

**IN THE WAITANGI TRIBUNAL**

**WAI 2575**

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**IN THE MATTER OF**

The Treaty of Waitangi Act 1975

and

**IN THE MATTER OF**

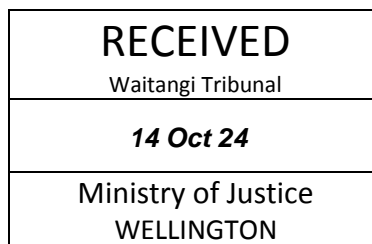
a claim to the Waitangi Tribunal by Janice Kuka and Lady Tureiti Moxon in respect of the the proposed disestablishment of Te Aka Whai Ora the Maaori Health Authority

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**Closing Submissions for Raukura Hauora o Tainui**

**Dated 14 October 2024**

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## MAY IT PLEASE THE TRIBUNAL

- 1 These closing submissions are filed for Korina Burne-Vaughn as the Chair of Raukura Hauora O Tainui Trust (**Raukura Hauora O Tainui**), a Kaupapa Maaori health and wellbeing services provider, on behalf of the Maaori whaanau which it serves pursuant to the memorandum-directions of the Tribunal dated 1 October 2024.<sup>1</sup>
- 2 Raukura Hauora O Tainui is an interested party in Wai 2575 and in Wai 3307<sup>2</sup> and previously filed Opening Submissions on 20 February 2024 (**Opening Submissions**) and the Joint Brief of Evidence of Korina Burne-Vaughn and Sarina Louise Rawhira Ponga of that same date (**Joint Brief of Evidence**).

### Summary

- 3 In summary, Raukura Hauora O Tainui submits that the disestablishment of Te Aka Whai Ora has resulted in:
  - (a) ongoing prejudice to Maaori, as set out in the Joint Brief of Evidence;<sup>3</sup>
  - (b) no certainty for Maaori health providers leaving them unable to plan for the future;<sup>4</sup> and
  - (c) reduced funding for Maaori health needs;<sup>5</sup>
- 4 These actions of the Coalition Government are in breach of the principles of Te Tiriti including tino rangatiratanga, partnership, equity, options and active protection.<sup>6</sup> As a result Raukura Hauora O Tainui submits that the Tribunal should recommend that whatever replaces Te Aka Whai Ora should at least provide the same benefits to Maaori health as Te Aka Whai

<sup>1</sup> The Tribunal confirmed that it would inquire into and report on “the processes and steps the Crown has taken in the disestablishment of Te Aka Whai Ora as a standalone and separate issue” and that this inquiry would be conducted on the papers based on existing evidence. The Tribunal directed that claimant and interested party closing submissions should be filed by 5pm, Monday 14 October 2024.

<sup>2</sup> Te Whakataunga Mō te Tono Ohotata e Pā ana ki te Aka Whai Ora, 19 Hānurere 2024, at paragraph 10.

<sup>3</sup> Opening Submissions for Raukura Hauora o Tainui dated 20 February 2024 (**Opening Submissions**) at [12] – with references to specific paragraphs in the Joint Brief of Evidence of Korina Burne-Vaughn and Sarina Louise Rawhira Ponga dated 20 February 2024 (**Joint Brief of Evidence**).

<sup>4</sup> Joint Brief of Evidence at [41] – [45] and Opening Submissions at [15].

<sup>5</sup> Opening Submissions at [7].

<sup>6</sup> Statement of Claim for Janice Kuka and Lady Tureiti Moxon regarding proposed disestablishment of Te Aka Whai Ora dated 7 December 2023, Wai 3307, #1.1.1.

Ora did even though it was still in its infancy and there was room for improvement.<sup>7</sup>

- 5 We elaborate on these three key points below.

### **Ongoing Prejudice to Maaori**

- 6 Whatever is to replace Te Aka Whai Ora has still not eventuated (more than three months after the disestablishment), meaning that concern about extensive prejudice to Maaori outlined by Raukura Hauora O Tainui in its Opening Submissions and Joint Brief of Evidence has now crystallised.<sup>8</sup>

- 7 As set out in the Opening Submissions and Joint Brief of Evidence, prior to its disestablishment, Te Aka Whai Ora was undertaking a tikanga-based approach to delivering on health outcomes focusing on equity for whaanau based on their needs through partnering with Maaori health providers.<sup>9</sup>

- 8 Raukura Hauora o Tainui submits that this approach was building towards positive changes in health contracting and service delivery to address specific and significant Maaori mental health and physical health needs and to support the whaanau that Raukura Hauora o Tainui serves.

- 9 Te Aka Whai Ora was working with Maaori health providers to redesign contracts and methods of service delivery and building partnerships between Maaori health providers to equip them to co-operate to deliver better health outcomes for their whaanau.<sup>10</sup> This was mana motuhake in action, and an expression of a real partnership between Crown and Maaori.

### ***Disestablishment of Te Aka Whai Ora***

- 10 The Pae Ora (Disestablishment of Māori Health Authority) Amendment Bill to disestablish Te Aka Whai Ora received royal assent on 5 March 2024 and came into force on 30 June 2024.

- 11 The process, or lack thereof, following this disestablishment has been extremely disappointing for Raukura Hauora O Tainui. Its whaanau are now in a significantly worse state than before the disestablishment.

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<sup>7</sup> Joint Brief of Evidence at [54].

<sup>8</sup> The prejudice is summarised in the Opening Submissions at [12] with reference to the Joint Brief of Evidence.

<sup>9</sup> Opening Submissions at [6].

<sup>10</sup> Joint Brief of Evidence at [13] – [23].

- 12 There is still no clear indication from the Coalition Government as to the details of any future efforts to replace Te Aka Whai Ora.
- 13 As stated in the Opening Submissions, it took almost five years to get Te Aka Whai Ora to the position it was in prior to the disestablishment.<sup>11</sup> The failure to have any replacement in place now causes further prejudice and it is Maaori whaanau and Maaori health providers who will suffer in this interim period until an effective replacement is implemented.<sup>12</sup>

### **No Certainty for Health Providers**

- 14 Raukura Hauora O Tainui was told that its “legacy” contracts (those held for five plus years) would roll over again for another year but all its “new” contracts (entered into in the last five years) would be reviewed which could lead to further significant reductions in funding or scope or simple termination of those contracts. Raukura Hauora O Tainui’s current contracts have now been rolled over for a year to 30 June 2025, and while some have been retained at existing levels other contracts have already been scaled back. For example the contract Kahu Taurima has already had a significant reduction in funding of approximately 25% for 2024,<sup>13</sup> contrary to previous commitments. There is no guarantee of any further renewals or roll over of contracts after 30 June 2025. This differs from the two-yearly approach to contracts being taken under Te Aka Whai Ora and it is unclear to Raukura Hauora O Tainui whether these one-year roll overs are simply a transitional approach or the new status quo.
- 15 This uncertainty leaves Raukura Hauora O Tainui unable to plan for the future of health service delivery for its whaanau.<sup>14</sup> This is the same uncertainty that Raukura Hauora O Tainui expressed concern about in its opening submissions over 7 months ago<sup>15</sup> and it is now clear that this new status quo may continue for an indeterminate period of time.
- 16 In addition, simply rolling over contracts means there is no opportunity to discuss new issues or the need for changes to services and funding. Over time this means contracts become less and less fit for purpose.

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<sup>11</sup> Opening Submissions at [13].

<sup>12</sup> Joint Brief of Evidence at [47] – [57].

<sup>13</sup> From the approximately \$800k in agreed annual funding to only approximately \$600k provided.

<sup>14</sup> Joint Brief of Evidence at [41] – [45].

<sup>15</sup> Opening Submissions at [15].

### **Reduced Funding for Maaori Health Needs**

- 17 With no specific Maaori health funding agency fighting for Maaori health or ringfenced funding it has now become much easier for Te Whatu Ora to repurpose funds previously dedicated to Maaori health needs.
- 18 This was the exact concern Raukura Hauora O Tainui expressed in its Opening Submissions, that Maaori health needs would be lost in the broader health system.<sup>16</sup>
- 19 For example, Raukura Hauora O Tainui received a commitment from Te Whatu Ora in October 2023 that they would half-fund the lease of an old birthing centre in Huntly that was closed down.
- 20 As a result of that commitment, Raukura Hauora O Tainui stepped in to take over the lease in February 2024 and re-open it as a wellness and respite centre so that the midwives, rongoā practitioners, and nurses could remain in the community and provide their services to the Northern Waikato. Raukura Hauora O Tainui has followed up with Te Whatu Ora throughout 2024 and none of the promised funding has been provided.
- 21 As a result, Raukura Hauora O Tainui has had to repurpose funding under its Kahu Taurima contract to keep the wellness and respite centre open – using funding dedicated for Maaori services to prop up a general population service. The only alternative was to let the wellness and respite centre close which would have a severe impact on Maaori and non-Maaori in the community. The failure of Te Whatu Ora to provide the promised funding means that funds that should have been dedicated to Maaori health needs have been diverted to the needs of the general population.
- 22 The above reinforces Raukura Hauora o Tainui's earlier submissions that specific and significant Maaori mental and physical health needs and issues were not properly addressed in the previous health system and that the same is now true again after the disestablishment of Te Aka Whai Ora.<sup>17</sup>

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<sup>16</sup> Opening Submissions at [7].

<sup>17</sup> Opening Submissions at [14].

### **Actions Contrary to Principles of Te Tiriti**

- 23 The principles of Te Tiriti including tino rangatiratanga, partnership, equity, options and active protection are being breached in the swift disestablishment of Te Aka Whai Ora by the Coalition Government without any consultation with Maaori, consideration of Maaori health needs, or any implementation of a replacement.<sup>18</sup>
- 24 The current health plans and strategies still in place espouse these principles of Te Tiriti while at the same time the Coalition Government tramples on them through their actions.
- 25 For example, see the principles named in *Whakamaua* which include ‘Mana whakahaere’ defined as “Effective and appropriate kaitiakitanga and stewardship over the health and disability system. Mana whakahaere is the exercise of control in accordance with tikanga, kaupapa and kawa Māori”.<sup>19</sup> In the plan, ‘Tino Rangatiratanga’ is defined as “Providing for Māori self-determination and mana motuhake in the design, delivery and monitoring of health and disability services.”<sup>20</sup>
- 26 Intended outcome 1 in *Whakamaua* states “Iwi, hapū, whānau and Māori communities can exercise their authority to improve their health and wellbeing.” And further states “It requires system shifts that better enable iwi, hapū and whānau to thrive as Māori, create healthy and sustainable environments and communities in which to live and raise children.”<sup>21</sup>

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<sup>18</sup> We are now in an interim period of indeterminate length before any replacement is implemented.

<sup>19</sup> Ministry of Health, *Whakamaua: Māori Health Action Plan 2020-2025* at page 14.

<sup>20</sup> At page 15.

<sup>21</sup> At page 31.

**Recommendations**

- 27 Raukura Hauora o Tainui submits that the Tribunal recommend that whatever the replacement of Te Aka Whai Ora implemented by the Coalition Government it provide at least the same benefits to the health of Maaori that were being provided by Te Aka Whai Ora's activities / approaches consistent with the principles of Te Tiriti prior to its disestablishment. Raukura Hauora o Tainui also submits that the implementation of the replacement must include initiatives to reverse the prejudice already caused to Maaori by the disestablishment.
- 28 In future, it is critical to upholding Te Tiriti that consultation on replacement must take place before the disestablishment of an entity such as Te Aka Whai Ora.



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**Mai Chen/Caleb Saunders**  
Counsel for the Claimant  
Dated: 14 October 2024