

IN THE WAITANGI TRIBUNAL**Wai 2575 Wai 1307**
Wai 3215 Wai 2850
Wai 3334 Wai 120
Wai 3111 Wai 179
Wai 3227 Wai 2849
Wai 3332 Wai 1940**IN THE MATTER OF** the Treaty of Waitangi Act 1975**AND****IN THE MATTER OF** the Health Services and Outcomes
Kaupapa Inquiry**BY** Mane Grant Tahere, Chairperson of
Te Ruunanga-Aa-Iwi Oo Ngaapuhi,
Chrisandra Iti Rana Joyce, Deputy
Chairperson of Te Ruunanga-Aa-
Iwi Oo Ngaapuhi, and Hoone
Sadler, Kaumatua, on behalf of
themselves, and the whaanau,
hapuu and iwi who constitute te
Whare Tapu o Ngaapuhi**AND** Others...

CLOSING SUBMISSIONS**Dated: 4 June 2025**

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Waitangi Tribunal

5 Jun 25Ministry of Justice
WELLINGTON

MAY IT PLEASE THE TRIBUNAL:

I: EXECUTIVE SUMMARY

1. These Closing Submissions are filed on behalf of:
 - a. Mane Grant Tahere, Chairperson of Te Ruunanga-aa-Iwi oo Ngaapuhi, Chrisandra Iti Rana Joyce, Deputy Chairperson of Ruunanga-aa-Iwi oo Ngaapuhi, and Hoone Sadler, Kaumatua, on behalf of themselves, and the whaanau, hapuu and iwi who constitute te Whare Tapu o Ngaapuhi (Wai 3416);
 - b. Moerangi Potiki, on behalf of Te Ruunanga o Ngaati Whakaue Incorporated, for and on behalf of Ngaati Whakaue ki Maketu Hapuu (Wai 3423);
 - c. Jane Mihingarangi Ruka, on behalf of the Grandmother Council of the Waitaha Nation, including the three hapū of Ngāti Kurawaka, Ngāti Rakaiwaka, and Ngāti Pakauwaka (Wai 1940);
 - d. Ruiha Te Matekino Collier, and Rihari Richard Takuira Dargaville, on behalf of themselves, and Ngāti Kawau Iti (Wai 179);
 - e. Rhonda Aorangi Kawiti, on behalf of the Kawiti Marae Committee, the Kawiti Whaanau, and their descendants of Ngaati Hine, Ngaati Manu, Te Kapotai, Ngaati Rāhiri, Ngaati Rangi, Ngaaitewake and Ngaapuhi iwi (Wai 120);
 - f. Mike Tana, on behalf of his whaanau, hapuu, iwi, whaanau whaanui, and whaanga (Wai 3334);
 - g. Nicola Dally-Paki, on behalf of her whaanau, hapuu, iwi, whaanau whaanui, and whaanga (Wai 3111);
 - h. Georgia Eparaima Diana Grant-Mackie, on behalf of her whaanau, hapuu, iwi, whaanau whaanui, and whaanga (Wai 3227);
 - i. Angela Waiomio, on behalf of her whaanau, hapuu, iwi, whaanau whaanui, and whaanga (Wai 3303); and

- j. Awhirangi Panehina Lawrence, on behalf of herself, her Whaanau, and Ngaa Uri o Ngaatau me Pomana Honetua (Wai 2849) (claimants at sub-paragraph 1a. to 1j. together called “the Claimants”).
2. These Closing Submissions have demonstrated that the disestablishment of Te Aka Whai Ora/Maaori Health Authority (“TAWO”) represents a serious departure from the findings and recommendations of the Waitangi Tribunal’s *Hauora*¹ and *Hautapua*² Reports (“the Health Reports”), and from the intentions and commitments embedded in the Pae Ora (Healthy Futures) Act 2022 (“the Pae Ora Act”). The Tribunal's clear and evidence-based findings confirm that persistent and profound Maaori health inequities arise from longstanding breaches of te Tiriti o Waitangi/the Treaty of Waitangi (“te Tiriti”) and its Principles, institutional racism, and Crown inaction. The Tribunal’s recommendation to establish a Maaori-led health entity was not symbolic, it was a necessary and proportionate response to a demonstrable te Tiriti breach.
3. The Pae Ora Act sought to give life to that recommendation by establishing TAWO as a vehicle for tino rangatiratanga and by embedding partnership and co-governance in the health system. It was widely recognised, including by the Ministry of Health (“MoH”) as a transformational step toward equity and justice for Maaori. Its disestablishment by the Coalition Government through the Pae Ora (Disestablishment of Maaori Health Authority) Amendment Act 2024 (“the Disestablishment Act”) occurred in the absence of meaningful engagement with Maaori, and without the articulation of a clear or credible alternative policy pathway. This action is inconsistent with the Health Reports, contrary to the Principles of te Tiriti, and emblematic of the Crown’s ongoing failure to uphold its te Tiriti obligations in the sphere of health.
4. The disestablishment of the MHA represents a fundamental reversal of Tiriti compliant policy progress. Without clear alternatives or meaningful

¹ Waitangi Tribunal *Hauora Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2021).

² Waitangi Tribunal, *Hautupua Report: Te Aka Whai Ora Maaori Health Authority Priority Report: Part 1* (Wai 2575, 2024).

consultation, the Crown's current approach reinstates structural discrimination in health governance and places Maaori at continued risk of poor health outcomes.

5. The remainder of these Closing Submissions are structured in the following manner:
 - a. **Part II** will set out a background;
 - b. **Part III** will set out a summary of the Claimants' evidence;
 - c. **Part IV** will describe the Principles of te Tiriti which are relied upon;
 - d. **Part V** will describe the Crown's breaches of te Tiriti and its Principles; and
 - e. **Part VI** will set out the recommendations and relief sought by the Claimants.

II: BACKGROUND

6. The Claimants say that, since time immemorial, Maaori have collectively exercised Tino Rangatiratanga over their own communities, and regulating their own societies in accordance with an extensive body of regulatory laws called Tikanga Maaori.
7. In 1840, certain rangatira signed te Tiriti, which guaranteed Maaori Tino Rangatiratanga over their taonga. The Crown has not, since 1840, legitimately acquired, in any way, the authority/Tino Rangatiratanga which Maaori have exercised, and are entitled to continue to exercise, over their own lands and peoples.
8. Nevertheless, after the execution of te Tiriti, the British Crown usurped the authority of Maaori and attempted to enforce its regime of governance over all Maaori in Aotearoa New Zealand and over all of their taonga. Lands and other resources, as well as control over communities, were illegally taken. Any signs of Maaori resistance were met with aggression and acts of war and violence, and

the Maaori people were stripped of their language and culture, their social structures, and their health systems.

9. Maaori did not cede their Tino Rangatiratanga to the Crown. The Crown's imposition of Kaawanatanga over them was a grave breach of te Tiriti. In imposing its laws over them, the Crown forced Maaori to abandon their own social structures and their own holistic and healthful ways of living, and instead imposed its own social and cultural norms. Doing so resulted in widespread social, cultural, and economic devastation for the Claimants. One of the many consequences has been a woeful level of health and well-being for Maaori.
10. The current Crown laws, policies and conduct have failed to provide meaningfully for Maaori Health Systems ("MHSs") and are in breach of te Tiriti and its Principles.
11. These clear failures in the Public Health System ("PHS") highlight the need for structural changes that give Maaori patients and Maaori providers control over their care, as required under the Crown's te Tiriti obligations. The worse outcomes for Maaori are not coincidental, but instead reflect a PHS that is "structured upon dominant European cultural beliefs and values", to the detriment of Maaori Health.³
12. The Claimants' case rests upon the conclusion in *Te Paparahi o Te Raki Inquiry Stage One Report* (the "Ngāpuhi Report") that under te Tiriti, Maaori did not cede their Tino Rangatiratanga, or authority, over themselves, and their taonga, including, inter alia, their lands, forests, fisheries, peoples, and health systems, to the Crown.⁴
13. The spirit of the submissions of other claimant parties made in this Inquiry are supported.

³ Wai 2575, N010, Appendix A (2-9 August 2024), at 573.

⁴ Waitangi Tribunal *He Whakaputanga me te Tiriti/The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry* (Wai 1040, 2014).

14. The MHSs, which include maatauranga Maaori, Tikanga and Kawa, holistic ways of delivering health care, and Maaori forms of social organisation, ensuring good health and wellbeing, are protected taonga under Article Two.
15. The Claimants' case is that the Crown did not, under te Tiriti, acquire any rights to govern, manage or control the way Maaori societies lived and organised themselves, or their Tikanga and Kawa, and their essential ways of living. This full 'bundle of rights' in relation to MHSs has remained with Maaori, since time immemorial, and to the current day remains extant under te Tiriti.
16. It is submitted that MHSs are an integral part of the exercise of Tino Rangatiratanga. One cannot exercise Tino Rangatiratanga if responsibility and control over health and well-being are being imposed by foreign institutions and entities. The imposition of foreign values, processes, and a colonial system has resulted in Maaori being irreversibly prejudiced by poorer health outcomes.
17. Accordingly, all laws and policies enacted by the Crown, without the informed consent of Maaori, which have allowed the Crown, or its agents and delegates, to govern, manage, control, or interfere with MHSs, are a breach of te Tiriti and its Principles.
18. It is submitted that there is a nexus between the Crown's ongoing te Tiriti breaches, and the poor health outcomes of Maaori communities. The United Nations Indigenous Peoples Department of Economic and Social Affairs made the following statement:

Self-determination, collective rights, crucial to indigenous health. To address the root causes of indigenous peoples' health problems, there must be a full recognition and exercise of indigenous peoples' collective rights to communal asset and self-determination. Many mental health issues such as depression, substance abuse and suicide have been identified as connected to the historical colonization and dispossession of indigenous peoples, which has resulted in the fragmentation of indigenous social,

cultural, economic and political institutions.⁵

19. Internationally, the correlation between the removal of indigenous peoples' autonomy over their health and well-being due to colonisation, and significant health inequities and poor health outcomes for indigenous peoples is well recognised. In the context of Canada:

It is widely accepted that the health status of Indigenous peoples was considerably better before colonisation. Rather than being linked to biological factors, as previous studies have falsely concluded, disparities are entrenched in the “history of relations between Indigenous peoples and the nation-state and the limited autonomy Indigenous peoples have in determining and addressing their health needs.”⁶

20. Te Tiriti guarantees Maaori their Tino Rangatiratanga over their MHSs, and there is a nexus between the Crown's denial of Tino Rangatiratanga and poor health outcomes for Maaori. It is submitted that the only solution is for the transfer of the authority over MHSs, along with the requisite funding and technical support, to Maaori. The Crown needs to stop playing political football with issues that have arisen as a result of the Crown's shortfalls for far too long. It is time that Maaori are at the table rather than on the menu.
21. The rights of Maaori to design and administer their own MHSs are not just part and parcel of their legal rights under te Tiriti. Most importantly, at a practical level, it is the only thing that will resolve the disgraceful health statistics pertaining to Maaori.
22. The Waitangi Tribunal's *Hauora Report* was initially released in 2019, with interim recommendations. Final recommendations pertaining to the PHS

⁵ United Nations – Indigenous Peoples: Department of Economic and Social Affairs, accessed 21 September 2024 ; see also *Indigenous determinants of health in the 2030 Agenda for Sustainable Development* UN Doc E/C.19/2023/5 (31 January 2023).

⁶ M Auger, T Howell, and T Gomes “Moving toward holistic wellness, empowerment and self-determination for Indigenous peoples in Canada: Can traditional Indigenous health care practices increase ownership over health and health care decisions?” (2016) 107 *Canadian Journal of Public Health* 393, at 393.

followed in 2021. The Tribunal found that Maaori suffered significant prejudice as a result of multiple Tiriti breaches, and recommended the wholesale reform of many areas of the Crown's PHS.

23. The *Hauora Report* was recognised by the Crown as significant. The then Director-General of Health, Dr. Ashley Bloomfield stated “there is still considerable work needed to achieve equitable health outcomes between Maaori and non-Maaori. This has been an ongoing issue for the primary health care system and one that is not acceptable or tolerable.”⁷ The Tribunal further stated that there was absolutely no question as to whether Maaori health was significantly worse than non-Maaori health, as this was well-established and not disputed by the Crown.

II(a): The Hauora Report

24. The *Hauora Report* detailed that Maaori health inequities did not stand alone. They were the result of the cumulative effects of colonisation. The Crown's continued “inaction in the face of need” had caused the institutional racism which was evident in the social outcomes to this day.⁸
25. One of the most prominent recommendations was the establishment of TAWO, to enable an indigenous model of health to be utilised to carry out a variety of functions, and to reflect a greater level of Tino Rangatiratanga. The Crown was told that it should be making policy decisions with a view to fulfilling the demand for an increased exercise of Tino Rangatiratanga by Maaori over their health affairs. These structures needed to be co-designed through greater engagement between the Tiriti partners.
26. Equity was a very important part of the Tribunal's recommendations. It stated that creating a standalone commitment to this Principle in regard to health care

⁷ Waitangi Tribunal *Hauora Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2023), at 17.

⁸ Waitangi Tribunal *Hauora Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2023), at 21.

should not be controversial, as that should be the ultimate goal of any just health system.⁹

27. The *Hauora Report* found that the Crown had failed to ensure that Maaori had adequate decision-making authority and recommended the establishment of a Maaori-controlled agency, organisation, or collective, which would have substantial oversight and control of Maaori health-related spending and policy.¹⁰

II(b): Maaori Health Authority

28. Following the recommendations in the *Hauora Report*, the Crown enacted the Pae Ora Act, which implemented the Tribunal’s recommendation to establish a Maaori-controlled agency, by establishing TAWO. The establishment of TAWO was intended to provide for Maaori to exercise a greater level of Tino Rangatiratanga over the health affairs of their peoples.

29. A core purpose of the Pae Ora Act was for the Crown to “achieve equity in health outcomes among New Zealand’s population groups, including by striving to eliminate health disparities, in particular for Maaori.”¹¹

30. TAWO was designed to be more responsive to the health care needs of Maaori than the Eurocentric PHS. That spirit was reflected in the objectives set for the TAWO in the Pae Ora Act to:

- a) ensure that planning and service delivery respond to the aspirations and needs of whānau, hapū, iwi, and Maaori in general; and
- b) design, deliver, and arrange services—
 - i) to achieve the purpose of this Act in accordance with the health sector principles;

⁹ Waitangi Tribunal *Hauora Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2023). #164

¹⁰ Waitangi Tribunal *Hauora Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2023). #191

¹¹ Pae Ora (Healthy Futures) Act 2022, s3(b).

- ii) to achieve the best possible health outcomes for whānau, hapū, iwi, and Maaori in general; and
- c) promote Maaori health and prevent, reduce, and delay the onset of ill-health for Maaori, including by collaborating with other agencies, organisations, and individuals to address the determinants of Maaori health.¹²

31. The MoH 2023 Maaori Strategy Report acknowledged the introduction of the MHA as bringing a “positive and transformational dynamic to the health sector.”¹³
32. However, despite these positive beginnings, the Coalition Government took steps to urgently disestablish it upon taking office.¹⁴
33. The Disestablishment Act came into force on 30 June 2024. It gives effect to the Government’s 100-Day Plan and the Coalition Agreement between the National Party and the ACT Party.¹⁵
34. Disestablishing TAWO was undertaken despite both historical data showing that Maaori health outcomes are significantly lacking compared to non-Maaori, and the conditions stated in Te Whatu Ora’s *Health Status Report*, that the Crown’s health system has been “fundamentally failing to recognise Te Tiriti o Waitangi and Maaori rights to health.”¹⁶
35. The enactment of the Disestablishment Act is entirely contrary to the findings of the Waitangi Tribunal’s *Hauora Report* which recommended the establishment of the MHA in the first place.
36. Due to the enactment of the Disestablishment Act, there will no longer be a Maaori body with express objectives to:

¹² Pae Ora (Healthy Futures) Act 2022, s18.

¹³ Minister of Health *Pae Tū: Hauora Maaori Strategy* (2023, Wellington, Ministry of Health).

¹⁴ New Zealand National Party, *National’s 100 day Action Plan* (2023).

¹⁵ Coalition Agreement between the National Party and the ACT Party, #8.

¹⁶ Te Whatu Ora *Health Status Report 2023* “Maaori Health priorities and Aspirations”, #25.

- a. ensure that planning and service delivery responds to Maaori aspirations and needs;
- b. design, deliver and arrange services to achieve the best possible health outcomes for Maaori;
- c. promote Maaori health; and
- d. undertake the functions set out in section 19 of the Pae Ora Act; engage with Maaori to find out their aspirations and needs and report back to them, support iwi-Maaori partnership boards, or jointly prepare the Hauora Maaori Strategy.¹⁷

37. Maaori will therefore continue to be particularly impacted by racism and stereotyping in primary health care and experience a significantly lower standard of health including significantly shorter lives than non-Maaori.

38. Whilst the Crown claims it will continue to meet its Tiriti obligations,¹⁸ no alternative mechanism has been proposed, nor were Maaori engaged appropriately prior to the introduction of the Disestablishment Act.

39. The policy changes brought in by the Coalition Government have reversed the progress made in the Pae Ora Act. The Coalition Government's health policies are reverting the PHS back to pre-21st century approaches, and back to non-compliance with the Crown's te Tiriti obligations. Therefore, Maaori are once again faced with unacceptably high levels of health inequity well into the future.

III: CLAIMANT EVIDENCE

40. In her Brief of Evidence, Ms. Georgia Grant-Mackie, taakuta, kaihauora, a descendant from Ngaapuhi, Ngaati Kuri and Te Rarawa, describes in detail how the health system has failed to serve Maaori:

¹⁷ Pae Ora (Healthy Futures) Act 2022, ss 20, 21 and 42.

¹⁸ Office of the Minister of Health *Pae Ora (Disestablishment of Maaori Health Authority) Amendment Bill: Approval for Introduction* (28th February 2024) at [8].

I witnessed how Maaori health needs were addressed by the health system. It is my belief these were inadequate.

- a. **Cultural Insensitivity:** Many health services lacked cultural competency, failing to accommodate Maaori values, beliefs, and practices. This often resulted in Maaori patients feeling disregarded or misunderstood within the system;
- b. **Limited Access to Services:** Geographic and socioeconomic barriers frequently impeded Maaori access to timely and appropriate health services. Rural and remote areas, particularly those with high Maaori populations, were often underserved;
- c. **Underfunding and Resource Allocation:** Health services targeted at Maaori were frequently underfunded compared to those available to Pakeha communities. This disparity in resource allocation impaired existing health inequalities;
- d. **Ineffective Engagement:** The health system often did not effectively engage with Maaori communities in the design and delivery of services. This lack of engagement meant that Maaori perspectives and needs were not adequately reflected in health policies and practices; and
- e. **Disparities in Health Outcomes:** Systemic issues led to persistent disparities in health outcomes between Maaori and Pakeha, including higher rates of chronic conditions, lower life expectancy, and poorer overall health indicators for the Maaori populations.¹⁹

41. Ms. Angela Waiomio, an advocate for Community Mental Health and Addiction workers, a descendant of Ngaati Pikiaio, gave her personal experience of being treated for addiction, and felt let down by the lack of a culturally sensitive approach. She deposed as follows:

If there had been a system like the MHA, by Maaori and for Maaori, I could have been accepted as a waahine Maaori and not an addict, where I could have been supported and assisted to break free from this intergenerational trauma.

¹⁹ Brief of Evidence of Georgia Grant Mackie, dated 14 May 2025, at [11].

While struggling with addiction and mental health issues, I found it difficult to get help because the western system did not recognise my problems as health issues and judged me for being Maaori. A system like the MHA, which collaborates with Iwi and Maaori boards, would have made my recovery more accessible and supportive by addressing both my addiction and mental health needs. My lived experiences drive my work today as a drug and alcohol counsellor, where I use my understanding of these struggles, particularly within Maaori communities, to advocate for better resourcing and support in the health system.²⁰

42. Furthermore, Ms. Waiomio submitted that not only was there no alternative in the process of being implemented, but also that Maaori have not even been consulted on one, stating:

Despite public claims of strengthening the health system for all New Zealanders, there has been no consultation with iwi or Maaori health experts in the development of any alternative. There has been no explanation of how Maaori health needs will be addressed in the absence of the MHA, no safeguarding of Maaori-led decision making, and no commitment to uphold the Pae Ora Act's original intent. Maaori are, once again, being expected to adapt to a system that was not built with their realities, values, well-being, or experiences in mind.²¹

43. Mr. Mike Tana, a descendant of Te Uri O Hau and Ngaati Whaatua, and the former Mayor of Porirua, provided evidence to the Tribunal that the failure to provide for a full emergency department for the city was an example of costs being put before people, and over the needs of Maaori patients:

Unfortunately, this Government looks at us as dollar figures as opposed to humans, and the most vulnerable members of our community are put at risk by this Government's actions.²²

44. Mr. Mike Tana made a further specific critique of the Crown's current plans, by stating that carrying out TAWO's role through a departmental unit of Te Whatu

²⁰ Brief of Evidence of Angela Waimoio, dated 14 May 2025, at [16]-[17].

²¹ Brief of Evidence of Angela Waimoio, dated 14 May 2025, at [26].

²² Brief of Evidence of Mike Tana, dated 14 May 2025, at [17].

Ora was a “deprioritisation of Maaori issues”.²³ He explained this in the following way:

The Crown has proposed that the functions formerly performed by the MHA will now be absorbed into Te Whatu Ora, with the assurance that a new 'Maaori Health Directorate' will sit within this structure. However, this internal unit lacks the statutory independence, decision-making authority, and cultural mandate that the MHA held. It does not meet the threshold of a ‘by Maaori, for Maaori’ approach and cannot be seen as an equivalent substitute.²⁴

45. The Claimants have made clear that no adequate alternative to TAWO has been provided for. If such an alternative is not provided, then the status quo of Maaori health would remain. That status quo has already been found by the Tribunal in the *Hauora* Report to be in breach of te Tiriti.

46. Ms. Nicola Dally-Paki, a Kaitohutohu Whaanau Ora and a descendant of Ngaati Tuuwharetoa, Ngaa Puhi and Maniapoto, submitted that the Crown’s policy was forcing Maaori to rely on the failed status quo, as follows:

Without a credible alternative in place, Maaori are now expected to depend solely on Te Whatu Ora, a mainstream health system that is already demonstrably failing. It is under-resourced, lacking in cultural competency, and has for decades delivered consistently poorer outcomes for Maaori. The Crown is effectively asking Maaori to place their trust in a system that has systematically delivered lacklustre results for Maaori.²⁵

47. Ms. Sue Elliott, an Iwi Maaori Partnership Board Representative of Tauranga, rebutted the claim that the Iwi-Maaori Partnership Boards (“IMPBs”), which were established in the Pae Ora Act, can replace the role of TAWO. As an IMPB member herself, she said “The IMPBs play an important role, but we are just one step towards rectifying health inequities and we cannot substitute for the loss of

²³ Brief of Evidence of Mike Tana, dated 14 May 2025, at [22].

²⁴ Brief of Evidence of Mike Tana, dated 14 May 2025, at [19].

²⁵ Brief of Evidence of Nicola Dally-Paki, 14 May 2025, at [31].

the MHA.”²⁶

48. Furthermore, the lack of an Alternative Plan (“AP”) does not just breach te Tiriti by reverting to the pre-redress environment. The Claimants have stated that the lack of an AP, and the lack of consultation, is also creating uncertainty for Maaori health providers. This uncertainty makes it difficult for them to plan for the future and to sustain the services that they provide, and therefore, it compounds the breach beyond that of the reversion to the pre-TAWO framework.

49. Ms. Elliott provided an example of a Bay of Plenty health provider that she had worked with, which is now struggling due to this uncertainty, and stated as follows:

For example, Tapuika Iwi Authority in Te Puke historically were able to access funding from the MHA to deliver Maaori focused health services, including Whaanau Ora. However, since the disestablishment, there has been continued uncertainty around long-term support, which impacts on the ability to sustain the need for essential services.²⁷

50. Ms Grant-Mackie, who has dedicated her life to the health sector, and has been actively involved in the health and disability sector, similarly emphasised this point, as follows:

Over a year has passed since the announcement of its removal, and the role, functions, and responsibilities previously held by Te Aka Whai Ora remain unfulfilled. This vacuum has created a state of uncertainty and confusion for Maaori health providers, whaanau, and communities, many of whom were building strong, culturally grounded partnerships and models of care through Te Aka Whai Ora. To date, there has been no meaningful communication or engagement from the Crown regarding what, if anything, will replace this entity.²⁸

²⁶ Brief of Evidence of Sue Elliott, dated 14 May 2025, at [25].

²⁷ Brief of Evidence of Sue Elliott, dated 14 May 2025, at [17].

²⁸ Brief of Evidence of Georgia Grant-Mackie, dated 14 May 2025, at [20].

51. The Crown is obliged not only to actively protect Maaori in order to prevent or rectify wide disparities in outcomes with other demographics, but also to work in partnership with Maaori in designing policies and enabling Maaori to access supports needed to change these outcomes. It has manifestly failed to do this.
52. It is not the role of the Crown to impose solutions on Maaori. Whether through TAWO, or through an AP, only a “by Maaori, for Maaori” approach will enable Maaori to overcome the legacy of the Crown’s failed health policies. This is also evident through the fact that the current health system was not designed by and for Maaori, but it was a foreign solution imposed on them.
53. The Crown case relies on the legislative mechanisms within the Pae Ora Act and the operational arm of the MoH/Te Whatu Ora to implement these legislative provisions and to give effect to them in lieu of TAWO. It is submitted that this is merely lip service and will not address health inequities experienced by Maaori. A by Maaori, for Maaori, from the flax roots approach is the only way to eradicate these health inequities.
54. The question for the Tribunal then is not necessarily what an AP looks like. It is what does the partnership look like through which an AP is developed?

IV: PRINCIPLES OF TE TIRITI

55. The Tribunal is bound by its legislation to look at whether Crown conduct is contrary to the Principles. It must turn its mind to what these Principles should be, and to do so it must be clear about what the extent and nature of the agreement between the British Crown and Maaori under te Tiriti was.
56. As the Crown does not derive the sovereignty that it purports to exercise from te Tiriti, the Crown’s current exercise of Kaawangatanga over the Maaori people, their lands and other taonga is not authorised by the Principles.

57. The *Ngaapuhi Report* conclusions differed in a significant way from previous interpretations of te Tiriti. Previously, the courts had made findings on the basis that te Tiriti had provided the Crown with the authority to govern unilaterally over all of New Zealand and over all the inhabitants of New Zealand, so long as the Crown provided for Maaori to exercise Tino Rangatiratanga over their taonga. A corollary of this is that the Crown is obliged to actively protect both the exercise of Tino Rangatiratanga, and the other taonga. Accordingly, the Crown's policy decisions, if dealing with Maaori taonga, require informed consent.
58. The Claimants submit that the *Ngaapuhi Report* displaces all previous inconsistent interpretations of the text of te Tiriti, and all previous inconsistent enumerations of the Principles.
59. In effect, the *Ngaapuhi Report* has changed, not just the nature of the discourse on the Principles, but the actual Principles themselves. For many Maaori, it merely confirmed what they already knew. That Maaori had never ceded their sovereignty to the Crown when they signed te Tiriti, but instead had agreed to a Partnership in which the Crown would have authority over their own people and lands, and Maaori would have authority over their own people, lands and taonga, and there would be Shared Authority where their interests intermingled.
60. In addition, the Tribunal previously highlighted, in its *Hautupua Report*, that the following Principles are most relevant to the disestablishment of TAWO:
- a. the principle of tino rangatiratanga;
 - b. the principles of kaawanatanga and good government;
 - c. the principle of partnership;
 - d. the principle of active protection; and
 - e. the principle of equity.²⁹

²⁹ Waitangi Tribunal, *Hautupua Report: Te Aka Whai Ora Maaori Health Authority Priority Report: Part I* (Wai 2575, 2024) at 17.

Tino Rangatiratanga

61. Maaori were guaranteed the right under te Tiriti to exercise Tino Rangatiratanga over their peoples, lands, waters and other taonga, which includes Maaori health.
62. Inherent in Maaori autonomy and Tino Rangatiratanga is the right to retain their own customary law and institutions and the right to determine their own decision makers and land entitlements.
63. This Principle first appeared in the Crown's enumeration of the Principles. The fact that Maaori have been guaranteed their Tino Rangatiratanga over their peoples, lands, waters and other taonga is clear from both the English Treaty text and the Te Reo Tiriti text.
64. In the circumstances, whereby the Crown has usurped Maaori Authority, the Crown has a duty to collaborate with Maaori to agree on a process for the realisation of the exercise of Tino Rangatiratanga over their own peoples, lands, waters and other taonga.
65. In relation to the extent of the exercise of Maaori Authority, one obvious area over which it applies is Maaori lands under Te Ture Whenua Maaori Act 1993. The Tribunal in the recent Te Ture Whenua Maaori Act 1993 Report (Wai 2478) concluded:

We agree with the claimants that the 'full, free, and informed consent' of Maaori is required when a legislative change substantially affects or even controls a matter squarely under their authority. The governance and management of Maaori land, a Taonga tuku iho, is one such matter. We agree with Professor Whatarangi Winiata's evidence that 'land as Taonga tuku iho falls directly into the "sphere of authority" of the Maaori Treaty partner'. Professor Winiata also quoted the Tribunal's Report on the Motunui–Waitara Claim: "Rangatiratanga" denotes the mana not only to possess what is yours, but to control and manage it in accordance with your own preferences.' This is fundamental to Maaori identity and well-being, and to the continued existence of Maaori as a people. As Moana Jackson put it: 'One cannot fully be tangata Whenua without a Whenua to be tangata upon, and one cannot be a tangata Whenua exercising the mana and rangatira handed down by the tīpuna without the authority to determine what happens to and with the Whenua.'

We agree with Professor Winiata that the Crown's Treaty duty in that circumstance is to 'ensure the full expression of Tino Rangatiratanga in

relation to our Taonga, including our right to exercise decision making and control of our Whenua and Taonga'. Broad Maaori support is essential in Treaty terms for significant changes to such matters as how Maaori legally make decisions about and control their Whenua and Taonga...

It is our finding that the reform of Te Ture Whenua Maaori Act 1993 is an instance where the Maaori interest is so central and so compelling that the Crown cannot proceed without an indication of broad, fully informed support from Maaori. Matters of detail, perhaps, could then be worked out by engagement with key leadership groups, but the final package must again be shown to have broadly based, properly informed support.³⁰

66. The Tribunal recently explained the modern meaning of Tino Rangatiratanga, in the *Nгаа Maataapono Report*:

[T]he Crown's guarantee of tino rangatiratanga in exchange for the granting of an authority to exercise kaawanatanga created two spheres of authority. Where there is an overlap or intrusion into the rangatiratanga sphere contemplated by Crown action or policies, open dialogue and engagement with Maaori is required. This constitutional positioning of the Treaty/te Tiriti Maaori–Crown relationship means that the Crown is required to engage with Maaori on such important policies and to recognise and give effect to the guarantee of tino rangatiratanga in statute law. That is what the principle of rangatiratanga requires and what the Treaty clauses have sought to do in legislation, albeit with varying success. In the words of the *Central North Island Tribunal*, that is because Maaori authority 'carried with it the right to manage their own policy, resources, and affairs within the minimum parameters necessary for the proper operation of the State'³¹

67. The Tribunal has also clearly linked Tino Rangatiratanga with the Principle of Equity, through setting the following guidance for 'co-governance' in modern contexts such as healthcare provision:

Coupled with the guarantee of Maaori tino rangatiratanga, Article Three guarantees to Maaori the right of political representation and self-determination through their own forms of self-government. This means that

³⁰ Waitangi Tribunal (2016) *He Kura Whenua Ka Rokohanga Report*, Wai 2478 at 235 – 237.

³¹ Waitangi Tribunal, *Nгаа Maataapono / The Principles: The Interim Report of the Tomokia Nгаа Tatau o Matangireia* – The Constitutional Kaupapa Inquiry Panel on The Crown's Treaty Principles Bill and Treaty Clause Review Policies – Pre-publication Version (Wai 3300, 2024), at 71.

a Maaori system of self-government should be appropriately and equitably funded in comparison to similar institutions.³²

68. This Principle applies to all Maaori taonga, including waters, takutai moana, minerals etc. In relation to Rangatiratanga over Maaori peoples, the Principles require that the Crown makes immediate and strenuous efforts to devolve all services pertaining to Maaori, back to Maaori, including, health, housing and other social services.

Kaawanatanga and Good Government

69. Under te Tiriti, the British Crown was only given the right to exercise kaawanatanga over its settlers and over land they had legitimately acquired. Where Maaori interests and Crown interests overlapped, Maaori and the Crown were expected to discuss and negotiate governance arrangements (“the Shared Authority Sphere”). The Crown unilaterally, illegally, and despite continued protestations from Maaori, enlarged their authority by usurping Maaori authority, and, acting unilaterally in the Shared Authority Sphere, to the detriment of the Maaori peoples.
70. The Tribunal has established that kaawanatanga is “not unfettered power”, “rather, it was a power that was conditioned or qualified by the rights reserved to Maaori.”³³
71. Today, because of the Crown’s assimilationist policies, there are arguably no areas in which non-Maaori have interests which exclude Maaori, as Maaori now participate in all sectors of society. As such Kāwanatanga is to be exercised as part of the Shared Authority Sphere. The Crown is entitled to exercise Kāwanatanga jointly with Maaori over these areas in which Maaori and non-Maaori interests have intermingled.

³² Waitangi Tribunal, *Whaia Te Mana Motuhake*, (Wai 2417, 2015), at 31.

³³ Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*, (Wai 898, 2023), vol 1, at 196.

72. In the *Hautupua Report*, the Tribunal drew a clear link between Kaawangatanga and good government, and the Principle of Partnership. It stated as follows:

Drawing on previous Tribunal jurisprudence on the principle of good government, the Tribunal in its *Nгаа Maataapono Report* noted that the Crown must produce ‘robust well-designed transparent policy forged in partnership’ for it to be Tiriti/Treaty consistent. Although *Nгаа Maataapono* focuses on the constitutional status of te Tiriti/the Treaty, these comments apply to Tiriti/Treaty principles generally and the Crown’s policy-design process. It is incumbent on the Crown to ensure that all major policy on matters of significance to Maaori are forged in partnership with them. Working in partnership also helps minimise the risk that the constitutional status of te Tiriti/the Treaty and its principles may be ‘undermined by poorly designed [and] unjustifiable policies.’³⁴

Partnership

73. Under this Principle, it is accepted that te Tiriti was not a treaty of cession. Instead, te Tiriti envisaged three spheres of authority as follows:

- a. the British Crown governing its subjects over land legitimately acquired by it or them (“British Authority”);
- b. Maaori Tino Rangatiratanga over Maaori peoples, lands and other taonga (“Maaori Authority”); and
- c. a partnership, to be discussed and agreed where Maaori and English populations intermingled (“Shared Authority”).

74. This was the nature of the Partnership that was to follow the signing of te Tiriti. Crown conduct must be assessed against the Partnership as set out above.

75. Te Tiriti created a sphere where Maaori exercised Tino Rangatiratanga over their taonga including their people and health systems, and a further sphere of shared authority between the Crown and Maaori where Crown and Maaori interests

³⁴ Waitangi Tribunal, *Hautupua Report: Te Aka Whai Ora Maaori Health Authority Priority Report: Part I*, (Wai 2575, 2024) at 19.

overlapped.³⁵ The Principle of Partnership means that both parties have enduring obligations to work with one another in good faith. The Tribunal stated the following in the *He Maunga Rongo Report*:

In the words of the president of the Court of Appeal, ‘the Treaty signified a partnership between races’, and each partner had to act towards the other ‘with the utmost good faith which is the characteristic obligation of partnership’. . . . The Treaty partners were required to show mutual respect and to enter into dialogue to resolve issues where their respective authorities overlapped or affected each other.³⁶

76. The Tribunal has also set out that the Principle of Partnership should be applied through the vehicle of co-governance, especially in the provision of social services, stating:

Co-governance, particularly in social service design and delivery, is not only an essential part of upholding the Treaty relationship but also essential to the improvement of Maaori socio-economic status. The Crown should be making policy decisions with a view to fulfilling this Treaty obligation under the principle of partnership and to recognise tino rangatiratanga.³⁷

77. Furthermore, mere consultation is not in keeping with a Partnership, especially for issues that go to the heart of the Tiriti relationship, such as health policy. A level of engagement, which exceeds consultation, is required, such as co-governance. The Tribunal stated in the *Ngaa Maataapono Report*:

In some cases, particularly where the issue is significant to Maaori or goes to the heart of the Treaty / te Tiriti relationship, the Tribunal has found the Crown may be obliged to go further than consultation and obtain the consent of Maaori. The Indigenous Flora and Fauna Tribunal in its *Ko Aotearoa Teenei report* (2011), for example, noted that there is no ‘one size fits all’ approach to consultation, and indicated there could be ‘occasions

³⁵ Waitangi Tribunal *He Whakaputanga me te Tiriti/The Declaration and the Treaty: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry* (Wai 1040, 2014).

³⁶ Waitangi Tribunal, *He Mauna Rongo Report: Report on Central North Island Claims Stage One*, Vol 1, at 173.

³⁷ Waitangi Tribunal *Hauora Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2021), at 165.

in which the Maaori Treaty interest is so central and compelling that engagement should go beyond consultation to negotiation aimed at achieving consensus, acquiescence or consent'. The Te Raki stage 2 Tribunal similarly found that the Treaty / te Tiriti obliges the Crown to go beyond consultation and negotiate through 'discussion and agreement'.³⁸

78. The Tribunal has also previously linked the Principle of Partnership to the Principle of Equity, as discussed below. The Tribunal referred to *Te Urewera*³⁹ and *The Napier Hospital Report*⁴⁰ in the *Hauora Report* and stated the following:

In *Te Urewera*, The Tribunal stated that partnership is critical for pursuing socioeconomic equity for Maaori: '[The Crown] cannot simply present Maaori with its own solutions...at minimum it must consult with Maaori, and ideally it will either form a partnership with, or deliver funding and autonomy to, Maaori organisations.' In *The Napier Hospital Report*, the Tribunal stated that partnership means the Crown should be 'empowering Maaori to design and provide health services for Maaori'.⁴¹

79. This excerpt demonstrates the point that the Principles are not meant to be read in isolation, but rather integrated together, so that they can properly be applied to modern contexts.

Active Protection

80. The Principle of Active Protection is a mutual one. The Crown must protect Maaori interests and Maaori must protect Crown interests. The Crown's duty to protect Maaori rights and interests arises from the meaning of te Tiriti, including the promises that were made at the time to secure te Tiriti's acceptance, and from the Principles of Partnership and Reciprocity. In particular, until the Crown and Maaori have agreed to a constitutional framework and mechanisms that are consistent with te Tiriti, and those

³⁸ Waitangi Tribunal, *Ngaa Maataapono / The Principles : The Interim Report of the Tomokia Ngaa Tatau o Matangireia* – The Constitutional Kaupapa Inquiry Panel on The Crown's Treaty Principles Bill and Treaty Clause Review Policies – Pre-publication Version (Wai 3300), at 76.

³⁹ Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001).

⁴⁰ Waitangi Tribunal, *The Te Urewera Report (8 Volumes)* (Wai 894, 2017).

⁴¹ Waitangi Tribunal *Hauora Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2021), at 29.

mechanisms have been put into effect, the Crown has a heightened duty to protect Maaori rights and interests over their peoples, lands, waters and other taonga.

81. All de facto sovereignty currently exercised in breach of te Tiriti, must be exercised and administered in a manner which does not diminish Maaori Tino Rangatiratanga over their peoples, lands, waters and other taonga. Such de facto sovereignty is exercised until such time as Maaori and the Crown have agreed to a new constitutional structure consistent with te Tiriti.
82. The Maaori duty of Active Protection of the Crown's interests, requires Maaori to act reasonably and in good faith when exercising Tino Rangatiratanga over their peoples, lands, waters and other taonga and, when engaging and collaborating with the Crown in relation to Shared Authority.
83. The Crown's obligations to Maaori have been established in case law since 1987 as more than a passive duty, and akin to a fiduciary duty, which "extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable."⁴²
84. The *Te Tau Ihu o te Waka o Maui Report* further highlighted the interconnection of the Principles. It found that Active Protection and Partnership are intrinsically linked, stating "active protection requires honourable conduct by, and fair processes from, the Crown, and full consultation with – and, where appropriate, decision-making by – those whose interests are to be protected".⁴³
85. There are two points which are particularly relevant to the application of Active Protection in the field of health policy. Firstly, Active Protection is widely applied and is an obligation which is heightened where the Protection is required through the legacy of historic wrongs on the part of the Crown. The Tribunal previously found the following:

⁴² *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, at 664.

⁴³ Waitangi Tribunal, *Te Tau Ihu o te Waka o Maui Report: Preliminary Report on Customary Rights in the Northern South Island* (Wai 785), at 4.

Active protection applies to all rights and interests guaranteed to Maaori in te Tiriti/the Treaty, to tangible and intangible properties, and across all statutory regimes and fields of Crown policy today. The obligation to actively protect Maaori interests is heightened by ‘past historical wrongs done by the Crown and any prejudice that has affected subsequent generations.’⁴⁴

86. Secondly, any AP needs to be both effective and in compliance with the collective whole, namely all of the Principles:

In balancing tino rangatiratanga and active protection, we accept that a range of possible protections exist in this situation that Maaori now find themselves in. As noted earlier, what matters is that the form of protection chosen be effective, and that it have general support from Maaori.⁴⁵

Equity

87. Building on the Principle of Active Protection, the Tribunal has established that the Crown has a proactive duty to close the gaps between Maaori and non-Maaori.⁴⁶

88. In its successive Health Reports, in 2021 and 2024, on healthcare provision, the Tribunal made clear that the Principle of Equity places an ongoing obligation on the Crown. It found as follows:

In *Hauora*, we found that the Crown must provide health services that are designed to close inequitable gaps in health outcomes. To this end, the Crown is required to focus specific attention on inequities experienced by Maaori, and keep itself informed of all relevant factors affecting Maaori needs. The Crown must be well informed about the extent and nature of Maaori health outcomes and about efforts to achieve Maaori health equity. The Crown must also ensure its Tiriti/Treaty partner remains informed of and involved in this work. If need be, the Crown must provide additional resources to address the causes of inequities, and implement other positive

⁴⁴ Above n 44., 23.

⁴⁵ Waitangi Tribunal, *He Kura Whenua ka Rokohanga: Report on Claims about the Reform of Te Ture Whenua Maaori Act 1993* (Wai 2478, 2016), at 209.

⁴⁶ Waitangi Tribunal, *Hautupua Report: Te Aka Whai Ora Maaori Health Authority Priority Report: Part I* (Wai 2575, 2024) at 24.

steps towards addressing them. This is particularly urgent when Maaori interests and rights derived from te Tiriti/the Treaty are under grave threat.⁴⁷

V: BREACHES OF TE TIRITI

Article One: Kaawanatanga

- 89.** The Claimants submit that Maaori never consented or acquiesced to the imposition by the Crown of sovereignty over them, and that the Kaawanatanga envisaged in Article One did not authorise the Crown to impose legislation, such as its Westernised health system, legislated through the Health Act 1956, over Maaori and their Taonga.
- 90.** In relation to the establishment and operation of the PHS by the Crown, the Claimants submit that Maaori never at any stage consented or acquiesced under Article One of te Tiriti to its imposition over them. The Kaawanatanga envisaged in Article One did not authorise the Crown to impose legislation, over Maaori, without their consent.
- 91.** The consequences of this fundamental breach are evidenced in the outcomes for Maaori over many decades, outcomes which demonstrate a consistent underperformance in relation to Maaori health outcomes. A pertinent example is that Maaori male life expectancy is 7.3 years lower than non-Maaori male life expectancy. Maaori female life expectancy is 6.8 years lower.
- 92.** The evidence reflected in all of the Health Reports shows this is a persistent ongoing pattern. Worse outcomes for Maaori consistently appear in the health system, such as through higher chronic obstructive pulmonary disorder (“COPD”) related hospitalisations, higher prevalence of cardiovascular disease, and higher cancer mortality rates.

⁴⁷ Above n 47.

- 93.** The previous Director-General of Health, Dr Ashley Bloomfield, partly attributed poor health outcomes of Maaori to systemic racism within the PHS. His view was that worse Maaori social-economic deprivation contributed to poor health, but that deprivation itself did not explain the gaps in health outcomes:

Deprivation is compounded by other factors, including racism. The impact of personal and institutional racism is significant on both the determinants of health and on access to and outcomes from health care itself.⁴⁸

- 94.** The Claimants submit that the breaches of Article One, of te Tiriti in relation to the PHS have led directly to the outcomes as outlined below:

- a.** a persistent denial of Maaori tino rangatiratanga, and the erosion of traditional Maaori health practices, maatauranga, and autonomy over their health-related decision-making;
- b.** the institutionalisation of a Western-centric health system that does not reflect or accommodate Maaori worldviews, values, or approaches to health and wellbeing;
- c.** systemic and ongoing entrenched health inequities, evidenced by poorer access to healthcare services, poorer quality of care, and worse health outcomes for Maaori across nearly all major health indicators; and
- d.** lack of Maaori engagement, and participation in the governance, design, delivery, and evaluation of health services, which undermines the ability of Maaori communities to exercise authority over their own health and wellbeing in accordance with te Tiriti.

- 95.** The outcomes are not incidental, nor are they accidental. They are the direct and foreseeable consequences of a system that has been imposed without engagement with Maaori, thus breaching Articles One of te Tiriti and the breach of the Principles of Tino Rangatiratanga, Partnership, Active Protection, and

⁴⁸ Comments from former Director General of Health, Dr. Ashley Bloomfield located in Waitangi Tribunal *Hauora Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2023), at 2.3.

Good Faith. The imposition by the Crown on hauora Maaori has entrenched structural inequalities and excluded Maaori, particularly the Claimants from exercising effective governance and decision making over their own hauora.

96. This breach of not devising any AP following the disestablishment of TAWO has and will continue to erode trust in the current Coalition Government. The ongoing calls from many hauora Maaori providers for reform, to include the recognition of rongooa Maaori, to invest in hauora Maaori led providers, and to devise and establish a of truly te Tiriti compliant AP that upholds Maaori tino rangatiratanga have been met with deaf ears.

Article Two: Tino Rangatiratanga over Taonga

97. Article Two of the Treaty states:

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Pre-emption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

98. Article Two of te Tiriti states:

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangitira ki nga hapu – ki nga tangata katoa o Nu Tirani te Tino Rangatiratanga o o ratou wenua o ratou kainga me o ratou Taonga katoa. Otiia ko nga Rangatira o te wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua – ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

- 99.** The Claimants submit that Tino Rangatiratanga in Article Two means that Maaori, not the Crown, retain the right to control their Taonga, which includes their MHSs. The Claimants say that this was the agreed intention of the Crown and Maaori in 1840 in relation to te Tiriti.
- 100.** The Claimants submit that the breaches of Article Two of te Tiriti in relation to the PHS are as outlined below:
- a.** the Crown has failed to recognise or uphold the tino rangatiratanga of Maaori over their own Health Systems, instead maintaining a centralised, monocultural system that marginalises Maaori approaches to health and wellbeing;
 - b.** the imposition of the PHS without Maaori engagement, and the exclusion of Maaori from substantive roles in the governance, design, and delivery of health services, is inconsistent with the guarantees of authority and control over taonga in Article Two; and
 - c.** the lack of an APs following the disestablishment of TAWO, represents a direct breach of the guarantee afforded to Maaori of their authority over their taonga and undermines Maaori tino rangatiratanga in the Health Sector.
- 101.** The disestablishment of TAWO takes Maaori back to the exact situation which was lambasted by the Tribunal in the *Hauora Report*. This is despite the *Hauora Report* stating that: “Tino rangatiratanga of hauora Maaori will not be possible without more active support from the Crown.” The outcome of the *Hauora Report* was that substantial policy reform, better inclusivity and the embracing of more culturally appropriate care was needed. The Crown has, however, gone against this by disestablishing TAWO without an AP.
- 102.** The recommendations of the *Hauora Report* showed that the PHS and its Policies were clearly inadequate, and breached te Tiriti and its Principles in a multitude of ways:

The Crown's legislative and policy arrangements for primary care do not, either in the ways they are designed or in the ways they are implemented, afford Maaori the central role they are guaranteed under the Treaty. Being given the opportunity to merely add commentary to the margins is not consistent with the principle of partnership and certainly does not recognise mana motuhake and Tino Rangatiratanga rights.⁴⁹

- 103.** It is submitted that if Maaori rights are reversed so that Maaori are placed in the margins of the PHS, then the outcomes for Maaori will be increased disparities in health outcomes. The Crown is a te Tiriti partner with Maaori and should treat Maaori as a partner, not an afterthought and not a problem waiting to be solved.
- 104.** It was established by the Tribunal that Maaori providers have a far greater rate of success in providing appropriate healthcare to Maaori. For instance, the Tribunal in the *Hauora Report* notes:
- Maaori primary health organisations and health providers are intrinsic to sustaining Maaori health and wellbeing and are expressions of tino rangatiratanga.⁵⁰
- 105.** The evidence demonstrates that by Maaori for Maaori policies achieve better health outcomes. Nevertheless, the Crown disestablished TAWO, going against the evidence and the recommendations of the Tribunal in the *Hauora Report*.
- 106.** The Crown's decision to disestablish TAWO, without any AP and without any engagement with Maaori, is inconsistent with its obligations under te Tiriti and its Principles.
- 107.** No evidence has been presented that any equivalent model was or is being developed. There has been no meaningful consultation process. There is no mechanism in place that would ensure Maaori decision-making authority in the Health System, or address the irrefutable health inequities.

⁴⁹ Waitangi Tribunal *Hauora Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2021), at 159.

⁵⁰ Above n 50., at xiv-xv.

- 108.** It is submitted that the Crown’s actions cannot be reconciled with its obligations under te Tiriti and its Principles. The process by which TAWO was disestablished lacked transparency, excluded Maaori voices, and disregarded established findings of institutional failure. The substantive outcome is that Maaori are perpetually left without adequate structural representation or control over their health outcomes, with the resulting negative outcomes for their people’s health and wellbeing.
- 109.** The Claimants support the comments of Lady Tureiti Moxon on the Crown’s lack of APs. She stated that Maaori health providers are already suffering the severe consequences of the Crown’s decision to disestablish TAWO. These consequences are heightened by the added failure of the Crown in failing to produce a coherent or transparent AP since disestablishing TAWO, even though the Crown has now had approximately two years to prepare their AP.⁵¹

VI: RECOMMENDATIONS AND RELIEF SOUGHT

- 110.** The Claimants respectfully seek any or of all the following recommendations
- a.** a finding that:
 - i.** at or shortly prior to 1840, Maaori collectively exercised mana and Tino Rangatiratanga, over their peoples and their taonga;
 - ii.** the exercise of mana and Tino Rangatiratanga included the responsibility for ensuring the health and wellbeing of their own peoples in accordance with their own extensive body of regulatory laws or Tikanga;
 - iii.** under Article Two, Maaori retained the full, exclusive and undisturbed possession of their taonga, including their peoples and Maaori Health Services;

⁵¹ Michael Cugley “Waitangi Tribunal to hear case on Te Aka Whai Ora Disestablishment” *Te Ao News* (online ed, Auckland, 15 April 2025) <[Waitangi Tribunal to hear case on Te Aka Whai Ora disestablishment – Te Ao Maaori News](#)>

- iv. the Tino Rangatiratanga of Maaori over their peoples and Maaori Health Services was never ceded under Article One of the Tiriti/Treaty;
- v. consequently, all responsibility for ensuring the health wellbeing of their own peoples resides with Maaori;
- vi. Crown acknowledgment that the full responsibility for ensuring the health and wellbeing of Maaori remains with Maaori;
- vii. the disestablishment of TAWO was a breach of Articles One and Two of te Tiriti, and the Principles of Tino Rangatiratanga, Partnership, Informed Decisions, Active Protection, the Duty to Act Reasonably and in Good Faith, and Redress by:
 - i. failing to respect, recognise and protect the right of Maaori to exercise Tino Rangatiratanga, in accordance with Tikanga Maaori, in relation to the health care of their own peoples and communities;
 - ii. imposing on Maaori, without their consent or acquiescence, unfamiliar and unwelcome legal, political and health care systems;
 - iii. failing to actively protect and ensure te Tiriti compliant outcomes for Maaori, in particular by ignoring the *Hauora Report* and its recommendations to establish a MHA,⁵² and/or, to ensure a Tikanga Maaori based provision of health care;
- viii. the Crown has failed to develop genuine, robust, and te Tiriti consistent alternatives to TAWO;
- ix. that the process by which the Crown developed its current health structures was inconsistent with the principles of te Tiriti;

⁵² Waitangi Tribunal *Hauora Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2023).

112. The Claimants consider that, as Article Two guaranteed that Maaori retain the full, exclusive and undisturbed possession of their taonga, and MHSs are taonga, then nothing less than the full transfer of MHSs, which Maaori would design, operate, govern, control and administer, along with the requisite funding, and technical support would be te Tiriti compliant. In addition, Maaori ought to be an equal partner in the design, and governance of the PHS.

Dated 4 June 2025



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