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Waitangi Tribunal

2 Dec 24

Ministry of Justice
WELLINGTON

List of remedies / recommendations sought by NHC, together with Crown response

Wai 2943 (Disability Phase)

| Remedy | Level and linkages | Crown submissions |
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| <p>1. National Kōrero</p> <ul style="list-style-type: none"> - Invest in taangata whaikaha Maaori to lead processes to define and capture lived experience of disability in line with their own tikanga and maatauranga. - Resource taangata whaikaha Maaori to come together and explore issues of how the community works together, in partnership with the Crown and with Iwi - Support the development of a Maaori Disabled Persons Organisation (or organisations) or some other mechanism to ensure taangata whaikaha Maaori to participate meaningfully in government policy development and the IMM process as part of the UNCRPD monitoring of NZ. - Support access of taangata whaikaha Maaori te ao Maaori and cultural practice. | <p>Whole of Government / societal level priority (Whaikaha lead agency)</p> <p>Could be led by taangata whaikaha Maaori claimants and also taangata whaikaha Maaori groups that were not able to participate in the Tribunal process (such as TAMA, Maaori with lived experience of intellectual /learning disability) - but will require investment from the Crown.</p> <p>This work would also need to ensure that the voices of rangatahi whaikaha and taangata whaikaha Maaori impacted by incarceration are included and heard.</p> <p>This is part of a wider requirement for a national kōrero as articulated by Tristram Ingham:</p> <p><i>“Tāngata Whaikaha Māori need the opportunity to develop collective voice and identity around disability, a national kōrero. This includes a kōrero about the constitutional relationship between Tāngata Whaikaha Māori and the Crown and a kōrero about how we reclaim and use our own tikanga and own mātauranga. I imagine this kōrero is analogous of the inspirational work of Dr Moana Jackson, Margaret Mutu and the working group on constitutional transformation that led to Matike Mai. In fact, this area of change that underpins my call for a national kōrero is based on a belief in the transformational change of Tāngata Whaikaha Māori being able to exercise our mana motuhake.” (#4.1.015, 275, line5)</i></p> | <p>No response on a national kōrero included in the Crown’s closing submissions.</p> <p>[NB discussion on IMM included under decision-making below.]</p> |
| <p>2. Improving data, ensuring data is comprehensive, valid and reliable for taangata whaikaha Maaori.</p> <p>2.1: Survey data</p> <p>Invest in regular cross-sectional surveys of the population to accurately understand the health and wellbeing of taangata whaikaha Maaori.</p> | <p>Whole of Government priority, (StatsNZ lead agency)</p> <p>This should be informed by the University of Otago, Wellington School of Medicine on Te Ao Mārama research project, which included a nationally representative, cross-sectional survey of adults of Māori descent across NZ. The NHC recommends that the University of Otago team be engaged with and seen as partners, experts, and leaders in the area.</p> <p>Would need to link with principles of Maaori Data Sovereignty.</p> <p>Would need to be done in partnership with taangata whaikaha Maaori.</p> | <p>The Crown does not specifically commit to investing in regular, comprehensive and reliable survey data, but instead indicates a general intention to work with Stats NZ to improve data. The submissions state “Whaikaha will work with Stats NZ to include more content relevant to tāngata whaikaha Māori in the 2028 [Te Kupenga] cycle”. (Para 206). Although this is generally positive, it is unclear what, if anything, will change as a result. Further, it does not directly address how tāngata whaikaha Māori themselves, and the scholarship of tāngata whaikaha Māori academics, will be included in the survey.</p> <p>We also note the inference that the government may be intending to move away from survey data:</p> <p>“Stats NZ have been undertaking public consultation on the approach to the next census. If a decision is reached that the 2028 Census design will be developed using an ‘administrative data first’ approach, careful consideration will be needed to ensure disabled people and taangata whaikaha Maaori are represented in the data.” (Para 207)</p> |

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| | | <p>It is unclear what this means, but we note the risks that the Ministry of Health has previously identified in feedback on the “administrative data first approach”- specifically that:</p> <p>“moving away from the current census model increases risks associated with our understanding of the need for services as data may become limited to those who have access to and have successfully navigated the system.” (p 3 from “Modernising and transforming the 2028 Census: Public consultation on an administrative data-first approach for census”, March 2023 - link available here).</p> |
| <p>2.2: Administrative data</p> <p>Establish systems to capture disability status for Maaori in administrative data, starting with the health, education, and social welfare sectors.</p> | <p>Whole of Government priority, implemented at an agency-level (all agencies that collect personal data, including Te Whatu Ora, Ministry of Social Development/Whaikaha, Education, Corrections and ACC)</p> <p>This recommendation allows government performance monitoring and accountability (including monitoring cultural safety and workforce), and for informed policy and funding decisions.</p> <p>May need to include data infrastructure and IT system change, and could require contracting changes (to ensure data is appropriately collected by non-government providers), which could be made progressively.</p> <p>Would need to link with principles of Maaori Data Sovereignty (meaning that the way data is collected, stored, and used would need to be overseen and informed by taangata whaikaha Maaori)</p> <p>Would need to be done in partnership with taangata whaikaha Maaori and could be supported by Maaori providers.</p> | <p>In response to submissions that WGSS asks the wrong questions, the Crown provides a range of responses (Para 185), indicating both that there is no current way to capture the impact of disability on Māori across government and that “working with the disability community, tāngata whaikaha Māori and other key stakeholders to improve data collection is an ongoing effort”. (Para 185.1). Although the Crown acknowledges that the WGSS questions are not culturally validated (para 178), there is no commitment to changing the questions.</p> <p>A lack of adequate resourcing is clearly a limiting factor in this, with the Crown submission also stating that:</p> <ul style="list-style-type: none"> • “Whaikaha and Stats NZ planned to hold a series of workshops from late 2024 over six months with the Disability Data and Evidence Advisory Group to develop administrative measures to streamline disability data collection approaches across agencies. Counsel understand resourcing means this work will now be conducted in 2025”. (Para 194) • “The Disability Data and Evidence Advisory Group developed a plan to engage with taangata whaikaha Maaori on disability data collection to gain perspectives from a Maaori worldview and its implementation will depend on capacity issues” (Para 199). |
| <p>2.3 Progress the PPNHI project in partnership with taangata whaikaha Maaori</p> <p><i>The PPNHI was described by Ben O’Meara as “a Te Whatu Ora-led disability data kaupapa that aims to identify all disabled people and their access needs in health datasets by a National Health Index (NHI) identifier. PPNHI will enable health entities and Whaikaha to meet access needs and monitor outcomes for disabled people when accessing health services.”¹</i></p> | <p>Health sector priority (Ministry of Health and Te Whatu Ora/Health NZ lead)</p> <p>This should be carried out with effective governance that included taangata whaikaha Maaori at the decision-making table, and in a way that ensured the principles of Maaori data sovereignty were maintained.</p> | <p>The Crown makes no direct reference to NHC’s suggested remedy, although there are references to the PPNHI programme, including that the Crown is looking to improve data collection and that, for example, “NHI data might be usefully expanded by Te Whatu Ora to address disability as most people interact with the health system” (Para 181)</p> <p>The Crown closing submission also confirms: “Mr O’Meara’s evidence was that the scope of the PPNHI project was currently not as wide as previously envisaged in terms of robustly measuring disability status as well as accessibility needs.²⁵⁰ However, Te Whatu Ora has confirmed the project has maintained its dual goals, but has been temporarily paused whilst funding is confirmed.” (Para</p> |

¹ Evidence of Ben O’Meara, #L21, Para 100.

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| | | 196). This confirms NHC's submission that PPNHI has been de-prioritised by the Crown. |
| <p>2.4 Support improved data systems for Maaori providers</p> <p>Provide capital investment to Māori health and social service providers where required to ensure data systems are able to collect, record, and store disability data appropriately.</p> | <p>Social sector priority (Te Whatu Ora and Ministry of Social Development/Whaikaha lead)</p> <p>It allows Māori providers to understand the population they're serving and respond accordingly. It also allows more insights into the funding required for providers serving large Māori populations.</p> <p>Would need to be a partnership between the government agencies and Maaori providers.</p> | No response in Crown closing submission. |
| <p>2.5 Increased transparency for taangata whaikaha Maaori</p> <p>Ensure data held by the Crown on tāngata whaikaha Māori is accessible and available in a range of alternative formats</p> | <p>Whole of Government priority (Whaikaha lead)</p> <p>As more comprehensive, valid, and reliable data is collected by the Crown, it needs to be shared with taangata whaikaha Maaori in a range of alternative formats.</p> <p>This will require investment in skills to support alternative formats, such as the preparation of Easy Read and the use of NZSL (especially in building the number of tri-lingual interpreters).</p> | <p>No direct response in Crown closing submissions.</p> <p>There is reference to online data dashboards which in theory could increase transparency (Para 201) but there is no information provided on whether these were intended to, or have in fact, increased access to data for taangata whaikaha Maaori.</p> <p>Also on information released publicly the Crown states:</p> <p>"Where data quality is sufficient, the 2023 Disability Survey will be disaggregated by ethnicity and will report on the population of taangata whaikaha Maaori." (Para 204). However, there is no indication of whether the Crown consider it likely or unlikely.</p> |
| <p>2.6 Better data analysis</p> <p>Where data is collected using the WGSS questions, it should be analysed in a way that separates out those who identify as having "some difficulty" so as not to further invisibilise taangata whaikaha Maaori.</p> | <p>Whole of Government priority (StatsNZ and Whaikaha lead)</p> <p>Such a move would need to be guided by tāngata whaikaha Māori, in line with principles of Māori data sovereignty and the principle of partnership.</p> | While there is reference to the WGSS in the Crown's closing submission, there is no response to this suggestion in relation to the analysis of the data by the Crown. |
| <p>2.6 Better data quality</p> <p>Improve ethnicity data quality and Iwi and hapū level data</p> | <p>Whole of Government priority (StatsNZ, Whaikaha and Te Whatu Ora)</p> <p>Within the health sector the guidance the Ethnicity Data Action Plan (2023) be followed, which concluded that "There is an urgent need for leadership and a coordinated and ongoing response across the health sector, with strengthened accountability and monitoring mechanisms, to achieve high quality ethnicity data."²</p> | No response in Crown closing submission. |
| <p>3. Social investment</p> <p>Ensure social investment activity benefits taangata whaikaha Maaori and meets their needs and aspirations.</p> | <p>Whole of Government priority (Social Investment Agency)</p> <p>Current government priority (see text in closing submission)</p> <p>This includes:</p> <ul style="list-style-type: none"> - Ensuring taangata whaikaha Maaori are at governance table - Data quality is improved - Taangata whaikaha Maaori involved in commissioning for the services - Maaori community-based organisations and providers are able to participate in social investment - Effective monitoring of social investment looks at the impacts of investment on taangata whaikaha Maaori | <p>Social investment is said to be an important priority for the current government, but the Crown submissions do not commit to working in partnership with taangata whaikaha Maaori in relation to its social investment strategy. While there is reference to the important role social investment is likely to play in the future of government investment, the Crown's closing submissions do not indicate how tāngata whaikaha Māori will be involved in working with the government in the development of social investment policy, as NHC is seeking. Instead the focus seems to be on different government agencies talking to each other, for example:</p> <p>"Whaikaha is working with the Social Investment Agency (SIA) to improve data collection and monitoring for taangata whaikaha Maaori and other groups" (Para 77)</p> |

² Te Aka Whai Ora 2023. Ethnicity Data Action Plan. <https://www.tewhatauora.govt.nz/assets/Publications/Maori-health/Ethnicity-Data-Action-Plan.pdf>

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| | <ul style="list-style-type: none"> - That information on taangata whaikaha maaori is available in a range of accessible / alternative formats | <p>Cabinet has said that the transfer of DSS and implementation of the Independent Review recommendations were to be “consistent with our social investment approach” (Para 87.2.3).</p> <p>“A collaborative project between Whaikaha and the SIA has explored the lives of disabled people using data from many different government agencies using Integrated Data Infrastructure. Data from the first stage of this project will be published in the coming months. Whaikaha will continue to explore options for future work to further analyse the wellbeing and life trajectories of disabled people. This analysis would be valuable in guiding Government policy” (Para 202) However, continuing to “explore options for future work” is no more than a promise to think about things, rather than committing to actions that will lead to change.</p> <p>We note that the Crown has stated the FASD Action plan includes a “joint meeting on FASD priorities and funding and briefing on a comprehensive social investment approach” (Para 284.3) – this is potentially promising but is isolated to one area of the disability inquiry and is focused on information sharing not co-development and co-creation of the social investment approach.</p> |
| <p>4. Better decision-making</p> <p>Develop mechanisms to include taangata whaikaha Maaori in decision-making at every level of government activity</p> | <p>Whole of Government priority (start with Ministry of Health and Ministry of Social Development/ Whaikaha lead)</p> <p>This includes recommendations for legislative change to establish requirements for Boards and IMPBs to include expertise relevant to taangata whaikaha Maaori.</p> <p>While legislative change would provide a level of certainty for taangata whaikaha Maaori, the Crown need not wait for legislative change to make it happen and could begin actively recruiting taangata whaikaha Maaori to Board positions as they become available (eg by advertising to taangata whaikaha Maaori networks, ensuring that reasonable accommodations are taken and well known) and could ensure all new Boards and Ministerial level advisory groups have appropriate inclusion of Maaori with lived experience of disability.</p> <p>This includes a recommendation that taangata whaikaha Maaori be directly involved in the development of health strategies as required under the Pae Ora Act. Given the Government Policy Statement does not reference Te Tiriti o Waitangi, it is imperative that the Ministry of Health’s work to develop a New Zealand Health Strategy. A Maaori Health Strategy, and a Health of Disabled People Strategy reflect the needs and aspirations of taangata whaikaha Maaori. This includes having taangata whaikaha Maaori on governance or advisory groups, using data and research that is meaningful for taangata whaikaha Maaori, having a range of ways for taangata whaikaha Maaori to engage in consultation and other processes in the development of the strategies (and for information to be available in a range of alternative formats), and for there to be robust monitoring around the strategies.</p> | <p>There are no clear commitments in the Crown’s closing submissions. The Crown states that “It is the responsibility of each agency to engage with their stakeholders and clients, including tāngata whaikaha Māori” (Para 141), and goes on to say that the NZDS recognises “the need for involvement of taangata whaikaha Maaori and their whanau in the development and implementation of legislation and policies concerning supports and services specific to them” (Para 141). However, given these existing requirements have not led to adequate levels of tāngata whaikaha Māori involvement in decision-making, this appears to reinforce the need for more formal mechanisms.</p> <p>Currently, the Crown is not acting consistently with the principles of kawanatanga when making decisions that affect taangata whaikaha Maaori because policy processes do not adequately understand the aspirations of taangata whaikaha or engage with their needs, and there is inadequate monitoring of the impact of decision-making on taangata whaikaha.</p> <p>In relation to IMM, the Crown states “In relation to how taangata whaikaha Maaori communities can best participate in monitoring and reporting on how the UNCRPD is being realised in Aotearoa, the Crown must respect the civil society nature of the DPO coalition and should not exercise influence over its membership”. (Para 142)</p> <p>However, this statement does not recognise that the Crown set up the IMM arrangements, which were constituted by formal Gazette notice on</p> |

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| | | 13 October 2011. This recognised that it was the responsibility of New Zealand as State Party to the UNCRPD to designate an Independent Monitor for the promotion, protection and implementation of the UNCRPD under article 33. The IMM is made up of the Human Rights Commission, the Ombudsman and six Disabled People's Organisations that work together as a coalition" (Para 64) |
| <p>5. Addressing underfunding</p> <p>5.1 Review primary health care funding to better support Maaori PHOs and primary care providers to meet the needs of taangata whaikaha Maaori</p> | <p>Health sector priority (Ministry of Health and Te Whatu Ora lead) Continuing / restating the recommendation from the Hauora report.</p> <p>Note that on top of the recommendations from the Hauora Report, the new recommendation is also meant to ensure the funding formulae explore how to best achieve equitable outcomes for taangata whaikaha Maaori in primary health care.</p> | <p>No response in Crown closing submission to the NHC proposed remedies.</p> <p>We note that the Crown has discussed underfunding in relation to Dr Meade and Dr Croxson's briefs of evidence, which focuses on disability support services and not primary health care.</p> |
| <p>5.2 Commission health and disability support services in holistic ways that support Māori concepts of hauora for taangata whaikaha Maaori</p> | <p>Health sector priority (Ministry of Health and Te Whatu ora lead)</p> <p>As the health sector continues to improve its approach to commissioning and procuring services, and including Iwi Maaori Partnership Boards in "strategic commissioning", this recommendation is that the needs and aspirations of taangata whaikaha Maaori must become embedded in the process, and that this will mean that artificial distinctions between what are considered disability services and what are considered health services be removed.</p> <p>This must also include better and fairer contracting of Maaori-led providers, allowing them to participate in and benefit from social investment approaches.</p> | <p>No response in Crown closing submission.</p> |
| <p>5.3 Invest in Maaori provider development to ensure taangata whaikaha Maaori have true options to access Maaori led providers of DSS and primary health care services</p> | <p>Health and Disability Sector priority (Te Whatu Ora and Ministry of Social Development/Whaikaha lead)</p> <p>This would have two parts to it. Firstly, prioritising investment in increasing the numbers of Maaori-led DSS providers (currently only 33 out of over 900), to ensure that at a minimum taangata whaikaha Maaori throughout the country have the option of accessing Kaupapa Maaori DSS.</p> <p>The second part is to ensure that taangata whaikaha Maaori have the option of accessing primary and community health care from Maaori PHOs and primary health care providers throughout the country. This could include either growing the number of Maaori PHOs and providers OR increasing the coverage and contracted services of existing providers.</p> | <p>No response in Crown closing submission.</p> |
| <p>5.4 Investing in the taangata whaikaha Maaori workforce (+ workforce responsive to Maaori disability needs)</p> | <p>Health and Disability Sector Priority (Te Whatu Ora, Ministry of Health, Ministry of Social Development/Whaikaha lead)</p> <p>This recommendation would put tangible steps in place to achieve the goal the Ministry signed up to in Whaia Te Ao Maarama (2018) that it would support taangata whaikaha Maaori access to training and development.</p> | <p>While there is no direct response to the NHC's proposed remedies, the Crown submission states (at Para 149) that the Crown and claimants agree:</p> <ul style="list-style-type: none"> - That there should be a properly trained and culturally competent workforce that meets the needs of tāngata whaikaha Māori and that cultural competency training and strong Māori representation in the workforce are important factors for that |

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| | <p>A secondary focus of this recommendation is that the skills of the non-disabled workforce be increased to be more culturally safe and responsive to the needs and aspirations of taangata whaikaha.</p> | <ul style="list-style-type: none"> - Development of a Māori workforce strategy has been recommended to the Crown before - Challenges remain in recruiting and retaining “Maaori and taangata Maaori” into the health and disability workforce - Studies in the past that point to barriers to Māori entering the health and disability workforce, including, from the discrimination they face - There is need for representation of tāngata whaikaha Māori in the health and disability workforce. <p>In other words, the Crown acknowledges that there is a problem, but has not made any specific commitment to actions that might result in an improvement in the taangata whaikaha workforce.</p> |
| <p>5.5 invest in taangata whaikaha Maaori led research</p> | <p>Health Research Priority (Ministry of Business, Innovation, and Employment and Ministry of Health lead)</p> <p>This recommendation includes that dedicated funding pools be available for taangata whaikaha Maaori-led research, for example by establishing a ringfenced fund through the Health Research Council (which is funded through the general pool, and not carved off from current Hauora Maaori funding)</p> | <p>Refers to the HRC funding, which is already noted in our arguments.</p> <p>Note that the Crown incorrectly refers to Ministry of Health funded research at Para 200.</p> |
| <p>6. Improving mainstream effectiveness, cultural safety, and accessibility for taangata whaikaha Maaori.</p> | <p>Health Sector Priority (Ministry of Health and Te Whatu Ora)</p> <p>This recommendation has three main elements</p> <ol style="list-style-type: none"> 1. Improve monitoring of Government delivered and contracted services to ensure equitable performance for taangata whaikaha Maaori. In addition to the data recommendations (above) this includes ensuring appropriate replacements for the monitoring role Te Aka Whai Ora had under the Pae Ora Act, which might include a stronger role for Te Puni Kōkiri, and a greater role for the Health Quality and Safety Commission or the Health and Disability Commissioner in holding the health system and disability system (including the health services provided through prisons) to account 2. Prioritise improved access to essential care for taangata whaikaha Maaori, especially through emergency departments and primary health care. The experiences for taangata whaikaha Maaori in emergency departments are often harrowing, and can be addressed to some extent through effective, accessible, and culturally safe primary health care and more culturally safe and people-centred care in hospitals. 3. Removing institutional racism in funding criteria, especially in relation to support for age-related disabling conditions so that Maaori under 65 are able to access the support they need. | <p>The Crown’s closing submissions suggest that the Crown agrees with claimants that there should be a properly trained and culturally competent workforce that meets the needs of tāngata whaikaha Māori and that cultural competency training and strong Māori representation in the workforce are important factors for that (Para 149). However, the NHC’s recommended remedies are not directly referred or responded to, and there are no concrete proposals for change.</p> |