

IN THE WAITANGI TRIBUNAL
KEI MUA I TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI

WAI 2575

WAI 2003

KEI RARO I TE MANA O

te ture o Tiriti o Waitangi 1975

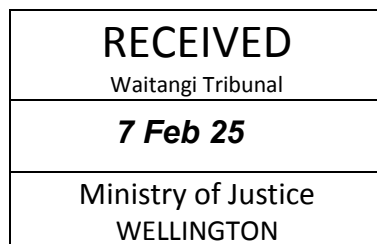
AA

I TE TAKE O

te Health Services and Outcomes Inquiry
(Wai 2575)

AA

I TE TAKE O

teetahi kereeme naa Cheryl Turner, raatou
ko John Klaricich, Harerei Toia (kua mate),
Ellen Naera, Fred Toi, Warren Moetara,
Hone Taimona maa ngaa hapuu o Ngaati
Korokoro raatau ko Ngaati Wharara, Te
Pouka (Wai 2003)

REPLY SUBMISSIONS FOR WAI 2003

NGAA HAPUU O TE WAHAPU O HOKIANGA NUI A KUPE

I teenei raa, i te raa 5 Peepuere 2025

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TEENAA, E TE TARAIPUNARA

KUPU WHAKATAKI

1. These reply submissions are made on behalf of Te Wahapu o Hokianga (“**the Claimants**”), in response to the Crown’s filed written submissions, and oral submissions made in Hearing Week 11.¹
2. In summary the Claimants submit:
 - a. The Crown is creating false complexity in its position on the underfunding of Māori Health Providers issue;
 - b. The Crown’s critique of Dr Meade’s analysis as to the underfunding of Hauora Hokianga lacks substance;
 - c. The Crown has not offered competing analysis on this issue;
 - d. Dr Meade’s findings about the underfunding of Hauora Hokianga are reliable, consistent, conservative, and robust;
 - e. The Crown’s own witness essentially conceded that underfunding exists;
 - f. Tribunal’s role to assess the balance of probabilities, not to set health policy; and
 - g. The Tribunal can and should accept Dr Meade’s analysis and acknowledge that there has been substantial underfunding of Hauora Hokianga.

A False Complexity

3. The Crown has attempted to distract the Tribunal from a key issue advanced by the Claimants, creating a false sense of complexity in relation to the underfunding of Hauora Hokianga issue, the Crown states:²

“There are inherent complexities of assessing community and primary

¹ This claim is brought by Cheryl Turner, John Klaricich, Harerei Toia (deceased), Ellen Naera, Fred Toi, Warren Moetara and Hone Taimona on behalf of Ngaati Korokoro, Ngaati Wharara and Te Pouka Hapuu (Ngaa Hapuu o Te Wahapu o Hokianga nui a Kupe, Wai 2003).

² Closing Submissions for the Crown dated 11 October 2024 Wai 2575 3.3.138(a) at [299] – [300].

services in decentralised systems within the context of uncertainty and a lack of information.

The Crown notes the complex history of funding associated with Hauora Hokianga. It is not unusual for non-governmental health and disability providers to have their funding streams subject to relevant funding and contractual frameworks, which are subject to change from time to time."

4. The Claimants do not accept this submission. It is respectfully submitted that complexity should not be used as a justification for inaction or neglect. The Crown has had decades to address disparities in funding and service delivery in Hokianga. The failure to collect and use adequate data/information on Hokianga further reflects systemic neglect rather than unavoidable complexity.
5. The Crown further elaborated on this stance during its oral presentation, arguing that funding decisions are inherently difficult due to competing resource demands:³

"...complexity must be a sign of failure but my respectful submission is unduly simplifying matters, somethings society tend to complex and multifaceted and that's particularly where there is pressure over resource allocation, and I think the difficult for you, as members of the Tribunal, is that you hear a lot of people saying "we need adequate levels of this, this and this" but let's take funding, and it is entirely to be expected that we need adequate funding" and who could disagree of course, but the challenge then becomes when...If you're the person who can say "I need adequate funding", but it is not your job to also figure out the sources of that adequate funding and the other demand for those resources then you're not faced with the same complexity that the State is, and the eternal conundrum that manifests each year in the budget presented to Parliament, and then behind the scenes manifests in the use of the money across the year. None of this as is to decry the

³ At 5:24:00 of livestream recording in December 2024 (transcript not yet available).

struggle for simplicity, it is that we cannot wish away that complexity..."

6. The argument that "adequate funding" is hard to define does not absolve the Crown of its obligations under te Tiriti o Waitangi, to ensure equitable and effective service provision.
7. Further, the Crown's assertion that it is not unusual for non-governmental providers to be subject to changing funding streams reiterates the problem.⁴ The historical inconsistency in funding is part of the problem, and the Crown's failure to establish stable, reliable, and sufficient funding streams has directly led to severe inequities in health outcomes for Taangata Whaikaha whaanau in Hokianga.
8. The Crown is making the issue before the Tribunal more complex than it is. The fundamental question before the Tribunal is: **whether Hauora Hokianga has been underfunded, and if so, by how much?** The evidence put forward by the Claimants and Dr Meade overwhelmingly supports the submission that Hauora Hokianga has suffered significant underfunding over the decades, and the Crown's attempt to introduce unnecessary complexity is a deliberate distraction.⁵

Criticism of Dr Meade's Methodology, Approach and Findings

9. The Crown does not accept estimates of underfunding provided in Dr Meade's evidence,⁶ listing the following critique of Dr Meade's assessment:
 - a. Dr Meade's assessment lacks clarity and transparency in economic assumptions;⁷
 - b. Inappropriate comparison of Northland (excluding Hokianga) to HHET;⁸

⁴ Closing Submissions for the Crown dated 11 October 2024 Wai 2575 3.3.138(a) at [300].

⁵ See Brief of Evidence of Richard Brent Meade dated 13 June 2022 Wai 2575 F18, Brief of Evidence of Richard Meade in reply to Crown Witness Dr Bronwyn Croxson, Wai 2575 F018(b), Brief of Evidence of Tracy Clarke-Baker dated 17 June 2022 Wai 2575 F19, Joint Brief of Evidence of Mathilda Margareth Broodkoorn and Katherine May Clarke dated 20 June 2022 Wai 2575 F20, Appendix A: Wai 1040 Joint Brief of Evidence of Hikurangi Cherrington and John Wigglesworth, Wai 2575 #F020(a).

⁶ Closing Submissions for the Crown dated 11 October 2024 Wai 2575 3.3.138(a) at [302].

⁷ Closing Submissions for the Crown dated 11 October 2024 Wai 2575 3.3.138(a) at [304].

⁸ Closing Submissions for the Crown dated 11 October 2024 Wai 2575 3.3.138(a) at [304.1], citing Wai 2575, L18 at [31]-[34].

- c. Limited sensitivity analysis;⁹
 - d. Omission of third party DSS funding from his estimates;¹⁰
 - e. Questionable approach to adjusting historical underfunding to current values;¹¹ and
 - f. Given the sources of uncertainty, it is not possible to assert the methodology leads to conservative results. The Crown, therefore, submits that the estimates of Dr Meade are not a robust basis for Waitangi Tribunal findings.¹²
10. In oral submissions the Crown further stated that the Tribunal is not required to accept Dr Meade's findings by default, insisting that further analysis is required, and the Tribunal should recognize that historical funding assessments are complex.¹³
11. As discussed by Dr Meade, any uncertainty in the results supports the conclusion that Hauora Hokianga has been underfunded.¹⁴ The most significant data limitation, as acknowledged by both Dr Meade and Dr Croxson, is that the available funding figures underestimate the true level of DSS funding in Northland (excluding Hokianga).¹⁵
12. Further, Dr Meade only included Northland DHB funding in his comparison, excluding other sources of DSS funding (e.g., Ministry of Health, ACC). This omission means that his underfunding estimates are likely too low, since the funding available per disabled person in Northland (excluding Hokianga) is actually higher than what he used in his analysis. As argued by Dr Meade,

⁹ Closing Submissions for the Crown dated 11 October 2024 Wai 2575 3.3.138(a) at [304.2], citing Wai 2575, 4.1.27 at 398.

¹⁰ Closing Submissions for the Crown dated 11 October 2024 Wai 2575 3.3.138(a) at [304.3], citing Wai 2575, 4.1.27 at 399.

¹¹ Closing Submissions for the Crown dated 11 October 2024 Wai 2575 3.3.138(a) at [304.4].

¹² Closing Submissions for the Crown dated 11 October 2024 Wai 2575 3.3.138(a) at [305.5].

¹³ At 5:30:43 of livestream recording on 6 December 2024 (transcript not yet available).

¹⁴ See Wai 2575 #118(f) Brief of Evidence of Dr Richard Meade in Reply to Crown Witness Dr Bronwyn Croxson.

¹⁵ Brief of Evidence of Richard Meade in reply to Crown Witness Dr Bronwyn Croxson, Wai 2575 F018(b) at [12].

Hauora Hokianga's underfunding is even greater than initially estimated – a fact Dr Croxson did not directly dispute.¹⁶

13. The Crown's approach has been to critique Dr Meade's methodology without offering an alternative analysis, failing to provide any alternative calculations or funding estimates. The Crown is aware that Hauora Hokianga has been underfunded but is unwilling to engage with the issue in good faith. If it is the Crown's position that the funding was adequate, it would have conducted its own assessment.
14. While no economic model is perfect, Dr Meade's approach is a reasonable and structured attempt to quantify underfunding. The Crown's failure to provide its own calculations or a counterfactual undermines its own stance on the issue. Additionally, the suggestion that third-party DSS funding offsets underfunding lacks evidence and does not account for whether such funding is sufficient to meet the needs of the community.
15. Dr Meade provided detailed tables, methodology explanations, and data sources in his primary brief.¹⁷ He also offered the Crown access to his underlying spreadsheets, which the Crown chose not to request.¹⁸ The Crown has had ample opportunity to engage with the data and verify its accuracy but failed to do so. This is not a flaw in Dr Meade's work, it is a failure on the part of the Crown to engage meaningfully in the issue.
16. Importantly, Dr Croxson accepted that Dr Meade's approach was reasonable, even if alternative approaches could have been used.¹⁹ This undermines the Crown's argument that the analysis is unreliable. In addition, the fact that Dr Meade conducted multiple sensitivity analyses strengthens his conclusions rather than weakens them.
17. Dr Meade's estimates are conservative, meaning they are more likely to understate underfunding rather than exaggerate it. Even after considering the

¹⁶ Wai 2575 4.1.027 page 400 lines 10 – 19.

¹⁷ See Brief of Evidence of Richard Brent Meade dated 13 June 2022 Wai 2575 F18 at [26] – [84].

¹⁸ Wai 2575 4.1.013 page 188 lines 1 – 10.

¹⁹ Wai 2575 4.1.027 page 396 lines 20 – 24, page 402 lines 3 – 16.

Crown's criticisms, his additional research revealed that underfunding is worse than initially estimated.

18. Dr Croxson herself acknowledged that Dr Meade "did the best he could with what data is available."²⁰ Further:
 - a. Dr Croxson was "reluctant to criticize" Dr Meade for using the available data when no better data was available to herself;²¹ and
 - b. Dr Croxson did not attempt to identify alternative data sources or provided any alternative calculations.²²
19. This confirms that there was enough data for Dr. Meade to provide reliable underfunding estimates, and that the Crown's criticisms are a smokescreen.

Acknowledgement of Potential Underfunding without Quantification

20. Initially, the Crown does not outright deny underfunding but argues that it is difficult to quantify.
21. When questioned by Tribunal panel member Professor Frankel, the Crown eventually conceded that underfunding is an issue for Hauora Hokianga.²³
22. The Crown's acknowledgment that underfunding is an issue contradicts its refusal to engage in a substantive assessment.²⁴ Instead of constructively addressing the issue, the Crown is dismissing available analysis without providing an alternative. The Claimants' position remains that underfunding is evident from decades of service inadequacies, and the onus is on the Crown to rectify its failure.

Tribunal's Role in Determining Underfunding

23. The Tribunal's role is to determine whether the Crown has met its te Tiriti obligations. The long-standing funding disparities, regardless of precise quantification, demonstrate that the Crown has failed in its duty to ensure adequate health and disability services are available to Claimants and wider

²⁰ Wai 2575 #4.1.027 page 400 lines 20 – 25.

²¹ Wai 2575 #4.1.027 page 400 lines 20 – 31.

²² Wai 2575 #4.1.027 page 401, line 1.

²³ At 5:30 of livestream recording on 6 December 2024 (transcript not yet available).

²⁴ At 5.30.43 of livestream recording on 6 December 2024 (transcript not yet available).

Hokianga community. The Crown's argument focuses on methodological details rather than engaging with the fundamental issue: the systemic deprivation of resources for Taangata Whaikaha whaanau in Hokianga.

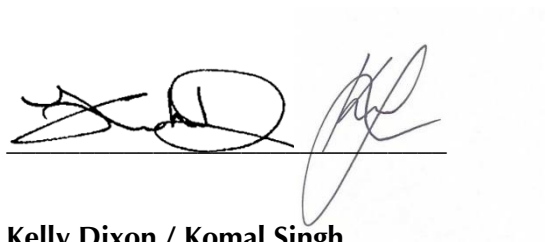
24. The consistent underfunding of health and disability provisions in Hokianga, is a breach of the Crown's obligations to the Claimants and widely, to Hokianga Taangata Whaikaha. The Tribunal is not being asked to set health policy—it is being asked to determine, on the balance of probabilities, whether Hauora Hokianga has been underfunded. The evidence of the Wai 2003 claimants and Dr Meade demonstrates that this is the case. Even if different methodologies could yield slightly different numbers, the fundamental finding of severe and prolonged underfunding remains undisputed.
25. The Crown's strategy is clear: it has deliberately avoided doing its own analysis and is now trying to discredit Dr Meade's findings without providing any alternative calculations. This is not a valid rebuttal; it is an attempt to distract the Tribunal from the undeniable reality of underfunding. The Crown argues that historical funding assessments are complex. However, complexity does not excuse decades of systemic deprivation of resources for Taangata Whaikaha whaanau in Hokianga.
26. The Tribunal is well-placed to suggest figures quantifying the Crown's historical and current underfunding of Hauora Hokianga. It is open to the Tribunal to determine an estimate for underfunding, based on the evidence before it. Acknowledging and estimating this underfunding fall within its role and is necessary to recommend meaningful redress."

KUPU WHAKAMUTUNGA

27. The Wai 2003 claim centers on the Crown's failure to uphold its obligations under te Tiriti o Waitangi, specifically regarding the wellbeing of Taangata Whaikaha whaanau in the Hokianga. Despite the Crown's obligations and responsibilities per te Tiriti o Waitangi, the Crown has persistently neglected Hokianga and the disability and health system and service provisions, leading to chronic underfunding, insufficient resources of the region's health and disability support services (Hauora Hokianga). This ongoing deprivation has profoundly impacted on the Claimants and wider Hokianga community,

highlighting the systemic inequities that have resulted from the Crown's inaction.

I TEENEI RAA i te raa 5 o Peepuere 2025

The image shows two handwritten signatures in black ink. The signature on the left is more stylized and appears to be 'KD'. The signature on the right is more fluid and appears to be 'KS'. Both signatures are written above a horizontal line.

Kelly Dixon / Komal Singh

Nгаа rooia moo ngaa Kaikereeme