikaha Maaori, their attempt to ‘improving’ data collection has also fallen short.<sup>10</sup>

**X. PREJUDICE**

15. Counsel submit that the Claimants and Te Paatu have suffered or will suffer, from the following prejudice: The ongoing health inequities due to a lack of access to appropriate disability services in the region; Te Paatu whaanau and hapuu aren’t able to assert their tino rangatiratanga regarding the disability care and support; Tangata whaikaha Maaori don’t have adequate access to culturally appropriate models of care and services; Māori kaumatua and their whanau are the most vulnerable to detrimental effects of degenerative/age related disabilities, including that, Maaori whanau are disproportionately affected by insufficient and inconsistent funding for whanau careers.

**XI. REMEDIES**

16. Paragraph 76 of the closing submissions comprehensively sets out the remedies sought by the claimant, and counsel included in the Wai 1176 opening submissions a number of recommendations based on the evidence of expert witnesses Dr. Makarena Dudley<sup>11</sup> and Professor Denise Wilson.<sup>12</sup>

**DATED** at Taamaki Makaurau this 26<sup>th</sup> day of September 2024



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Neuton Lambert / Bobbi Walker  
Counsel for Wai 1176

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<sup>10</sup> Wai 2575 #4.1.027 at page 15, and pg 389 line 30; Wai 2575, #4.1.026 at p 107, line 13, page 21 lines 9-24, and

<sup>11</sup> Wai 2575, #K020, at paras 47 to 60.

<sup>12</sup> Wai 2575 #K019 at para 35.