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

BEFORE THE WAITANGI TRIBUNAL **WAI 2575**

IN THE MATTER OF	**the Treaty of Waitangi Act 1975**
AND	
IN THE MATTER OF	**THE HEALTH SERVICES AND OUTCOMES KAUPAPA INQUIRY**

CLOSING SUBMISSIONS OF THE CROWN

6 Hune | June 2025

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MAY IT PLEASE THE TRIBUNAL:

Introduction

1. The Crown acknowledges the submissions and evidence presented on behalf of claimants and interested parties in this inquiry – both in the first part, heard on the papers in late 2024, and during the second part of the inquiry.

2. These legal submissions are filed with the Tribunal for the second part of its inquiry into the disestablishment of Te Aka Whai Ora (the Maaori Health Authority). These submissions follow an online hearing of evidence and oral legal submissions held between 26-29 May 2025.

Outline of Crown submissions

3. These written submissions:

   3.1 set out the issues for inquiry;

   3.2 note recent developments to reform aspects of the Pae Ora (Healthy Futures) Act 2022 (the Pae Ora legislation);

   3.3 describe the redistribution of health system functions on disestablishment of Te Aka Whai Ora (the Maaori Health Authority);

   3.4 contextualise that redistribution in light of settings in the Pae Ora legislation at the time the Maaori Health Authority was disestablished;

   3.5 describe how the functions and operations of the Hauora Maaori Advisory Committee and Iwi Maaori Partnership Boards were adjusted at the time the Maaori Health Authority was disestablished;

   3.6 identify other system-level changes in lieu of a Maaori Health Authority;

   3.7 identify relevant Treaty principles in the context of this inquiry; and

3.8 conclude with an outline of aspects of the procedural history of this inquiry.

Issues under inquiry and overlap with Minister's review

4. In March 2025 the Tribunal identified three issues for the second part of its inquiry and expressed a preference in April 2025 for a high-level inquiry focused on the Crown's alternative plans for Maaori health in lieu of a Maaori health authority:[1]

> (a) What are the Crown's alternative plans to address Maaori health in lieu of a Maaori health authority, and what steps were taken in developing such plans?
>
> (b) Was the Crown's process in developing alternative plans to address Maaori health in lieu of a Maaori health authority consistent with Te Tiriti o Waitangi and its principles?
>
> (c) Are the Crown's alternative plans to address Maaori health in lieu of a Maaori health authority consistent with Te Tiriti o Waitangi and its principles?

5. This second part of the priority inquiry follows the Tribunal's inquiry into whether the processes and steps taken by the Crown to disestablish Te Aka Whai Ora were in breach of the principles of the Treaty of Waitangi[2] and resulted in prejudice. In late November 2024, the Tribunal made findings of breach and made several recommendations to the Crown to address prejudice it found existed.[3]

6. Some of the Tribunal's part one findings are equally applicable to matters under inquiry now and this is identified below.

7. Completion of this second part of the inquiry is occurring at the same time as the Minister of Health is considering reform of aspects of the Pae Ora legislation, the Tribunal having reconfirmed on 23 May 2025 that it will proceed to complete its inquiry.[4] This topic is also addressed below in the section about aspects of the procedural history of this inquiry.

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1 Wai 2575, #2.6.201 at [14] and #2.6.202 at [36]-[37].

2 References to "Te Tiriti o Waitangi", "Te Tiriti", the "Treaty of Waitangi" or the "Treaty" are to both language versions of Te Tiriti/the Treaty.

3 Waitangi Tribunal *Hautupua: Te Aka Whai Ora (Maaori Health Authority) Priority Report, Part 1* (Wai 2575, 2024). See section 4.5.4.

4 See updated opening submissions for the Crown, 23 May 2025, at [6]-[7]. Direction received via an email from the Tribunal Registrar to the Wai 2575 distribution list on 23 May 2025 noting the Crown's withdrawal of John Whaanga's brief of evidence (Wai 2575, #M34(a)), confirming that the hearing would not be deferred and would

8. The Minister's review means that Crown participation in this inquiry is now constrained to an extent because of the matters under review. Crown officials are not authorised to talk about how present settings might be changed. These submissions address the issues from the time of the legislation disestablishing the Maaori Health Authority until the hearing held from 26-29 May 2025.[5]

The redistribution of health system functions on disestablishment of the Maaori Health Authority

Functions continue

9. As the Crown acknowledged in the first part of this priority inquiry,[6] some claimant submissions expressed concern that functions performed by the Maaori Health Authority were ended on its disestablishment without an alternative in place.

10. The Crown submits that in substance the functions of the Maaori Health Authority have been redistributed to other health system participants.

11. Some roles did not continue because they no longer applied from a practical perspective.[7] For example, as the Maaori Health Authority no longer exists, it cannot be consulted or involved in approving documents (as had been previously required).[8]

12. Some functions were redistributed without the need for explicit transfer because the entity picking up the function was already required to do that thing.[9] For example, policy and strategy functions, which moved to the Ministry of Health, are inherent departmental functions.[10] The statutory provisions that had been necessary to empower the Maaori

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commence as scheduled, granting the Crown leave for withdrawing the brief of evidence and filing a new brief of evidence by 9am Monday 26 May 2025, and that the panel would address the Crown's latest developments as a first item on the hearing agenda and make a determination on how the remainder of the hearing will proceed in light of these discussions.

5 See updated opening submissions for the Crown, 23 May 2025, at [7]. Wai 2575, #M34(d) at [22].

6 Wai 2575, #3.3.155 at [43].

7 Wai 2575, #3.3.155 at [44].

8 For example, s 100 of the Pae Ora (Healthy Futures) Act 2022 previously included an explicit requirement for the Director-General of Health to consult with the Maaori Health Authority when reviewing the Act.

9 Wai 2575, #M34(b) JW-1 at 9, para [29(a)].

10 Wai 2575, #3.3.155 at [45.1].

Health Authority to act in this regard, as a statutory entity separate from the Crown, were no longer required.

13. Monitoring functions, which also moved to the Ministry of Health, are an inherent departmental function, and the relevant provisions for the Maaori Health Authority could be repealed.[11] Adjusted settings for monitoring by the Hauora Maaori Advisory Committee and Iwi Maaori Partnership Boards are described further below.

14. Planning and commissioning of health services previously undertaken by the Maaori Health Authority were activities picked up by Health New Zealand, an organisation which has been involved in this work throughout its existence and where Maaori Health Authority staff were transferred to.[12] The statutory functions of Health New Zealand were sufficiently broad to encompass these matters and no change was required to Health New Zealand's functions (except to add reporting on the performance of the publicly-funded health sector to its public information function[13]).

15. Redistribution of functions means those functions continue and contribute to achieving the purposes of the Pae Ora legislation. This is relevant in assessing the Treaty consistency of how this part of the public health system was to operate from 30 June 2024 in lieu of the Maaori Health Authority.[14]

16. The appendix to these submissions contains a table that sets out objectives, functions and duties previously performed by the Maaori Health Authority and the organisations that undertake those redistributed functions after its disestablishment.

Contextualising redistribution of functions in light of settings in the Pae Ora legislation at the time the Maaori Health Authority was disestablished

Overarching themes from claimant evidence and submissions

17. Five overarching themes from claimant submissions can be identified as follows:

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11 Wai 2575, #3.3.155 at [45.2].

12 Wai 2575, #M34(c) JW-21 at 195, para [49]-[51].

13 Pae Ora (Healthy Futures) Act 2022, s 14(1)(p). See also Wai 2575, #3.3.155 at [45.3].

14 Wai 2575, #3.3.155 at [46].

17.1 *Lack of Consultation*: The Crown did not adequately consult with Maaori or respect their tino rangatiratanga over Maaori health.

17.2 *No Viable Replacement*: The Crown's proposed alternatives, such as expanding the roles of Iwi-Maaori Partnership Boards and the Hauora Maaori Advisory Committee, lack the necessary Maaori-led governance, authority, and resources to address health disparities.

17.3 *Negative Impact on Maaori Health*: The removal of the Maaori Health Authority is seen as a setback, returning to a model that has historically failed Maaori. The approach risks further marginalising Maaori, particularly disabled Maaori, by not adequately addressing their needs.

17.4 *Breach of Te Tiriti Principles*: The Crown's actions are said to breach the principles of partnership, tino rangatiratanga, active protection, and equity, leading to continued systemic health inequities.

17.5 *Regressive Approach*: The alternative plans are considered regressive, undermining Maaori-led health initiatives and failing to address critical disparities, harming Maaori health outcomes.

Crown evidence

18. The Crown led evidence from Mr John Whaanga, Deputy Director-General for Maaori Health at the Ministry of Health. Mr Whaanga spoke to an updated brief of evidence (filed on 24 May 2025 to update an April 2025 brief) addressing settings for Maaori health at a system level since disestablishment of the Maaori Health Authority.[15]

19. A bundle of supporting documents to Mr Whaanga's 2025 evidence was filed with the Tribunal in April 2025.[16] Other documents were filed in 2024.[17]

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15 Wai 2575, #M34(d).

16 Wai 2575, #M34(b) and Wai 2575, #M34(c). Some limited redactions were made to documents in the bundle to preserve the confidentiality of legally privileged information and to claim confidentiality over some matters that remain subject to future decisions by Cabinet and the Minister of Health or to preserve budget secrecy ahead of

20. There is other Crown evidence the Tribunal will want to consider. Mr Whaanga's earlier evidence from February 2024 remains relevant.[18] The Crown also refers to the explanations given by former Director-General of Health Dr Diana Sarfati in her 2024 evidence to the Tribunal about how the health system is structured under the Pae Ora legislation and the relationship between the legislative objectives and strategy and policy instruments required by the legislation to achieve the Act's objectives.[19] The Tribunal will recall that the transcript of excerpts from Dr Sarfati's 2024 presentation of evidence filed by the Crown includes discussion with the Tribunal about the disestablishment of the Maaori Health Authority.[20]

The health system in lieu of the Maaori Health Authority

21. Given the Tribunal has confirmed again it will proceed now to complete its priority inquiry, the Crown submits that a practical approach will be for the Tribunal to report its findings based on its analysis of settings in the publicly funded health system after disestablishment of the Maaori Health Authority. There is now nearly a year of experience of the health system operating without the Maaori Health Authority and a good deal of the evidence the Tribunal heard between 26-28 May addresses developments in this time.

Health system settings in lieu of the Maaori Health Authority – the June 2024 vision and priorities to address Maaori health need

22. The June 2024 Cabinet paper addressing the Government's vision and priorities to address Maaori health need demonstrates how the Crown saw health system settings as operating following disestablishment of the Maaori Health Authority.[21] This paper did not identify imminent law reform but focused on a vision and priority work and signalled an

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the 2025 Budget.

17 Wai 2575, #M40, #M48, #M49.

18 Wai 2575, #M34.

19 Wai 2575, #B39; Wai 2575, #L13.

20 Wai 2575, #3.2.1010(a). See Wai 2575, #4.1.026 at pp 126-166 for the full discussion in the draft hearing transcript.

21 "Vision and priorities to address Maaori health need" (Wai 2575, #M40 at 2.)

expectation that the Hauora Maaori Strategy would be completed by the end of 2024.[22]

22.1 The vision in the paper is for the Government to work with community partners to advance Maaori health aspirations and enable Maaori to have healthier and more independent lives.[23] The focus on working directly with community partners reflects the policy to reach those partners without the Maaori Health Authority.

22.2 The strategic direction for Maaori health would be reset by the Minister with an outcomes focused Maaori health strategy aligned with the new Government Policy Statement on Health.[24]

22.3 The Minister would work with the Ministry and the Hauora Maaori Advisory Committee to monitor the performance of the health system for Maaori using population and system priorities to track progress.[25]

22.4 The Minister planned to enable Iwi Maaori Partnership Boards to undertake local needs assessments, identify priorities for improving hauora Maaori, influence Health New Zealand's service commissioning processes and monitor local performance so that the health system is more responsive to local need.[26]

22.5 The Minister planned to progress and test local initiatives.[27]

23. The body of the paper repays review. It reports the higher health needs of Maaori as a population group and that Maaori experience poorer outcomes and service experiences.[28] It argues for an outcomes-driven approach to be achieved by shifting decision-making and accountability

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22 At 3, para [7].

23 At 2, para [6].

24 At 2, para [6.1].

25 At 2, para [6.2].

26 At 3, para [6.3].

27 At 3, para [6.4].

28 "Vision and priorities to address Maaori health need", above n 21, at 3-4, para [8] and [14].

around resources closer to homes and communities, enabling local leadership, collaboration and innovation to meet needs.[29]

24. The move to enable greater community leadership, as an alternative to the Maaori Health Authority, was described as follows:[30]

> The disestablishment of the Maaori Health Authority was the first step towards achieving this vision. By reducing central bureaucracy and integrating Maaori health expertise within the mainstream health system, we now have a clearer pathway towards decentralisation, enabling greater community leadership to meet local needs.

25. The paper describes monitoring and accountability for Maaori health outcomes:[31]

> Regardless of the structures put in place, strong Maaori leadership and involvement in monitoring the performance of the health system is important at both local and national levels to be effective. I intend to grow Maaori capability and capacity to take on greater responsibilities and accountability to plan, guide, design and deliver health services that meet community needs. This is where the Hauora Maaori Advisory Committee (HMAC) in its national independent advisory role, and Iwi-Maaori Partnership Boards (IMPBs) with local and regional influence have critical, complementary roles to play in holding the system to account.

26. After setting out the five priority areas in the Government Policy Statement on Health 2024-2027 the Minister observed:[32]

> We simply cannot meet our targets and expectations without significant shifts in Maaori health outcomes, achieved by improving how the health system partners with Maaori to understand and respond to Maaori health needs.

27. The paper reviewed the plan to complete the Hauora Maaori Strategy by the end of 2024 after targeted engagement.[33]

28. Then the paper moved on to outline monitoring of system performance by the Hauora Maaori Advisory Committee operating under updated terms of reference.[34]

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29 At 4-5, para [20].

30 At 4, para [22].

31 At 4, para [24].

32 At 6, para [28].

33 At 5, para [29]-[31].

34 "Vision and priorities to address Maaori health need", above n 21, at 6, para [32]-[34].

29. Finally, the paper discussed the role of Iwi Maaori Partnership Boards as a key mechanism to improve system performance and identified opportunities for boards to be involved in commissioning of services:[35]

> 38 IMPBs' key functions include the need to engage with whaanau and hapuu about local health needs, evaluate the current state of Maaori health, identify priorities, and monitor local performance. …
>
> 40 To embed whaanau, hapuu and community voice in service planning and design, and improve the quality of investment, IMPBs need to be well integrated into Health NZ's business planning, service design and monitoring processes, alongside other groups that represent community needs.

30. Usefully for this high-level system inquiry, Appendix One to the June 2024 paper sets out an overview of the revised roles and responsibilities for Maaori health from 1 July 2024 covering the Ministry and its Te Pou Hauora Maaori directorate, the Hauora Maaori Advisory Committee, system and Maaori health responsibilities owed by Health New Zealand under the Pae Ora legislation, duties owed by other Crown entities and the critical functions of Iwi Maaori Partnership Boards.[36]

31. This overview description is consistent with how Parliament set the Pae Ora legislation's purpose in 2022 and the redistribution of roles and responsibilities after the 2024 amendment to that legislation which disestablished the Maaori Health Authority.

Pae Ora legislation after 30 June 2024

32. The legislative amendments to disestablish the Maaori Health Authority need to be seen against the context of the legislative framework for the New Zealand public health system – the Pae Ora (Healthy Futures) Act 2022.

33. Acknowledging that this legislation is the subject of review at present, for the purposes of the Tribunal's second part of this inquiry, key provisions of that Act after 30 June 2024 include:

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35 At 6-8, para [36]-[45].

36 At 12.

33.1 Section 3, which states the Act's purpose is to provide for the public funding and provision of services in order to:

> (a) protect, promote, and improve the health of all New Zealanders; and
>
> (b) achieve equity in health outcomes among New Zealand's population groups, including by striving to eliminate health disparities, in particular for Maaori; and
>
> (c) build towards pae ora (healthy futures) for all New Zealanders.

33.2 Section 6, which describes how particular provisions in the Act provide for the Crown's intention to give effect to Treaty principles. This is a descriptive list of things the legislation requires.

33.3 Section 7, which sets out health sector principles to guide decision making under the Act. The majority of these principles, which were strongly influenced in their development by the Treaty principles the Tribunal articulated in its stage one *Hauora Report*,[37] involve a direct focus on Maaori health needs. For example, the first three health sector principles provide:

> (a) the health sector should be equitable, which includes ensuring Maaori and other population groups—
>
> > (i) have access to services in proportion to their health needs; and
> >
> > (ii) receive equitable levels of service; and
> >
> > (iii) achieve equitable health outcomes:
>
> (b) the health sector should engage with Maaori, other population groups, and other people to develop and deliver services and programmes that reflect their needs and aspirations, for example, by engaging with Maaori to develop, deliver, and monitor services and programmes designed to improve hauora Maaori outcomes:
>
> (c) the health sector should provide opportunities for Maaori to exercise decision-making authority on

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

> matters of importance to Maaori and for that purpose, have regard to both—
>
> > (i) the strength or nature of Maaori interests in a matter; and
> >
> > (ii) the interests of other health consumers and the Crown in the matter:

34. The Minister's role under the legislation is set out at s 10.

35. When appointing members to the Board of Health New Zealand the Minister must be satisfied that the board collectively has knowledge of, and experience and expertise in relation to te Tiriti o Waitangi (the Treaty of Waitangi) and tikanga Maaori among other matters.[38]

36. Also relevant are the statutory objectives and functions of Health New Zealand.[39] A point to keep in mind is that Health New Zealand has responsibility to design, arrange and deliver services to achieve the purpose of the Act in accordance with the Health Sector Principles.[40]

37. As part of its function to engage with Iwi Maaori Partnership Boards, Health New Zealand must support the boards to achieve their purpose, including with administrative, analytical or financial support where needed and with information that is both sufficient and timely.[41] See also the requirement on Health New Zealand to engage with iwi-Maaori partnership boards when determining priorities for kaupapa Maaori investment.[42]

38. The Board of Health New Zealand has specific additional collective duties over and above other Crown entities including that it must ensure that the organisation maintains systems and processes to ensure that Health New Zealand has the capacity and capability to perform its functions; and that it has the capacity and capability to understand te Tiriti o Waitangi (the Treaty of Waitangi), kaupapa Maaori services, cultural safety and

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38 Pae Ora (Healthy Futures) Act 2022, ss 12(3) and 6(k)).

39 Pae Ora (Healthy Futures) Act 2022, ss 13-14.

40 Pae Ora (Healthy Futures) Act 2022, s 13(a) in conjunction with ss 3 and 7.

41 Pae Ora (Healthy Futures) Act 2022, s 15(a).

42 Pae Ora (Healthy Futures) Act 2022, s 15(b).

responsiveness of services, maatauranga Maaori, and Maaori perspectives of services.[43]

39. Health New Zealand must have systems in place for the purpose of: engaging with Maaori in relation to their aspirations and needs for hauora Maaori; and, enabling the responses from that engagement to inform the performance of its functions. Health New Zealand must report back to Maaori from time to time on how engagement has informed the performance of its functions.[44]

40. In addition to the Government Policy Statement on health issued by the Minister and the New Zealand Health Plan developed by Health New Zealand, the Minister must determine a number of health strategies including a Hauora Maaori Strategy.[45] The New Zealand Health Plan must set out how Health New Zealand will engage with Maaori, protect Maaori interests and aspirations, and empower Maaori to improve their health. The plan must also set out how Health New Zealand has been guided by the health sector principles in the development and content of the New Zealand Health Plan.[46]

41. There is an annual performance report against the outcomes specified in the New Zealand Health Plan and this evaluation must use culturally relevant evaluation methods to evaluate any new interventions or services for Maaori health that Health New Zealand has provided or funded.[47]

42. Adjustments to system settings for iwi-Maaori partnership boards and the Hauora Maaori Advisory Committee are addressed further below.

43. Beyond these settings from primary legislation, the system settings applying from 30 June 2024 also built on existing health sector

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43 Pae Ora (Healthy Futures) Act 2022, s 16, noting that s 16(1)(d)(ii) was added from 30 June 2024 by the 2024 amending legislation. At present, a Commissioner is in place at Health New Zealand instead of a Board. Section 62(7) provides "All the provisions of this Act and the Crown Entities Act 2004 that apply to appointed members of a board apply, with any necessary modifications, to a commissioner and a deputy commissioner."

44 Pae Ora (Healthy Futures) Act 2022, s 16A.

45 Pae Ora (Healthy Futures) Act 2022, ss 33-42, noting the provisions from ss 33-52.

46 Pae Ora (Healthy Futures) Act 2022, s 51(h).

47 Pae Ora (Healthy Futures) Act 2022, s 52(2)(b)).

frameworks, strategies, and plans. These include the Ministry of Health's Te Tiriti o Waitangi Framework,[48] Whakamaua: Maaori Health Action Plan 2020-2025,[49] the interim strategy Pae Tuu: Hauora Maaori Strategy,[50] and Ngaa Paerewa Health and Disability Service Standards.[51]

44. These system settings are important in a system-level review by the Tribunal.

Adjustments to IMPBs and the Hauora Maaori Advisory Committee from 30 June 2024

Iwi-Maaori partnership boards from 30 June 2024

45. The potential of iwi-Maaori partnership boards was the subject of particular attention in the hearing. The boards come from whaanau, hapuu and iwi communities and are a key vehicle to assist those communities to hold the health system accountable for achieving the purpose of the Pae Ora legislation in each of the locations the boards operate in.[52]

46. The purpose of the boards is set out at s 29:[53]

> The purpose of iwi-Maaori partnership boards is to represent local Maaori perspectives on—
>
> (a) the needs and aspirations of Maaori in relation to hauora Maaori outcomes; and
>
> (b) how the health sector is performing in relation to those needs and aspirations; and
>
> (c) the design and delivery of services and public health interventions within localities.

47. The functions of the boards are as follows:[54]

> (1) An iwi-Maaori partnership board has the following functions:

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48 Ministry of Health *Te Tiriti o Waitangi Framework Plan* (Ministry of Health, 6 May 2024) <https://www.health.govt.nz/maori-health/te-tiriti-o-waitangi-framework>.

49 Ministry of Health *Whakamaua: Maaori Health Action Plan* (Ministry of Health, July 2020) <https://www.health.govt.nz/publications/whakamaua-maori-health-action-plan-2020-2025>.

50 Ministry of Health *Pae Tuu: Hauora Maaori Strategy* (Ministry of Health, July 2023) <https://www.health.govt.nz/strategies-initiatives/health-strategies/pae-tu-hauora-maori-strategy>.

51 Standards New Zealand *Ngaa Paerewa Health and Disability Services Standard NZS 8134:2021* (Standards New Zealand, 30 June 2021) <https://www.standards.govt.nz/shop/nzs-8134202>.

52 "Vision and priorities to address Maaori health need", above n 21, at 7-8, para [36]-[42].

53 Pae Ora (Healthy Futures) Act 2022, s 29.

54 Pae Ora (Healthy Futures) Act 2022, s 30.

> (a) to engage with whaanau and hapuu about local health needs, and communicate the results and insights from that engagement to Health New Zealand:
>
> (b) to evaluate the current state of hauora Maaori in the relevant locality for the purpose of determining priorities for improving hauora Maaori:
>
> (c) to work with Health New Zealand in developing priorities for improving hauora Maaori:
>
> (d) to monitor the performance of the health sector in a relevant locality:
>
> (e) to engage with Health New Zealand and support its stewardship of hauora Maaori and its priorities for kaupapa Maaori investment and innovation:
>
> (f) to report on the hauora Maaori activities of Health New Zealand to Maaori within the area covered by the iwi-Maaori partnership board.

48. There is a recognition process for organisations wanting to perform the functions of an iwi-Maaori partnership board.[55] IMPB recognition on the recognition criteria being satisfied now sits with the Director-General of Health.[56]

49. IMPBs do not have to take a particular organisational form. For example, some entities perform these functions in addition to other separate work. The organisations that seek recognition have been developed by whaanau, hapuu and iwi working with other Maaori organisations in communities. In this sense they represent rangatiratanga interests. The partnership space for them to operate under the Pae Ora legislation as recognised IMPBs specifies what functions they will perform and support for those functions from the kawanatanga domain.

50. Organisations seeking recognition as an IMPB must determine the IMPB's membership, proposed area of operation and set out how it will work with the Maaori communities and groups in the area to fulfil the functional obligations of being a board. There are requirements for the

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55 Pae Ora (Healthy Futures) Act 2022, s 31(1)-(5).

56 Pae Ora (Healthy Futures) Act 2022, s 31(6).

organisation's constitutional and governance arrangements and the resulting board will determine its own procedures.[57]

51. Recognised boards (by Order in Council) are included in Sch 4 to the Pae Ora legislation.

52. There is an informative briefing in the document bundle supporting Mr Whaanga's evidence about IMPBs including recognition, different organisational forms used, and early work by boards.[58]

53. Community health plans were developed by the boards at the end of 2024.[59] The Tribunal heard evidence about this work including the identification of priorities, collaboration between boards regionally and feedback on draft plans.

54. In answering questions, Dr Jansen described the community health plan he was involved in preparing as a good piece of work and went on to describe monitoring by the Tuuwharetoa IMPB he works with. He spoke to the Tribunal about the importance of good information to support the monitoring function an IMPB has. That monitoring document, now filed with the Tribunal, is a valuable example of the work that IMPBs are doing to advance the health interests of the communities they act on behalf of and it includes clear identification of data/information required by the Board.[60] It appears to be an example of the kind of exercise of leadership that Professor Crampton said that he hoped to see from IMPBs in defining needs and monitoring performance.

55. Connecting this work back to the June 2024 vision and priorities for Maaori health shows achievements towards the objective of powering up communities who exercise rangatiranga in place of centralised organisations. Whaanau and hapuu voices are key to the work of IMPBs in both collecting information about hauora Maaori needs and aspirations and helping those communities to monitor the (kawanatanga)

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57 Pae Ora (Healthy Futures) Act 2022, ss 31(1)-(3).

58 Wai 2575, #M34(c) JW-23 at 207-223.

59 Wai 2575, #M34(b) JW-18 at 133-153.

60 Monitoring Report Tuuwharetoa Iwi Maaori Partnership Board, 30 April 2025, sent to the Wai 2575 distribution list on 28 May 2025.

performance of the health system and health sector entities to improve health outcomes and achieve the purpose of the Pae Ora legislation.

56. Health New Zealand's business planning, service design and monitoring processes involve IMPBs.[61] Health New Zealand must also support IMPBs, including with information.[62] There is also evidence before the Tribunal showing that the nature and extent of IMPB involvement in commissioning of services by Health New Zealand was explored between the Ministry of Health and the Minister in 2024.[63]

The Hauora Maaori Advisory Committee from 30 June 2024

57. Along with a general power to establish ministerial committees,[64] the Pae Ora legislation requires the Minister to establish a Hauora Maaori Advisory Committee to advise the Minister on any matter relating to hauora Maaori that the Minister requests. The Committee comprises eight people appointed by the Minister in consultation with the Minister for Maaori Development and is a key conduit of independent expert advice to the Minister.[65]

58. Revised terms of reference for the Committee were issued after decisions to disestablish the Maaori Health Authority[66] and Mr Whaanga's evidence and supporting documents show the recent approach and work of the Committee, including through briefing documents in early 2025 for the new Minister of Health.[67]

59. The Minister has regular scheduled meetings with HMAC and may request advice from the Committee on any issue.[68] In addition, HMAC

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61 Pae Ora (Healthy Futures) Act 2022, ss 29(c), 30(1)(c), 30(1)(e), 15, 14(1)(d), 14(1)(n), 13(a), 13(b) and 13(e).

62 Pae Ora (Healthy Futures) Act 2022, s 15(a).

63 See Wai 2575, #M35(b) JW-4 at 58, paras [18]-[21]. Further advice provided on IMPBs is included in Wai 2575, #M34(c) JW-19 at 164; Wai 2575, #M34(c) JW-20 at 178; Wai 2575, #M34(c) JW-21 at 185; Wai 2575, #M34(c) JW-22 at 199; Wai 2575, #M34(c) JW-18 at 133; Wai 2575, #M34(c) JW-23 at 207.

64 Pae Ora (Healthy Futures) Act 2022, s 87.

65 Pae Ora (Healthy Futures) Act 2022, s 89(1)-(2) and see also s 6(c)-(d).

66 Wai 2575, #M34(b) JW-10 at 96-103, setting out updated terms of reference and communication of these to the Committee.

67 Wai 2575, #M34(b) JW-14 at 104-132. This material includes descriptions of work on the Committee's population priorities.

68 Wai 2575, #M34(b) JW-11 at 99, para [3].

may also request meetings and act on its own initiative and provide advice where the Committee sees that is necessary.[69]

60. The Ministry provides Secretariat support to the Hauora Maaori Advisory Committee.[70]

61. The Committee developed a set of population priorities to assist with insight on system performance and population health trends.[71] Early reporting on these priorities is included in Mr Whaanga's bundle of documents.[72]

62. The Committee is an important and independent source of advice. Its membership and the health sector expertise it can access, through the Ministry or by independent engagement of external expertise, means it will make a significant contribution to the Minister's understanding of how the health sector is performing for Maaori. The Committee's work will in turn inform decisions by the Minister, the Ministry and Health New Zealand. The Committee's contributions arguably have greater independence than the statutorily directed Maaori Health Authority had given the legislative requirements it operated under. Mr Whaanga drew the Tribunal's attention to Crown entity legislation and associated mechanisms such as directions from the Minister[73] and ministerial letters of expectation.[74]

63. In exchanges with His Honour Judge Stone, the Presiding Officer, Mr Whaanga highlighted that, in the absence of Te Aka Whai Ora, the Committee took over and now has increased system monitoring

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69 For advice from HMAC, see Wai 2575, #M34(b) JW-13 at 104; Wai 2575, #M34(b)JW-14 at 119; Wai 2575, #M34(b) JW-9 at 95.

70 Wai 2575, at #M34(d) [46].

71 HMAC population priorities are in Wai 2575, #M34(b) JW-15 at 121; Wai 2575, #M34(b) JW-16 at 125, and Wai 2575, #M34(b) JW-17 at129.

72 Wai 2575, M34(b) at 104-132.

73 See former s 19(1)(u) of the Pae Ora (Healthy Futures) Act 2022 providing for ministerial directions relevant to organisational functions consistent with s 112 of the Crown Entities Act 2004.

74 Wai 2575, #M34(b) JW-10 at 96-103 for the Ministry of Health's briefing on updated Committee terms, as well as the updated terms themselves. See Wai 2575, #M34(b) JW-3 at 49, para [19(a)]. The Maaori Health Authority, as a Crown entity, is still subject to the Minister's expectations through mechanisms such as letters of expectation pursuant to the provisions of the Crown Entity Act. Further, see Wai 2575, #M34(b) JW-8 at 94, for a summary of how each layer (strategic, expectation setting, and agency response) interacts with one another to direct health entities in accordance with Ministerial priorities.

responsibilities which are reflected in its term of reference and letters of expectation.[75]

64. When Professor Crampton answered a question from Tribunal member Professor Frankel about the extent of independence of the Maaori Health Authority, he identified that it could advocate and speak to evidence in ways that may not align with stated government policy including, if need be, introducing tension, heated discussion, intelligence and information into policy debates. Professor Crampton compared the independence enjoyed by Te Aka Whai Ora to that of the Ministry of Health, stating that the Ministry is obliged to follow Government's lead in terms of policy settings. That might be so, but that observation does not take away from the independent role the Hauora Maaori Advisory Committee has.

65. There is no reason why the Hauora Maaori Advisory Committee cannot challenge internal Crown thinking and policy in the ways Professor Crampton identified. There is every expectation that the Minister will benefit from independent thinking by the Committee.

66. Further, in response to questions posed by His Honour Judge Stone, the Presiding Officer, on whether it is possible within the current legislative framework to provide for Te Tiriti and hauora Maaori, Professor Crampton highlighted that the key issue was not whether Te Aka Whai Ora existed or not – but the exercise of rangatiratanga in the health system. In considering whether it is possible to design these features of a health system without an independent Maaori health authority, Professor Crampton recognised that there are other ways of achieving the exercise of tino rangatiratanga and the goals of Maaori leadership and agency in healthcare from all stages of conceptualisation, design and delivery. In response to a question from counsel for the Crown, Professor Crampton explained he held a great deal of hope for IMPBs prior to reading the Crown's updated brief of evidence but did not appear to explain what

[75] Wai 2575, #M34(b) JW-10 at 96; Wai 2575, #M34(b) JW-11 at 99; Wai 2575, #M34(b) JW-12 at 103; Wai 2575, #M34(b) JW-13 at 107.

about that updated evidence detracted from his hopeful expectations for the work that IMPBs will do.

67. Some witnesses drew the Tribunal's attention to the earlier review of Te Aka Whai Ora by the Hauora Maaori Advisory Committee.[76] Mr Whaanga answered some questions about this in his evidence noting that the Committee had approached the Minister to express their concerns about progress, and on the Committee's advice, the Minister initiated the review. Essentially, however, the review is beyond the scope of this second part of the inquiry focused on the health system in lieu of a Maaori health authority. The review occurred prior to disestablishment decision-making.

68. To conclude on this point, the Committee has an important whole of health system monitoring role at the national level – including but not limited to the Ministry and Health New Zealand[77] – of services and functions impacting on hauora Maaori outcomes, and to ensure hauora Maaori targets are being achieved.[78] As highlighted above, since taking on its enhanced role, HMAC has already begun significant work on identifying population priorities to support an overall monitoring framework for Maaori health.[79] The Committee's provision of independent advice to the Minister is complemented by its whole-of system- monitoring role, as well as by the work of IMPBs.[80] The Government Policy Statement notes that Health New Zealand will need to support monitoring agencies' work in full collaboration with monitors including the Committee, and other monitors like the Ministry of Health.[81]

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76 See for example the exchanges the Tribunal had with witness Dr Chris Tooley and Dr Elana Curtis

77 Wai 2575, #M34(b) JW-12 at 99, para [9.1].

78 Wai 2575, #M34(b) JW-12 at 97, para [4]. See also the letter from the Committee Chair noting the Committee is best placed to monitor and drive measurable improvements for Maaori outcomes (Wai 2575, #M34(b) JW-12 at 103). See also Wai 2575, #M34(c) JW-24 at 266, for the Committee's role explained in the Government policy statement. Further, See Wai 2575, #M34(c) JW-19 at 169, para [10], noting the Committee recent provision of population priorities advice for monitoring – considering a life-course and whole-of-system approach to addressing Maaori health disparities.

79 Wai 2575, #M34(b) JW-13 at 108.

80 Wai 2575, #M34(c) JW-24 at 266.

81 Wai 2575, #M34(c) JW-24 at 265.

The partnership space and potential for the whole to be more than the sum of parts for an organisation or sector

69. In oral submissions Ms Te Hira, on behalf of Wai 1194/Wai 1212, Wai 2713 and Wai 2494, observed that the Maaori Health Authority operated in a partnership space under Te Tiriti principles. Rather than being solely a kawanatanga or tino rangatiratanga organisation it drew on elements of both domains.

70. With the reduction of centralised bureaucracy and redistribution of functions after disestablishment of the Authority, the Tribunal can look at the remaining health sector participants the subject of this inquiry to see if they offer potential to operate collectively in the health sector in ways that will exceed the sum of each of their parts. This way of looking at things was developed in exchanges when the Tribunal heard oral submissions. At this point in time the Tribunal can conclude this potential exists but evaluation of what is achieved will require a longer period than the one year since the 30 June 2024 changes took effect. Given the many legislative and system requirements for the participants to work together it cannot be said that this hoped for synergy is not possible or that the Maaori Health Authority had achieved something in this regard during its existence that cannot now be bettered by other sector participants over time. When seen through a Treaty lens there are cleaner demarcation lines between the domains of kawanatanga and tino rangatiratanga in the way things are currently organised, remembering that the inquiry is not focused on providers of regulated health services.

71. For example, looking at the Pae Ora legislation the Tribunal can see how IMPBs can rely on Health New Zealand to support the boards' work to monitor health system performance and report on this for each board's location. In addition to the specific reporting to Maaori on system effectiveness now required under s 16A, this builds on the previous function that the Maaori Health Authority had to report on health system performance for Maaori.[82]

[82] See the way in which sections of the Pae Ora legislation operate together. Pae Ora (Healthy Futures) Act 2022,

72. Te Aka Whai Ora also had the function of monitoring the performance of the publicly funded health sector in relation to Hauora Maaori (in cooperation with the Ministry of Health and Te Puni Kookiri.[83] Now, Health New Zealand has been given the function of providing information to the public about the performance of the publicly funded health sector.[84]

Other system-level changes in lieu of a Maaori Health Authority

Preserving expertise – transfer of people to Health New Zealand and the Ministry of Health

73. When Te Aka Whai Ora was disestablished, its functions and staff were transferred to existing agencies, primarily the Ministry of Health and Health New Zealand.[85]

74. On 31 March 2024, Te Aka Whai Ora staff were transferred under the Health Sector (Transfers) Act 1993.[86]

    74.1 Ten staff moved to Te Pou Hauora Maaori directorate in the Ministry of Health with funding for 13 positions given three roles were vacant.[87]

    74.2 270 people moved to Health New Zealand with funding for 367 positions, and those people formed the Hauora Maaori Service directorate at Health New Zealand.[88] There was evidence at the hearing of subsequent restructuring at Health New Zealand to implement decisions to operate regionally.[89]

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ss 14(1)(n), 15, 30(1)(d) and (f).

83 See prior s 19(1)(m) of the Pae Ora (Healthy Futures) Act version as at 27 July 2023, which states a function of the Maaori Health Authority to "monitor, in co-operation with the Ministry and Te Puni Kookiri, the performance of the publicly funded health sector in relation to hauora Maaori."

84 See Pae Ora (Healthy Futures) Act 2022, s 14(1)(p) amended by the Pae Ora (Disestablishment of Maaori Health Authority) Amendment Act 2024 outlining a function of Health New Zealand as to "provide accessible and understandable information to the public about services funded by Health New Zealand and the performance of the publicly funded health sector."

85 Wai 2575, #3.3.155 at [29]. Wai 2575, #M34(b) JW-1 at 2, para [3].

86 Wai 2575, #M34(b)JW-7 at 81-86. See also the written response of Mr Whaanga to questions.

87 Wai 2575, #M34(b) JW-7 at 85, para [1]-[4].

88 Wai 2575, #M34(b) JW-7 at 85, para [5]-[7].

89 For example, Wai 2575, #M63; Wai 2575, #M63(a); Wai 2575, #3.2.1260; Wai 2575, #M37.

Planning and commissioning

75. The planning and commissioning work previously done by Te Aka Whai Ora in partnership with Health New Zealand continues. The voices of Maaori communities are heard in that work through the IMPBs and Health New Zealand has inherited the expertise of former Maaori Health Authority staff to meet its obligations under the Pae Ora legislation to plan and commission services in ways that will work to address Maaori health needs along with other New Zealanders.[90]

76. In this system level review, it is not possible to say how Health New Zealand will do in coming years to meet these requirements. However, the previous functions of the Maaori Health Authority continue following redistribution and the human expertise transferred to Health New Zealand for that purpose.

Policy, strategy and monitoring functions continue at the Ministry of Health

77. As Mr Whaanga made clear in giving his evidence policy and strategy functions have continued at the Ministry in the Directorate he leads and elsewhere. These are inherent departmental functions. The statutory provisions that had been necessary to empower the Maaori Health Authority as a statutory entity separate from the Crown to do these things are not required for the Ministry.

78. Similarly, monitoring functions performed by the Ministry of Health are also an inherent departmental function. Mr Whaanga gave evidence of examples of monitoring.

A focus on outcomes and a needs-based approach to health

79. The June Cabinet paper on a vision and priorities for Maaori health need recognises explicitly:

> The coalition Government has expressed a needs-based approach to health, and acknowledges that Maaori have high health needs.[91]
>
> The Government has introduced targets for health and mental health that will focus the system on the concrete outcomes that it

[90] Pae Ora (Healthy Futures) Act 2022, s 14.

[91] "Vision and priorities to address Maaori health need", above n 21, at 3-4, para [8].

> needs to deliver for New Zealanders. This includes a population needs-based focus.[92]

80. The paper then goes on to say:

> We simply cannot meet our targets and expectations without significant shifts in Maaori health outcomes, achieved by improving how the health system partners with Maaori to understand and respond to Maaori health needs.

81. Dr Elana Curtis, in answering questions about a medical journal editorial she co-authored, confirmed there is considerable evidence about Maaori health need that can be deployed in demonstrating a case for needs-based programmes consistent with the 2024 Cabinet Office circular on needs-based service provision.[93] She expressed concern the circular would have a chilling effect on proposed programmes.

82. In response to questions, Mr Whaanga confirmed needs-based analysis is not new for the Ministry and has featured in health planning generally for over 30 years. He told the Tribunal that the Ministry expects staff to look at the requirements of the 2024 Cabinet Office circular and provide appropriately robust analysis of what is required for programme and service design to meet the requirements expected of good advice for proposed programmes.

Relevant Treaty principles

83. As submitted in Crown submissions for the first part of this priority inquiry,[94] the principles of the Treaty reflect the spirit and intent with which the parties treated with each other in 1840. The core obligations to which the Treaty and its principles give rise do not exist in isolation; they necessarily overlap, support and inform each other. Individually and collectively, they point to the task and challenge of balancing various interests.

84. Crown obligations flowing from the exchanges made under Te Tiriti o Waitangi are not absolute or unqualified. The yardstick is what is

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92 "Vision and priorities to address Maaori health need", above n 21, at 5-6, para [26] and [28].

93 Cabinet Office Circular "Needs-based Service Provision" (13 September 2024) CO 24/5. See also Wai 2575, #M34(f).

94 Wai 2575, #3.3.155 at [9]-[16].

reasonable in the circumstances.[95] The Crown is entitled to make decisions that are reasonable: that is, within the bounds of its own broad responsibilities and authority but with consideration of all the circumstances (including competing demands on funding as well as the economic and other circumstances of the day) and based on sound procedure and consideration of relevant material.

85. The Tribunal can complete this inquiry utilising principles of the Treaty identified earlier in the broader kaupapa inquiry:[96]

85.1 Tino rangatiratanga;

85.2 Equity;

85.3 Active protection;

85.4 Options; and

85.5 Partnership.

86. The principles of the Treaty seldom dictate that a single course of action must be taken. It is open to the Crown to choose from a range of Treaty-consistent options.[97]

87. Returning to the issues for inquiry in this second part of the Tribunal's priority inquiry, the first issue separates naturally into two sub-issues. The Tribunal has asked: what was developed as an alternative to the Maaori Health Authority; and, what steps were taken in developing those plans?

88. For practical purposes, the Tribunal having decided it will complete the inquiry now rather than wait any longer, the alternative, in lieu of a Maaori health authority, should be seen as the settings that were put in place to effect redistribution of functions and adjustments for IMPB entities and the Hauora Maaori Advisory Committee at the time Te Aka Whai Ora was disestablished.

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95 *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 (PC) ["*Broadcasting Assets Case"*] at 51.

96 The Treaty principles identified here are presented in the order used at p 15 of *Whakamaua, the Maaori Health Action Plan 2020-2025.*

97 *Attorney-General v New Zealand Maaori Council* [1991] 2 NZLR 129 (CA) ["Radio Frequencies Case"] per Cooke P at 135.

89. These submissions have described what that redistribution and adjustment involved. The Tribunal has already made findings in its *Hautupua* report that the decision-making process to disestablish Te Aka Whai Ora was in breach of Treaty principles and caused prejudice. Logically, that finding about process must also apply to the decision-making process for the alternative in lieu of a Maaori health authority (the second issue under inquiry here). This is because the same decision-making/same processes occurred for that as occurred for the decision to promote legislation to disestablish Te Aka Whai Ora.

90. The Crown submits it is premature for the Tribunal to decide the third issue the Tribunal is inquiring into. It is both too soon to evaluate whether Treaty consistency follows from the current settings that operate in lieu of a Maaori health authority and the Crown has decisions under active consideration about the Pae Ora legislation that may result in settings changing. In general, at a system level of review the Tribunal can see that, from 30 June 2024 after disestablishment of Te Aka Whai Ora, the Pae Ora legislation's purpose remained as before. Achievement of this purpose occurs with supporting plans, strategies and functional contributions from Health New Zealand (as an entity who inherited the expertise of former Te Aka Whai Ora staff), the Crown, as informed by the independent Hauora Maaori Advisory Committee operating under revised terms of reference, and with the actions of iwi-Maaori partnership boards representing rangatiratanga interests. This redistribution of functions occurred in ways that took over responsibility for the contributions made previously by Te Aka Whai Ora.

Aspects of the procedural history of this inquiry

Alternative plans requiring further legislation have not been pursued to date

91. An urgent claim was lodged[98] on 8 December 2023 by Janice Kuka and Lady Tureiti Moxon concerning the Crown's intention to disestablish Te Aka Whai Ora as part of the 100-day plan of the coalition government.

98 Wai 2575, #1.1.001.

92. In January 2024, the Tribunal decided to hear the claim urgently, and set a hearing for February 2024.[99] At that time the Tribunal sought information from the Crown on proposed alternative plans to address Maaori health.[100] The Crown submitted in response to this request that it was premature for it to articulate the full detail of these plans when these had not yet been worked through by Cabinet.[101]

93. The February 2024 urgent hearing was vacated[102] after the Government introduced the Pae Ora (Disestablishment of Maaori Health Authority) Bill 2024 on 28 February. The Bill was passed under urgency, received assent on 5 March and came into force on 30 June 2024.[103]

94. During the first hearing of Crown evidence for the disability phase of the Wai 2575 kaupapa inquiry, the Tribunal sought a further update from the Crown on when further information on alternative plans could be provided.[104] A written answer to the question was filed in April 2024 by then Director-General of Health Dr Sarfati, advising that the topic was the subject of a law reform process underway but that timeframes for final Cabinet decisions and introduction of amendment legislation to the House of Representatives had not been decided.[105]

95. In response to a request from the Tribunal for submissions on whether to reconvene an inquiry after enactment of the Pae Ora (Disestablishment of Maaori Health Authority) Amendment Act 2024 the Crown submitted, in March 2024, against holding either an urgent or priority inquiry:[106]

    95.1 The Cabinet decisions that had at that point been taken made it plain that improving Maaori health outcomes continued to be a Government priority.

    95.2 An urgent inquiry would have been inappropriate because

99 Wai 3307, #2.5.6 at [18].

100 Wai 3307, #2.5.3.

101 Wai 3307, #3.1.39.

102 Wai 2575, #2.6.163 at [7]-[8].

103 Pae Ora (Disestablishment of Maaori Health Authority) Amendment Act 2024.

104 Wai 2575, #2.6.168 at [21].

105 Wai 2575, #L17(l) at 2, para [8].

106 Wai 2575, #3.2.1010.

decisions were still to be made as to how best to provide for the achievement of the legislative objective of Maaori health equity under a reshaped system.[107]

95.3 The claim sought to re-open matters that were addressed in Stage One of the Tribunal's kaupapa inquiry into primary health matters and this would not be a good use of resources.[108]

96. On 8 May 2024, the Tribunal decided to hold a priority hearing into the disestablishment of Te Aka Whai Ora, explaining that the disestablishment of Te Aka Whai Ora is a high-level structural issue of the type that have already been prioritised in the Wai 2575 inquiry.[109]

97. When the priority inquiry was granted, the Tribunal determined that the scope of the priority inquiry would include the processes and steps taken by the Crown to disestablish Te Aka Whai Ora as well as the Crown's proposed alternative plans to address Maaori health outcomes following its disestablishment.[110]

98. At the same time, the Tribunal requested an update from the Crown on when relevant Cabinet decisions and the introduction of further legislation would be finalised.

99. In November 2024, following the part one hearing into whether the processes and steps taken by the Crown to disestablish Te Aka Whai Ora were in breach of the principles of the Treaty of Waitangi and resulted in prejudice,[111] the Tribunal found that a breach had occurred and made several recommendations to the Crown to address prejudice it found existed.[112]

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107 Wai 2575, #3.2.1010 at [20].

108 Wai 2575, #3.2.1010 at [17].

109 Wai 2575, #2.6.171 at [25].

110 Wai 2575, #2.6.171 at [28].

111 References to "Te Tiriti o Waitangi", "Te Tiriti", the "Treaty of Waitangi" or the "Treaty" are to both language versions of Te Tiriti/the Treaty.

112 Waitangi Tribunal *Hautupua: Te Aka Whai Ora (Maaori Health Authority) Priority Report, Part 1* (Wai 2575, 2024). See section 4.5.4.

100. In February 2025, the Tribunal sought further information from the Crown on the status and specifics of alternative plans.[113] The Crown response was that there was no further information to update the Tribunal on at that point, noting that a new Minister of Health had been appointed, and decisions had yet to be taken on the matters previously indicated to the Tribunal, including timeframes for substantive decisions.[114]

101. In March 2025, the Tribunal set out the scope of the second part of the inquiry.[115] The Tribunal then went on to note that from the Cabinet papers filed by the Crown with the Tribunal in August 2024 it had been apparent to the Tribunal that the Crown expected a Maaori Health Strategy would be finalised in December 2024 and released in early 2025. Because of this expectation about the timeframe for the Maaori Health Strategy the priority hearing time scheduled was deferred.[116] The Presiding Officer then said:

> 17. The Tribunal has signalled for some time that it wishes to review alternative strategies to address Maaori health following the disestablishment of Te Aka Whai Ora. We have already deferred the hearing of these matters. We set the new hearing for the week of 26 May 2025 in reliance on the Crown's earlier indication that its revised strategy would have been available by now. Unfortunately, this is not the case.
>
> 18. I am not inclined to defer this hearing again. To maintain the current hearing date, an indicative timetable should now be in place. I therefore set out an indicative timetable for the priority hearing as currently scheduled. …
>
> 19. The indicative timetable is predicated on the Crown making the necessary decisions on its alternative plans ahead of the hearing. As the indicative timetable suggests, the Tribunal considers that it needs to know details of the Crown's alternative plans by 5pm, Monday 14 April 2025 or earlier. The May hearing date may be at risk if the Crown's alternative plans are not known to the Tribunal by then. Of course, the Tribunal gives this indication to enable the Crown to consider whether the Crown's alternative plans will be known by then and advise the Tribunal accordingly, rather than to influence in any way the Crown's decision-making process and associated timeframes. That said, it would assist the Tribunal

113 Wai 2575, #2.6.200 at [12]-[14].

114 Wai 2575, #3.2.1240 at [2]-[4].

115 Wai 2575, #2.6.201 at [13]-[14].

116 Wai 2575, #2.6.201 at [15]-[16].

> planning for this inquiry if the Crown could keep the Tribunal and parties proactively informed of any timeframes for finalising relevant decisions and/or the introduction of relevant legislation intended to address these matters.

102. On 19 March 2025 the Crown updated the Tribunal that, at that time, it was anticipated the Hauora Maaori Strategy would be released in June 2025 and noted it was for the Tribunal to decide, in light of this, whether to reschedule the May 2025 hearing.[117] The Crown followed up with a further memorandum on 26 March 2025 providing further detail about matters it covered in its 19 March memorandum.[118]

103. The Presiding Officer next issued directions on 8 April 2025 after receipt of submissions from inquiry participants.[119] The directions assessed the likely relevance of the future Hauora Maaori Strategy before deciding that the May 2025 hearing would not be deferred.[120]

104. Recapping on this procedural history, the possibility of further legislative change was identified from early 2024. Also, from early 2024, consideration has occurred about how the Crown could use key elements of the health system settings to continue to progress Maaori health objectives. The June 2024 Cabinet decision, mentioned below, resulted.

105. Across the course of 2024, further legislative change did not emerge. With a new Minister of Health in 2025 a range of decisions have been taken on delivery in the health system.[121] The Minister has decided to review aspects of the Pae Ora legislation and this is the subject of active decision-making by the Crown at this point. Whether legislative change results that impacts on Maaori health will be announced in future. At the hearing, counsel were instructed to inform the Tribunal that legislation could be expected in the next couple of months, that the work underway is confidential and that no public announcements on the content of

117 Wai 2575, #3.2.1241 at [8]-[10] and [20]-[21].

118 Wai 2575, #3.2.1245.

119 Wai 2575, #2.6.202.

120 Wai 2575, #2.6.202 at [37]-[41].

121 Wai 2575, #3.2.1267; Wai 2575, #M65; Wai 2575, #M65(a).

reform were expected before introduction of a Bill to the House of Representatives.[122]

106. What is clear is that in June 2024, Cabinet regrouped on the vision and priorities for Maaori health in light of disestablishment of the Maaori Health Authority. At that time the Minister expected to have finalised the Hauora Maaori Strategy by the end of 2024. The approach taken in this Cabinet paper built on the elements of the system with redistributed functions following disestablishment of Te Aka Whai Ora. This was the focus of practical work for the second half of 2024 and into the first part of 2025.

107. The Tribunal decided, and reconfirmed, that it would proceed with the May 2025 hearing rather than wait longer for release of the Hauora Maaori Strategy or further law reform of the Pae Ora legislation. In these circumstances, the Crown submits, the most practical way for the Tribunal to now complete its inquiry is to take the redistributed system settings at 30 June 2024, in lieu of a Maaori health authority, and (if the Tribunal proceeds to decide issue three) evaluate their Treaty consistency in light of the Tribunal's jurisdiction under s 6(1) of the Treaty of Waitangi Act 1975.

108. The Tribunal has said that it would like to be kept informed of developments. The Crown has indicated it will update the Tribunal after decisions are taken on the Minister's present review but, as noted above, that there is no plan for public announcement of the content of any change until a Bill is introduced to the House of Representatives.

109. When the Tribunal's reporting happens, it will fall to the Crown to then consider the Tribunal's findings and recommendations.

Tribunal inquires into claims made – no persuasive onus on an inquiry participant

110. In a memorandum-directions document of 8 April the Presiding Officer indicated it is for the Crown to show its plans for alternatives in lieu of

[122] Wai 2575, #3.2.1266; Wai 2575, #3.2.1267.

Te Aka Whai Ora are Treaty compliant.[123] As a deemed commission of inquiry and inquiry body operating under its own legislation it is clear that the Tribunal inquiries into claims made to it that matters are inconsistent with Treaty principles. No inquiry participant bears a persuasive onus although all participants can be expected to contribute relevant information and submissions to assist the Tribunal to perform its function.

Tribunal panel inquorate for brief period on Tuesday 27 May 2025

111. The Tribunal was inquorate for a short period of evidence presentation on Tuesday 27 May 2025 after the lunch adjournment. This accidental omission to ensure members had returned from lunch can be met with a practical response.

112. The Crown submits that the relevant sections of the video record of proceedings and the transcript can be used by Tribunal members to obtain knowledge of what occurred in that 10–15-minute period. The Tribunal can then decide as a panel that it will receive those records as part of its inquiry documentation and proceed to deliberate on the matters discussed by the witness and with counsel during that brief period.

6 Hune | June 2025

C Linkhorn / F Dean / T Garimella
Counsel for the Crown

TO: The Registrar, Waitangi Tribunal

AND TO: Claimant Counsel

[123] Wai 2575, #2.6.202 at [37].