

In the Waitangi Tribunal

**Wai 2575 Wai 3216
Wai 3332 Wai 3334
Wai 3214 Wai 3111
Wai 3215 Wai 3011
Wai 3227 Wai 3230**

In the Matter

of the Treaty of Waitangi Act 1975

And in the Matter

**of the Health Services and Outcomes
Kaupapa Inquiry (Wai 2575)**

And in the Matter

Te Aka Whai Ora Priority Hearing

And in the Matter

**of a claim by Angela Waiomio on
behalf of her whaanau, hapuu, iwi,
whaanau whaanui and whaangai
(Wai 3332)**

And in the Matter

**of a claim by Denise Messiter on
behalf of her whaanau, hapuu, iwi,
whaanau whaanui and whaangai
(Wai 3214)**

And in the Matter

**of a claim by Genevieve Simpson on
behalf of her whaanau, hapuu, iwi,
whaanau whaanui and whaangai
(Wai 3215)**

And in the Matter

**of a claim by Georgia Grant-Mackie
on behalf of her whaanau, hapuu,
iwi, whaanau whaanui and whaangai
(Wai 3227)**

RECEIVED

Waitangi Tribunal

14 Oct 24

Ministry of Justice
WELLINGTON

And in the Matter

of a claim by Merepeka Raukawa-Tait on behalf of her whaanau, hapuu, iwi, whaanau whaanui and whaangai (Wai 3216)

And in the Matter

of a claim by Mike Tana on behalf of his whaanau, hapuu, iwi, whaanau whaanui and whaangai (Wai 3334)

And in the Matter

of a claim by Nicola Dally-Paki on behalf of her whaanau, hapuu, iwi, whaanau whaanui and whaangai (Wai 3111)

And in the Matter

of a claim by Paula Ormsby on behalf of Waahine in THE MIGHTY MONGREL MOB, and their whaanau, hapuu, iwi, whaanau whaanui and whaangai (Wai 3011)

And in the Matter

of a claim by Thomas Ratahi on behalf of his whaanau, hapuu, iwi, whaanau whaanui and whaangai (Wai 3230)

**JOINT CLOSING SUBMISSIONS IN RESPECT OF TE AKA WHAI
ORA**

DATED AT TOKOROA THIS 14 DAY OF OCTOBER 2024



Counsel Acting: Ārama Ngāpō / Te Karu o Whakatihi Brown / Hussain Sabori

NL Lawyers-Barristers & Solicitors

Tokoroa Office

58 Bonaly Street

PO Box 518,

Tokoroa, 3444

P 07 8867540

E arama@nll.co.nz

E waitangi@nll.co.nz

Table of Contents

INTRODUCTION	3
PREJUDICE CAUSED TO MAAORI	3
LACK OF CONSULTATION	6
Partnership	6
Participation	7
Equity	7
RELIEF SOUGHT	8
CONCLUSION	8

JOINT CLOSING SUBMISSIONS IN RESPECT OF TE AKA WHAI ORA

May It Please the Tribunal:

INTRODUCTION

1. We act for Ms Angela Waiomio (Wai 3332), Ms Denise Messiter (Wai 3214), Ms Genevieve Simpson (Wai 3125), Ms Georgia Grant-Mackie (Wai 3227), Ms Merepeka Raukawa-Tait (Wai 3216), Mr Mike Tana (Wai 3334), Ms Nicola Dally-Paki (Wai 3111), Ms Paula Ormsby (Wai 3011) and Mr Thomas Ratahi (Wai 3230), together known as “the Claimants”.
2. In Memorandum-Direction dated 1 October 2024,¹ his Honour Judge Stone confirmed that the Tribunal will proceed to inquire into and report on the processes and steps the Crown has taken in disestablishing Te Aka Whai Ora as standalone and separate issues to be conducted on the papers. These closing submissions are to be read in conjunction with our opening submissions dated 20 February 2024.² The Claimants support the evidence and submissions presented before the Tribunal by Claimant Counsel and their Claimants.
3. Counsel submits that the Crowns approach to disestablishing Te Aka Whai Ora is a breach of the Treaty of Waitangi. We say Maaori are not at the table but on the menu. Ms Dally-Paki explained the Crowns actions as an *attack towards Maaori Tikanga and Maaori Hiitori* and states:³

“The disestablishment of Te Aka Whai Ora is evident that this Government does not care about Hauora through a Te Ao Maaori lens. Te Aka Whai Ora was the bridge that connected Maaori, to an equitable health system”

4. Furthermore, the Crowns disregard to Maaori Health causes intergenerational prejudice towards Maaori. The steps and processes taken to disestablish Te Aka Whai Ora are inconsistent with the principles of the Treaty of Waitangi.

PREJUDICE CAUSED TO MAAORI

5. Counsel submits that the establishment of Te Aka Whai Ora were informed by the findings of the Waitangi Tribunal's Wai 2575 Health Services and

¹ Wai 2575, #2.6.191 Memorandum-Direction of Judge Stone dated 1 October 2024 at [47]

² Wai 2575, #3.2.959 Opening Submissions dated 20 February 2024

³ Wai 3111, #1.1.1(a) Amended Statement of Claim of Nicola Dally-Paki dated 17 July 2024 at [3]

Outcomes Kaupapa Inquiry Stage One report, released in 2019.⁴ The Tribunal determined that existing primary healthcare legislation and policies breached the Treaty of Waitangi and did not adequately address the health and wellbeing of Maaori.

6. Te Aka Whai Ora was established on 1 July 2022 under the Pae Ora Act 2022. Ms Raukawa-Tait states that:⁵

“Te Aka Whai Ora works with both the Ministry of Health and Te Whatu Ora. They are responsible for ensuring the health system works well for Maaori. Leading change in how the entire health system understands and treats Maaori health needs. Developing strategy and policy which will create better health outcomes for Maaori.”

7. We submit that the introduction of a ‘by Maaori for Maaori’ health system was to address Health inequities faced by Maaori and past breaches of the Treaty of Waitangi. Ms Messiter explained that Te Aka Whai Ora was “to create a new health system focused on pae ora (healthy futures)”.⁶
8. The Pae Ora Act 2022 (“the Act”) sets out the objectives of Te Aka Whai Ora, the Maaori Health Authority which include:
 - a. engage with Maaori in relation to their aspirations and needs for hauora Maaori and enabling the responses from that engagement to inform the performance of its functions (section 20 of the Act)
 - b. take reasonable steps to support iwi-Maaori partnership boards to achieve their purpose (section 21 of the Act)
 - c. jointly prepare the Hauora Maaori Strategy (section 42 of the Act)
9. In the two years that Te Aka Whai Ora operated, it performed some of its functions, including the preparation of the Hauora Maaori Strategy⁷ and the Interim New Zealand Health Plan 2022. Te Aka Whai Ora was also the connection between Maaori communities and Ministers.
10. During the 2023 General Elections, the National Government campaigned to “introduce legislation to disestablish the Maaori Health Authority”.⁸ This was one of the coalition Governments first actions to improving health. On 27 November 2023, Christopher Luxon was sworn in as prime minister.

⁴ Wai 2575, Waitangi Tribunal Report *Hauora report* – Dated 1 July 2019

⁵ Wai 3216, #1.1.1 (b), Second Amended Statement of Claim of Merepeka Raukawa-Tait Dated 17 July 2024

⁶ Wai 3214, # 1.1.1 (b), Third Amended Statement of Claim of Denise Messiter Dated 17 July 2024 at [6]

⁷ Minister of Health Pae Tuu: *Hauora Maaori Strategy* (Wellington, 2023)

⁸ National’s 100 Day Action Plan

11. On 8 December 2023, the Tribunal received a statement of claim with an application for an urgent inquiry into the disestablishment of Te Aka Whai Ora. On 16 February, Judge Stone in his Memorandum-Direction⁹ approved the application for urgency and a urgent hearing was set down for the 29 of February to 1 March 2024. The focus for this inquiry was “whether the disestablishment of Te Aka Whai Ora / Maaori Health Authority is in breach of the principles of the Treaty of Waitangi?”
12. On 17 January 2024, the Cabinet 100-Day Plan Committee agreed to disestablish Te Aka Whai Ora – The Maaori Health Authority. The Committee agreed that Health New Zealand would take over operational functions with the Ministry of Health to provide policy and strategy advice and monitor the performance of the health sector for Maaori.
13. On 12 February 2024, Minister of Health, Dr Shane Reti met with the Hauora Maaori Advisory Committee (the Committee). In the Manatu Hauora Aide-Memoire dated 9 February 2024, the purpose of this meeting was for the Minister to share his vision for the Committee, changes to its role and functions, and the future of Maaori Health.
14. On 27 February 2024, Judge Stone in his Memorandum-Direction¹⁰ confirmed to parties that, in light of the introduction of the Bill, the Tribunal’s jurisdiction to hold an urgent inquiry into the disestablishment of Te Aka Whai Ora had been suspended, per section 6(6) of the Treaty of Waitangi Act 1975. The urgent hearing set down for 29 February to 1 March 2024 was vacated.
15. On the 28 February 2024, the Pae Ora (disestablishment of Maaori Health Authority) Amendment Act 2024 (the Bill) was enacted. The requirements for the disestablishment of Te Aka Whai Ora are set out in this Act and come into force on the 30 June 2024.
16. Dr Shane Reti met with the Iwi-Maori Partnership Board (IMPB) at the National hui on 6 March 2024. This was an opportunity to discuss the introduction and the passing of the Bill and to discuss the future role and functions of IMPBs.
17. In the Crown Memorandum of Counsel dated 31 January 2024, the Crown confirmed that:¹¹

“Procedurally, no formal consultation was planned or occurred by the Crown before Cabinet confirmed the decision to disestablish Te Aka Whai Ora... However, it is important for the Tribunal to note that the now Minister of Health in his previous role as the Health

⁹ Wai 2575, #2.6.162 Memorandum Direction of Judge Stone dated 16 February 2024

¹⁰ Wai 2575, #2.6.166, Memorandum-Directions of Judge D Stone dated 7 March 2024 at [8]

¹¹ Wai 3307, #3.1.39, Memorandum of Counsel for the Crown dated 31 January 2024 at [12]

Spokesperson of the Opposition has undertaken engagement with Maaori over the past two years”

18. The enactment of the disestablishment Bill directly contradicts the findings of the Waitangi Tribunal's Hauora Report, which initially called for the creation of Te Aka Whai Ora.¹² The Hauora Report determined that the Crown had not provided Maaori with sufficient decision-making authority and advocated for the formation of a Maaori-controlled entity or collective to have significant oversight and control over Maaori health funding and policy.
19. We submit that the Crowns approach to disestablishing Te Aka Whai Ora is in breach of the Treaty of Waitangi. The engagement in which the Crown has undertaken is rather advise on what’s happening as appose to decision making engagement.

LACK OF CONSULTATION

20. Counsel submits that the Crowns approach to disestablishing Te Aka Whai Ora is in breach of the principles of the Treaty of Waitangi.

Partnership

21. The Waitangi Tribunal Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry found that the Crown did not design the primary health care framework in partnership with Maaori.¹³ The disestablishment of Te Aka Whai Ora is evident that in 5 years, nothing has changed as the Crown continue to breach their obligations to Maaori.
22. In response to the application for urgency, the Crown stated:¹⁴

“The intention to promote legislation to disestablish the Maaori Health Authority is not the product of a policy that officials have undertaken. Rather, the decision has been made by the Government at the political level following political parties campaigning on this issue ahead of the recent General Election... It is acknowledged that there has not been a consultation process with the Treaty partner leading up to the decision.”

23. Counsel submits that the Crowns actions in disestablishing Te Aka Whai Ora are merely a tick-box agenda with Maaori again at the bottom end. The removal of the by Maaori for Maaori health system will have detrimental effect on Maaori access and treatment to equitable health outcomes.

¹² Waitangi Tribunal *Hauora Report on Stage One* of the Health Services and Outcomes Kaupapa Inquiry, 2023

¹³ Wai 2575, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry*, 1 July 2019

¹⁴ Wai 3307, #3.1.28 Memorandum of Counsel for the Crown dated 18 December 2023 at [12]

24. The Ko Aotearoa Teenei report¹⁵ provides a strategy for a Treaty-compliant modern partnership between Maaori and the Crown. In assessing the Treaty's modern relevance to social policy, the Tribunal strongly endorsed a modern Treaty partnership that empowers Maaori communities to be actively involved in policy decision-making in matters affecting Maaori communities. A modern Treaty partnership will allow both Maaori and the Maaori-Crown relationship to thrive. We submit the Government has ignored this report.

Participation

25. In the Napier Hospital and Health Services Report, the Waitangi Tribunal stated:¹⁶

“The principle of partnership will in most cases be strengthened by maximising Maaori participation in decisions on programmes targeted at Maaori communities and Maaori agency in putting them into effect”

“Naau te rourou, naaku te rourou, ka ora ai te iwi”

26. Counsel submits the above whakatauki that speaks to active participation at a strengths-based approach. It acknowledges that everybody has something to offer, a piece of the puzzle, and by working together we can all flourish. During the disestablishment process, the Crown have failed to include Maaori participation in any way. Ms Ormsby stated,¹⁷ *“the Crown and the health system are not adequate in supporting Maaori with the absence of active Maaori participation.”*
27. We submit that the Treaty principle of partnership is strengthened through active and meaningful participation. The Crown's process in disestablishing Te Aka Whai Ora included no consultation with Maaori furthermore breaching their obligations to Maaori.

Equity

28. The Waitangi Tribunal Ngaa Maataapono Report defined equity as equal outcomes, not equal treatment. Some communities require more resources and support to achieve the same outcome. The principal of equity is an obligation by the Crown to provide the extra resources and support to the communities that require it to achieve the same outcomes.
29. Mr Tana stated that *“Te Aka Whai Ora was introduced at the blessing of the previous Government”*.¹⁸ Counsel further expands on submissions at

¹⁵ Waitangi Tribunal, *Ko Aotearoa Tēnei*: Te Taumata Tuarua, vol 2, p 559.

¹⁶ Waitangi Tribunal, *The Napier Hospital and Health Services Report* at p 55

¹⁷ Wai 3011, Second Amended Statement of Claim of Paula Ormsby dated 17 July 2024 at [4]

¹⁸ Wai 3334, #1.1.1(a) Amended Statement of Claim of Mike Tana dated 17 July 2024

paragraph [5]. The Waitangi Tribunal found that the current health care system in Aotearoa were in breach of the Treaty of Waitangi and did not adequately address the minimal health needs of Maaori.

30. Counsel submits that the introduction of Te Aka Whai Ora was a step forward by the Crown in addressing historical breaches of the Treaty and repeated breaches of the principles, this was an attempt at rehabilitating the injustices and inadequacies faced by Maaori in the health system.
31. Counsel further submits that The Royal New Zealand College of General Practitioners and Te Akoranga a Maauī, the College's Maaori representative group led by Dr Jason Tuhoe support the view that the disestablishment of Te Aka Whai Ora is a breach of the principles of the Treaty of Waitangi.¹⁹

RELIEF SOUGHT

32. The following remedies are sought by the Claimants:
 - a. A finding that the claim is well founded;
 - b. The Crown to uphold the principles of the Treaty of Waitangi, by working in partnership, participation, and protection when developing policies, procedures, and legislation regarding the health system in Aotearoa; and implementing these policies, procedures, and legislation to achieve a more equitable outcome for Maaori;
 - c. A finding that disestablishing Te Aka Whai Ora the Maaori Health Authority will irreversibly prejudice Maaori and is inconsistent with the principles of the Treaty of Waitangi;
 - d. A recommendation that the Crown breached their obligation to Maaori by disestablishing Te Aka Whai Ora; and
 - e. Any other relief as the Tribunal considers appropriate.

CONCLUSION

33. The disestablishment process was marked by a glaring lack of consultation and meaningful engagement with Maaori, perpetuating historical injustices rather than addressing them. As submitted by the Claimants, these actions reflect a continued marginalisation of Maaori perspectives in the health system, reinforcing systemic inequities and prejudicing future generations.

¹⁹ Wai 3307, Brief of Evidence of Doctor Jason Kohamutunga Tuhoe dated 20 February 2024

34. The establishment of Te Aka Whai Ora was a vital step towards rectifying these inequities, embodying a commitment to a health framework that serves Maaori interests. The abrupt dismantling of this structure not only disregards the findings of the Waitangi Tribunal but also signals a troubling disregard for the principles that should guide the Crown's relationship with Maaori.

35. The Claimants respectfully seek the Tribunal's recognition of these breaches, urging the Crown to commit to the Treaty principles that demand a collaborative, equitable approach to health policy development. We request a clear finding that the disestablishment of Te Aka Whai Ora is inconsistent with the Treaty. We seek the above remedies to restore a path toward genuine partnership and improved health outcomes for Maaori.

36. It is imperative that the Crown not only acknowledges these failures but also actively works to resolve them, advancing a health system that truly reflects and upholds the rights and aspirations of Maaori communities.

May it please the Tribunal these are our submissions.

Dated 14 October 2024



Ārama Ngāpō
Counsel for the Claimants



Te Karu o Whakatihi Brown



Hussain Sabori