

IN THE WAITANGI TRIBUNAL  
I TE ROOPUU WHAKAMANA I TE TIRITI O WAITANGI

Wai 2575  
Wai 2619

**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** of a claim by Dr Huhana Hickey on behalf  
of herself and other Maaori Disabled (Wai  
2619)

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**Reply Submissions in respect of the Te Aka Whai Ora Priority Inquiry**

**Dated 11 November 2024**

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Waitangi Tribunal

**11 Nov 24**

Ministry of Justice  
WELLINGTON

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**MAY IT PLEASE THE TRIBUNAL**

1. These Reply Submissions are filed on behalf of Wai 2619, a claim by Dr Huhana Hickey on behalf of herself and other Maaori Disabled (**Claimant**), and in response to the Crown Closing Submissions, filed on 25 October 2024.<sup>1</sup>
2. Counsel and Claimant make a principal submission in response to the Crown's Closing Submissions, regarding the Crown's duty to make informed decisions, that has not been covered by other Claimant Closing Submissions.
3. In the Crown's Closing Submissions, Crown counsel referred several times to the inequitable health disparities experienced by Maaori within the health sector generally. In particular, the Crown submitted that:
  - a. its decision to disestablish Te Aka Whai Ora was made in the knowledge that Maaori experience significant health disparities and that health outcomes need to improve;<sup>2</sup>
  - b. it had a significant amount of information available to it regarding Maaori health outcomes and existing disparities between Maaori as a population group and other groups;<sup>3</sup>
  - c. its decision to disestablish Te Aka Whai Ora was made in the context of the overarching legislative framework under the Pae Ora (Healthy Futures) Act 2022, which included striving to eliminate health disparities, in particular for Maaori;<sup>4</sup> and
  - d. it was well-informed about the disparities in health outcomes that Maaori as a population group experience and of the need to address them.<sup>5</sup>
4. With respect, in our submission, the Crown referring to the health disparities experienced by Maaori throughout its submissions suggests to

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<sup>1</sup> Crown Law Office *Closing Submissions of the Crown* dated 25 October 2024 (**Crown Closings**).

<sup>2</sup> Crown Closings at [22.1].

<sup>3</sup> Crown Closings at [23].

<sup>4</sup> Crown Closings at [34] and [34.1].

<sup>5</sup> Crown Closings at [50].

Counsel and the Claimant that the existence of those health disparities was significantly influential to the rationale behind the decision to disestablish Te Aka Whai Ora (**Disestablishment Decision**). We submit that framing the Disestablishment Decision in the context of these persisting health disparities is to imply that, at best, Te Aka Whai Ora was not able to address the persistent inequitable health disparities during its existence, and, at worst, implies that Te Aka Whai Ora is to blame for the persistent health disparities.

5. With respect, we submit that it is a logical fallacy to even consider these existing health disparities as part of the rationale behind disestablishing Te Aka Whai Ora. These health disparities for Maaori have long existed prior to the establishment of the Te Aka Whai Ora, and, as already submitted in our Closing Submissions,<sup>6</sup> the standalone Maaori health authority was established *specifically* to address the very health disparities referred to by the Crown in its Closing Submissions.
6. Furthermore, we emphasise that Te Aka Whai Ora, as submitted in our Closing Submissions, was disestablished *during* its two-year transition period. It is simply counterintuitive for the Crown to suggest that Te Aka Whai Ora was not in a position to address health disparities for Maaori when not even two years' worth of statistical data was available for the Crown to compare against existing data of the former system. Te Aka Whai Ora has now been done away with before it could possibly have "fixed" systemic disparities, under any reasonable and impartial assessment.
7. The Crown, in its Closing Submissions, specifically referred to the Minister's Cabinet paper referencing the mortality and morbidity rates for Maaori as a population group being disproportionately higher than for non-Maaori, and that Maaori report worse experience of health services as an indication that Maaori health outcomes needed improvement.<sup>7</sup>
8. However, the Crown omitted any positive progress noted by public officials

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<sup>6</sup> Dr B Gilling / R Soriano *Closing Submissions on behalf of Wai 2619* dated 14 October 2024 at [21] (**Claimant Closings**)

<sup>7</sup> Crown Closings at [23].

in any advice, as we have submitted in Closing Submissions,<sup>8</sup> such as the rate of waahine Maaori who were daily smoking having more than halved between 2011/12 and 2021/12.<sup>9</sup> Another early indication of progress noted by public officials is the fact that the “national approach to reducing waiting lists for planned care to manage demand was not practicable under the former structure”.<sup>10</sup>

9. In essence, Counsel submit that, while the Crown is aware of health disparities for Maaori generally, it cannot be said that it was well-informed of health disparities for Maaori within the context of Te Aka Whai Ora’s work itself – particularly when the standalone Maaori health authority had not been given the opportunity (even during its transition period) to demonstrate its capability to address those health disparities.<sup>11</sup> As the Claimant has said, the Crown, in breach of te Tiriti, disregarded the potential held by Te Aka Whai Ora as a means to exercise Maaori tino rangatiratanga.<sup>12</sup>
10. In our submission, it is clear that, once again amongst its actions of the last year, rather than having a clear actual problem that required fixing, this government had its own political policy agenda of unpicking the creation of the previous government. It was also furthering its misconceived agenda of purported equality for all in terms of levels and manner of government provision.
11. So, rather than address the greatest need with appropriate resources, it disestablished summarily and without basis the body created expressly to address that greatest need. Maaori are therefore now left back in the twentieth-century trap of poor resourcing, delivered inappropriately, in breach of their rights and legitimate expectations under te Tiriti, and as citizens of Aotearoa New Zealand suffering well documented and universally

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<sup>8</sup> Claimant Closings at [28.b.]

<sup>9</sup> Ministry of Health “Issues and opportunities for hauora Maaori” (briefing paper, H2023032865, dated 28 November 2023) at [2].

<sup>10</sup> Ministry of Health “Advice on disestablishing the Maaori Health Authority” (briefing paper, H2023032885, dated 28 November 2023) at [13].

<sup>11</sup> Ministry of Health “Advice on disestablishing the Maaori Health Authority” (briefing paper, H2023032885, dated 28 November 2023) at [10]-[15].

<sup>12</sup> Wai 2575, #M18 at [16.a.]

recognised health disparities.

12. Lastly, we note that these Reply Submissions are intended to supplement submissions made by other counsel. Counsel and the Claimant further endorse the reply submissions made by Counsel for the Wai 3307 Claimants.

**Dated** at Wellington this 11<sup>th</sup> day of November 2024



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**Dr B D Gilling and R M A Soriano**  
**Counsel for the Wai 2619 Claimant**