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KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA I  
TE TIRITI O WAITANGI

BEFORE THE WAITANGI TRIBUNAL

WAI 2575

WAI 2644

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IN THE MATTER OF

The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

The Health Services & Outcomes  
Kaupapa Inquiry

AND

IN THE MATTER OF

a claim by Sir Edward Taihaakurei  
Durie and Rangi Wade on behalf of  
the New Zealand Māori Council  
(Wai 2644)

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Speaking notes to closing submissions for the New Zealand Māori Council

5 December 2024

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RECEIVED

Waitangi Tribunal

5 Dec 24

Ministry of Justice  
WELLINGTON

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## E TE KAIWHAKAWĀ, TĒNĀ KOE

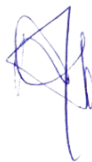
### Introduction

1. If your honour pleases, I would like to speak to my closing submissions rather than read them. I also wish to flag with you now that the claimants have had second thoughts and wish to add a rider to their recommendations. Since that rider is not prescriptive, I submit it can be given without prejudice to the Crown. If it suits your honour I will give my reasons for so submitting when I get to that point.
2. The first key message in closing is, as stated at paragraph 9 that because many are manual workers, Māori are more at risk from injury than non- Māori and having been injured are less effective than non- Māori in advocating for themselves to receive the necessary support.
3. The second key message is that stated at paragraphs 21 to 24. The message is that the ACC scheme is founded on an insurance model in which those best served are those who are most informed and motivated to make a claim, and who are then best able to prove their entitlement. The test becomes one that is not about who most need physical help but who are most able to help themselves.
4. The closing then refers to real life studies, at paragraph 25, but does so, in hindsight, at a somewhat high level. To come down to the ground we submit that the facts pertaining to Raymond Gordon, for example, are these:
  - a. Raymond has had over 80 case managers since 1999, and his case managers do not receive a sufficient briefing on Raymond's procedural history (requiring him to repeat his issues to each new case manager).
  - b. Between 2009 and 2014, his weekly compensation was ceased twice and both times reinstated on review before being ceased again permanently.
  - c. When Raymond has had cover revoked or payments ceased based on "insufficient information", ACC has not offered advice on what further information they would need for his claim to be covered (nor have they suggested options like impairment assessments or lump sums).
  - d. ACC has several times changed their reasons for declining Raymond's cover – when one reason for declining is disproven or overturned, ACC relies on another.
  - e. ACC has treated Raymond as though he is overstating the effect of his motor vehicle accident, as a result of his cover being revoked for an earlier incident.
  - f. ACC has relied on one-half of a doctor's assessment (to disprove the presence of carpal tunnel syndrome), and then discounted the other half (which asserts that Raymond suffered and should be covered for a traumatic brain injury).
  - g. There are several instances on record where the ACC representative simply agrees to pass Mr. Gordon's concerns on or invites him to fill out a form and make an official request.
    - i. This seems a common thread that runs throughout Raymond's case

and ACC's handling of it – he goes through the proper channels and is declined which inevitably leads to more meetings and reviews, where he is declined again and invited to make more applications and is generally bogged down in procedure and paperwork.

- ii. ACC are constantly dancing around issues and passing them along to someone else to avoid them altogether. Mr. Gordon appeals a decision, they tell him which steps to take, and once he has done so they either request more information, request that he fill out a completely different form, or tell him they want to refer him to another specialist for another round of testing (as if they don't trust that he is even experiencing the issues he describes).
5. We then acknowledge in closing, at paragraph 32, that ACC have shown themselves to be keen to make changes to improve their responsiveness to Māori. We therefore refrained from prescribing changes ourselves believing that there may be greater buy in when change is generated internally. We therefore proposed that the Crown should report progress in 18 months.
  6. We come now to the second thoughts and the rider that goes with it. We do not resile from the position we have given but ask that the Tribunal recommends that the Crown investigates the establishment of an advocacy service for Māori to advise and assist them in managing their relationships with ACC, and that that too is reported on in 18 months.
  7. In support of that we go back to the submission that the ACC scheme is founded on an insurance model in which those best served are those who are most informed and motivated to make a claim, and who are then best able to prove their entitlement. We submit further that within this structure there is a fundamental conflict between the provision of services, and the need to work within financial targets or limitations that works to the prejudice of those least able to advocate for themselves.
  8. NZMC offers to work with the Crown in the design of such an advocacy service, and then to have the matter referred back to the Tribunal for final determination.
  9. We submit that that need not deter the Tribunal from reporting on this phase of the inquiry meanwhile.
  10. As I have departed from the written closings, I have reduced these comments to writing and will file them before the end of the day.

**Dated at Wellington this 5 December 2024**



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Donna Hall

Counsel for the Claimant.