

**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 Disabilities Phase of the Health Inquiry**

**Dated 5 February 2025**

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**RECEIVED**

Waitangi Tribunal

**5 Feb 25**

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**), in response to the Crown Closing Submissions filed on 11 October 2024,<sup>1</sup> and the discussion by the Tribunal with Crown counsel during the presentation of closing submissions.<sup>2</sup>
2. These Reply Submissions (**Replies**) principally and generally respond to the following topics raised in both the written and oral presentation of Crown closing submissions:
  - a. The “Aotearoa” model of disability;
  - b. System-level transformation of disability strategies and plans; and
  - c. Participation and decision-making parameters.

## SUBMISSIONS IN REPLY

3. At the outset, we make a general comment on the Crown’s outline of the health and disability system, past and current. In its Closing Submissions, the Crown stated that:<sup>3</sup>

*...the arc of moving from institutions to the community, from a medical model to a social model and from individualised environments through to empowering space for whaanau models, is indeed a long one.*

4. We submit that the progress and change outlined above would not have been possible without the effort of whaanau hauaa and tangata whaikaha Maaori working tirelessly in these environments to advocate for change, as recounted by Wai 2619 witnesses in their evidence to the Tribunal.<sup>4</sup>
5. We also reiterate that whaanau hauaa / tangata whaikaha Maaori have

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<sup>1</sup> Crown Law Office *Closing Submissions of the Crown* (Wai 2575, #3.3.138(a)) dated 11 October 2024.

<sup>2</sup> Crown closing submissions were presented on Friday, 6 December 2024, at the Waitangi Tribunal Offices (**Oral Crown Closings**)

<sup>3</sup> Wai 2575, #3.3.138(a) at [57].

<sup>4</sup> See for example, Dr Huhana Hickey and Gary Williams’ work in their respective international fora, as well as Dr Tristram Ingham and Bernadette Jones’ work with the Independent Monitoring Mechanism and with Te Ao Marama Aotearoa Trust (Wai 2575, #J16, #J17, J18 and #J23).

been on this hikoi for the recognition of their rights for many decades. No assurances from a well-intentioned Crown regarding its plans for the future will be enough to address issues of inequitable health outcomes unless those assurances are translated into action that enables whaanau hauaa / taangata whaikaha Maaori to have and hold tino rangatiratanga and authority over their own health and wellbeing.

### **The “Aotearoa” model of disability**

6. In our submission, and more to the principal theme of our Replies, those actions described above should include giving whaanau hauaa / taangata whaikaha Maaori authority and decision-making over the “models of disability” to be adapted by the Crown, and consequently Aotearoa. During oral closing submissions, Crown counsel discussed the “*fundamental importance of the state saying that it will move to a social model of disability*”,<sup>5</sup> and that this model is “*non-exclusive and needs to make room for other models and worldviews*”.<sup>6</sup> With respect, and further to the discussion Professor Smith had with Crown counsel during Oral Crown Closings, we submit that using the social model of disability as a means of achieving an “Aotearoa model of disability” is incredibly difficult, if not impossible,<sup>7</sup> simply because the two types of models have very different underlying paradigms.
7. As noted in our Closing Submissions and through research by whaanau hauaa / taangata whaikaha Maaori experts, the social model of disability “emphasises that impairments occur because of societal barriers” and places emphasis on the individual and the personal impact of disability.<sup>8</sup> On the other hand, Maaori models of disability recognise the collective responsibility of the individual with the impairment and their whaanau to manage said impairment, as well as their inherent mana, their contributions to their whaanau, and their pivotal roles within their hapuu and iwi.<sup>9</sup>
8. In other words, we submit that the considerable difference of the underlying

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<sup>5</sup> Oral Crown Closings, at approximately 09:10 am.

<sup>6</sup> Oral Crown Closings at approximately 09:10 am.

<sup>7</sup> Oral Crown Closings at approximately 09:30 am.

<sup>8</sup> Wai 2575, #3.3.120 at [66]-[67]; Wai 2575, #J16(b) at pp.210-217; and Wai 2575, #J16(b) at pp. 403-415.

<sup>9</sup> See for example, Wai 2575, #J16(b) at pp.427-429; and Wai 2575, #B23 at pp. 40-41.

framework of the social model and Maaori models are so different as to be fundamentally incompatible with each other. The social model of disability relies on continuing to view impairments as separate from ‘the norm’ of society, whilst Maaori models of disability integrate impairments as part of day-to-day living in communities. We therefore submit that, until the Crown recognises the fundamental difference between the social model of disability and Maaori models of disability, any work towards a “non-exclusive social model of disability” simply reasserts the status quo whilst calling it change and would only serve to prolong the hikoi towards the recognition of the rights of whaanau hauaa / taangata whaikaha Maaori.<sup>10</sup>

9. Furthermore, as discussed by His Honour Judge Stone with Crown counsel, the expertise required to address whaanau hauaa Maaori health disparities already exists within whaanau hauaa / taangata whaikaha Maaori communities as well as their whaanau, hapuu and iwi,<sup>11</sup> but also exists not only in the lived experience of whaanau hauaa / taangata whaikaha Maaori, but also in academic literature researched and written by whaanau hauaa / taangata whaikaha Maaori.<sup>12</sup> We further submit that such expertise also includes models of disability that are unique to Aotearoa. Whaanau hauaa / taangata whaikaha Maaori have the foundation to develop a model of disability that could be adopted by the Crown in lieu of the social model of disability, although we suggest that whatever the model is or should look like needs to be shaped by whaanau hauaa / taangata whaikaha Maaori as a collective prior to any discussions with the Crown regarding that model.

### **System Level Disability Strategies and Plans**

10. In their Closing Submissions, of the key strategy and planning documents that underpin the disability system outlined by the Crown, we address the following:

- a. New Zealand Disability Strategy 2016-2026;

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<sup>10</sup> See for example, Wai 2575, #3.3.120 at [67] regarding the shift from medical model of disability to social model of disability is still ongoing within the current health and disability system.

<sup>11</sup> Oral Crown Closings, at approximately 09:45 am.

<sup>12</sup> See for example, Wai 2575, #J16(b); Wai 2575, #J23(b).

- b. Disability Action Plan 2016-2026; and
  - c. Whaaia Te Ao Maarama – the Maori Disability Action Plan.
11. In Oral Crown Closings, Crown counsel noted that there was an opportunity with the upcoming 2026 refresh of the New Zealand Disability Strategy (NZDS) for co-creation of a model or system that moves away from the Western models of disability.<sup>13</sup>
  12. Similarly, the Crown detailed in their written closings the current developments in relation to the refresh of Whaaia Te Ao Maarama, which included Whaikaha – the Ministry (**Whaikaha**) taking the lead on the refreshed plan, Te Ao Maarama Aotearoa Trust undertaking a review of the 2018-2022 version, and ongoing discussions on partnering with whaanau hauaa / taangata whaikaha Maaori.<sup>14</sup>
  13. Counsel respectfully suggest that the Tribunal ought to be cautious in giving too much weight to Crown actions where it does not appear to deviate from the status quo of engagement processes and practices. A radical shift is needed, and, in our submission, the Crown’s current engagement aspirations for either the NZDS or Whaaia Te Ao Maarama are not enough to effect the change sought by whaanau hauaa / taangata whaikaha Maaori. As described by the Wai 2619 witnesses in their evidence, despite their involvement in decision-making and advisory capacities, little, if any, of their comprehensive contributions were heeded, and at the end of the process, the Crown still held overall power over those contributions.<sup>15</sup>

#### **Participation and Decision-Making Parameters**

14. In response to Claimant concerns regarding participation and decision-making, the Crown:<sup>16</sup>
  - a. has referred to how the NZDS recognised the need for whaanau hauaa / taangata whaikaha Maaori to be involved in the

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<sup>13</sup> Oral Crown Closings, at approximately 09:20 am.

<sup>14</sup> Wai 2575, #3.3.138(a) at [115] and [119].

<sup>15</sup> See for example, Wai 2575, #3.3.120 at [127]-[154].

<sup>16</sup> Wai 2575, #3.3.138(a) at [141]-[143].

- development and implementation of legislation and policies;
- b. must respect the civil society nature of the Disabled People’s Organisations Coalition (**DPO Coalition**) and should not exercise influence over its membership, nor dictate membership of the Independent Monitoring Mechanism (**IMM**) for taangata whaikaha Maaori; and
  - c. in managing Disability Support Services (**DSS**) and to give effect to Enabling Good Lives (**EGL**) vision and principles, will engage with the community, including taangata whaikaha Maaori and kaupapa Maaori providers and ensure that DSS is fair, consistent and transparent.
15. Our submissions in response to the involvement of whaanau hauaa / taangata whaikaha Maaori in development and implementation of legislation and policies, and in respect of DSS engagement, is the same as outlined in paragraph [13] of these Replies. Until engagement practices by Crown agencies shift from advisory and consultation-based to practices which put trust in whaanau hauaa / taangata whaikaha Maaori to lead the work, then, we submit, it is unlikely the status quo will change.<sup>17</sup>
16. In response to the Crown’s submission regarding the DPO Coalition and the IMM, while we agree with the Crown that it should not influence or dictate membership, we submit that there are other ways for the Crown to address the issues raised by whaanau hauaa / taangata whaikaha Maaori. As noted in our Closings, the Crown relies on the DPO Coalition and the IMM to monitor the progress of the United Nations Convention on the Rights of Persons with Disabilities (**UNCRPD**), and that whaanau hauaa / taangata whaikaha Maaori engage in the process through unofficial channels.<sup>18</sup> As we have previously submitted, the Crown can resource and support taangata whaikaha / whaanau hauaa Maaori groups for advocacy/representation purposes.<sup>19</sup> This will enable better participation from whaanau hauaa / taangata whaikaha Maaori communities within the DPO Coalition process,

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<sup>17</sup> We refer specifically to Wai 2575, #3.3.120 at [152]-[154].

<sup>18</sup> Wai 2575, #3.3.120 at [158]-[162].

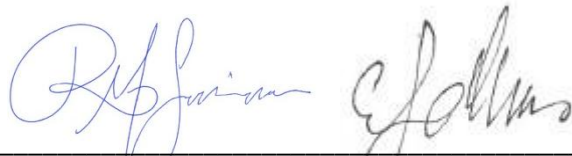
<sup>19</sup> Wai 2575, #3.3.120 at [220.b.]; see also [118].

as well as to address the general barriers faced by whaanau hauaa / taangata whaikaha Maaori.

### **Conclusion**

17. Overall, we encourage the Tribunal to err on the side of caution in placing too much weight on the Crown's current and future actions for whaanau hauaa / taangata whaikaha Maaori where those actions do not deviate from the status quo, as described by whaanau hauaa / taangata whaikaha Maaori claimants.
18. Firstly, the Crown has misunderstood the underlying framework of the social model of disability and has not yet recognised its incompatibility with Maaori models of disability. Any shift to an "Aotearoa model of disability" will require recognition of the flaws of the social model of disability, and to trust whaanau hauaa / taangata whaikaha Maaori to develop an entirely different model that will work for Aotearoa.
19. Secondly, current engagement practices, despite promises of partnership and engagement, is not dissimilar to previous engagement practices undertaken by the Crown and its agencies. Until there is a radical shift where whaanau hauaa / taangata whaikaha Maaori are able to lead the work, it is unlikely that things will change.
20. Unless these issues are addressed at its most fundamental level, we submit that the Crown will continue to breach te Tiriti o Waitangi and its principles as already outlined in our Closing Submissions.

**Dated** at Wellington this 5<sup>th</sup> day of February 2025



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