

IN THE WAITANGI TRIBUNAL

**WAI 2575
WAI 2143
WAI 3073**

**IN THE MATTER
AND** of the Treaty of Waitangi Act 1975

**IN THE MATTER
AND** of the Health Inquiry (Wai 2575)

**IN THE MATTER
AND** of a claim by Steven Wilson and Karen Pointon on behalf of Taangata Turi (Wai 2143)

IN THE MATTER of a claim by Tania Kingi on behalf of Te Roopu Waiora (Wai 3073)

JOINT REPLY SUBMISSIONS

Dated: 10 February 2025

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MAY IT PLEASE THE TRIBUNAL

1. These joint reply submissions are filed on behalf of:
 - a. A claim by Steven Wilson and Karen Pointon on behalf of Taangata Turi (Wai 2143); and
 - b. A claim by Tania Kingi on behalf of Te Roopu Waiora (Wai 3073).

‘Participation and decision-making’

2. The Crown addresses issues of ‘participation and decision-making’ at [140-143] of written closing submissions.¹

Tino rangatiratanga and co-governance

3. We reiterate the position that the claimants do not seek ‘participation’. They seek Te Tiriti based models and solutions. Tino rangatiratanga and true partnership cannot exist without the equitable sharing of resources and decision-making. Participation, advisory roles, seat(s) at the table, and engagement models simply fall short, and have been shown to repeatedly fail whaanau hauaa.

DPOs, NGOs, and the Charitable Model

4. The Crown submits that it “must respect the civil society nature of the DPO Coalition and should not exercise influence over its membership.” Similar issues are present within NGOs and the charitable model of disability more generally. Such approaches perpetuate intergenerational Maaori inequalities entrenched within ‘civil society’.

Systems level reporting and the 2024 paradigm shift

5. Crown counsel in oral submissions propose that the Tribunal first issue a systems level report, with the possibility of this being an interim report. Tribunal reporting could then follow on the more specific claim issues “if you feel strongly about certain issues”.

¹ Wai 2575, #3.3.138.

6. On system level reporting, Crown counsel caution against “chasing the latest changes and crisis.” However, the latest changes and crisis must be seen as a result of the systematic issues that persist. In our submission, the Tribunal should not shy from making strong findings and recommendations about the March and August 2024 paradigm shifts that occurred during the final phases of this inquiry.
7. In our submission, the Minister for Disability Issues failed to make reasonable and informed decisions despite officials being alive to, and advising of the historical issues, and ‘trust being eroded with tangataa whaikaha Maaori.’²
8. These decisions are ultimately political, with little Te Tiriti accountabilities. Overpromises were made (in relation to Equipment and Modifications, Flexible Funding, the roles and functions of Whaikaha, and the national roll out of EGLs) and under-delivery occurred because of financial constraints.
9. At the same time, this Government is choosing to change the bright line test and tax obligations. The issue is ultimately where public money is drawn from and spent, and there are clear winners and losers which entrench existing inequalities.

Taangata Turi specific issues and reporting

Historical recommendations

10. On the issue of the Crown’s response to Taangata Turi historical recommendations, in oral submissions, Crown counsel clarified that preliminary scoping work was done which concluded that further commissioned work would be required for a specialist to track down what the archival and departmental records show us about what happened as a result of each recommendation.
11. Crown counsel concluded that it is very unlikely “a whole lot of things were done that we have somehow lost institutional memory of” and that any responses were likely “on the light side” which is why the institutional memory of it is not strong.

² Wai 2575, #N17(b) at BMS-15 p14, p 248.

12. Claimant counsel agree with this analysis. The Tribunal has before it significant evidence from the Crown, Taangata Turi, and whaanau Turi (including experts called and disclosure received) that spans decades of involvement and advocacy on the persistent issues facing the community. Claimant and Crown evidence in this way aligns. In other words, all evidence points to a minimal, ad hoc, and fragmented Crown response to decades of advocacy and a multitude of historical recommendations.
13. We agree with the Crown that further commissioned work on the Crown's response to historical recommendations is not an efficient use of resource.
14. Recommendations sought by the claimants as set out in closings submissions largely align with the decades of historical recommendations that, in our submission, the Tribunal has sufficient evidence to conclude remain unaddressed.
15. The fact that the Crown has been 'on notice' and failed to sufficiently act for decades simply adds to the gravity of Te Tiriti breach and the urgency to which is now required.

Independent Taangata Turi entity

16. On the issue of an Independent Taangata Turi entity, Crown counsel in oral submissions agree that this "sounds positive" and that it is a "case of seeing in a prospective way what is was that the Crown could do to help the group itself advance that."
17. As set out in closing submissions, what is required by the Crown is clear, that is, the equitable and sustained resourcing of the development and establishment of an independent entity and true partnering with that entity on all issues concerning Turi Maaori. The claimants continue to seek strong recommendations on the Crown's role in resourcing and partnering in this way and just because the entity may ultimately be a private one, should not diminish the Crown's responsibility as such.

Tribunal reporting

18. The Crown submit that following the Tribunals 'systems level report' the Tribunal could further report on specific claim issues "if you feel strongly about certain claim issues". Although the Crown in written submissions does not support a standalone report on Turi Maaori issues, Crown oral submissions

seem to support the idea of Turi Maaori standalone priority or interim reporting that at the very least, consolidate the historical recommendations “in a way that might assist the Crown to consider what it will do next.” The claimants support this approach whilst continuing to seek a full standalone final report.

Dated at Wellington this 10th day of February 2025



Emma Whiley / Kudrat
Counsel for Wai 2143 and 3073