OFFICIAL

I TE ROOPUU WHAKAMANA I TE TIRITI O WAITANGI
IN THE WAITANGI TRIBUNAL

WAI 2575

KEI RARO I TE MANA O	te ture o te Tiriti o Waitangi 1975
IN THE MATTER	of the Treaty of Waitangi Act 1975
ME **AND**	
I TE TAKE O	te pakirehua Wai 2575 moo ngaa kereeme e paa ana ki te Health Services me Outcomes
IN THE MATTER	of the Health Services and Outcomes Kaupapa Inquiry (Wai 2575)

JOINT CLOSING SUBMISSIONS OF THE CLAIMANTS AND INTERESTED PARTIES

Dated: 3 Hune 2025

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MAY IT PLEASE THE TRIBUNAL

1. These joint closing submissions are made on behalf of the following Claimants:

   a. Evelyn Kereopa, on behalf of herself, the Kereopa whānau and members of Te Ihingārangi, Wai 762.

   b. Richard John Nathan on behalf of the Mangakāhia Hapū claims collective, Wai 861.

   c. Esme Warati Sherwin, on behalf of herself, the late Emma Gibbs-Smith, and her whānau as members of Nga Whānau o Waitangi Horotutu me Taputaputa o Pahi, Ngāti Kawa, Ngāti Rāhiri, and Ngare Raumati, Wai 1477.

   d. Te Enga Harris and Lee Harris, on behalf of themselves, and the Harris whānau, Wai 1531.

   e. April Grace on behalf of herself, the late Charlene Walker-Grace, her whānau, Ngā Wahapū o Te Rarawa o Kohai Settlement, and Te Hokingamai e te iwi o Ngāti Whātua Ngāpuhi nui tonu and members of Otangarei Marae, Wai 2206.

   f. Violet Nathan and Maringi Te Aroha Kalva Emily Pia Broughton on behalf of themselves and their whānau, Wai 2217.

   g. Bryce Aldridge, Mark Renata Smith and Russell Owen-Smith on behalf of Ngāti Pakahi, Wai 2377.

   h. Jane Stevens on behalf of the late Nicholas Taiaroa Macpherson Stevens, her whānau, Ngai Tahu and all Māori suffering from mental illness, Wai 2671.

   i. Susan Taylor on behalf of the late Georgia-May Morgan MacBeath, her whānau and all Māori suffering from mental illness, Wai 2729.

j. John Kearns and Maeva Kearns, on behalf of the Kearns whānau, Wai 2747.

k. Michael John Williams and Jessica Williams, on behalf of themselves, their whānau and members of Ngaitūpango, Wai 2776.

l. Kahura Watene, on behalf of himself and the Watene whānau, Wai 2778.

m. Tasilofa Huirama on behalf of the late Ziporah Grace Huirama, her whānau, as members of Ngāti Ueoneone and Ngāti Tautahi of Ngapuhi, Wai 2890.

n. Malcolm Kingi, on behalf of himself and Ngāi Tahu ō Mōhaka Waikare, Wai 2894; and

o. Stephanie August on behalf of the late Robert Charles William James Farrar, and her whānau, and all Māori rangatahi suffering from mental illness, Wai 3096.

(**"Claimants"**)

2. These joint closing submissions are also filed on behalf of the following Interested Parties:

a. Robert Gabel, on behalf of Ngāti Tara, Wai 1886.

b. Jasmine Cotter-Williams, on behalf of herself and her whānau, Wai 2063; and

c. Violet Walker on behalf of herself, the late Nuki Aldridge, her whānau and members of Ngāti Uru and Te Tahawai hapū, Wai 2382.

(**"Interested Parties"**)

INTRODUCTION

3. The Tribunal set the scope of stage two of the Priority Inquiry into the disestablishment of Te Aka Whai Ora, within the Health Services and Outcomes Kaupapa Inquiry (Wai 2575) as addressing three questions:[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; and

   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?

4. During the hearing, evidence and submissions were made in respect of what the alternative plans are, when they were put in place and what steps were taken by the Crown to develop them. In terms of determining what the actual "plans" are, Dr Jansen provided a useful summary that they include the:[2]

   a. Iwi-Maaori Partnership Boards ("**IMPBs**")

   b. Hauora Māori Advisory Committee to the Minister of Health ("**HMAC**").

   c. reallocation of functions performed previously by Te Aka Whai Ora, primarily within the Manatuu Hauora and Te Whatu Ora.

   d. the strategy and planning instruments in place that are required by the Pae Ora (Healthy Futures) Act 2022 ("**Pae Ora Act**"); and

[1] Waitangi Tribunal, *Memorandum-Directions of Judge D Stone Concerning the Te Aka Whai Ora Priority Inquiry* dated 6 March 2025, Wai 2575, #2.6.201, at 3-4.
[2] Dr R. Jansen, *Brief of Evidence of Dr Rawiri Jansen* dated 12 May 2025, Wai 2575, #M23(b) at [14].

e. current actions/priorities under those strategies and plans.

5. Counsel supports the submissions of Whaia Legal that all these “plans” were either in place prior to the Pae Ora (Disestablishment of the Maori Health Authority) Amendment Act 2024 (“**Amendment Act**”) or were brought about by the Amendment Act. Meaning that the steps that were taken to develop the plans, and the process(es) undertaken by the Crown in developing these actions predate the Amendment Act. Accordingly, it is our submission that the plans have been operational since at least 30 June 2024 and the findings and recommendations of this Tribunal in *Hautupua* in respect of the issue of whether the Crown’s process for disestablishing Te Aka Whai Ora was Te Tiriti o Waitangi (“**te Tiriti**”)/the Treaty of Waitangi (“**Treaty**”) compliant is applicable.

6. The relevant findings are that, in disestablishing Te Aka Whai Ora, the Crown, through its process:

> failed, once the coalition Government was formed and sworn in, to take account of its Tiriti / Treaty obligations as the Crown and modify its electoral pledges in the 100 Day Action Plan in light of them, in breach of the principle of good government;
>
> failed to recognise and respect tino rangatiratanga by deciding to disestablish Te Aka Whai Ora without consulting Maaori, and in the face of significant objection from Maaori, thereby breaching the principle of tino rangatiratanga;
>
> failed to discharge its duty to consult and be sufficiently informed, thereby breaching te Tiriti / the Treaty principle of partnership;
>
> failed to discharge its duty of active protection to Maaori, by failing to recognise and respect tino rangatiratanga and the right of Maaori to self-determine what is best for them for hauora Maaori ; and
>
> failed to follow its own processes for the development and implementation of legislative reform, thus further breaching te Tiriti / the Treaty principle of good government.

7. Accordingly, counsel will not address the process that the Crown undertook to develop its plans as in our submission, as the Claimants and Interested Parties rely on the earlier findings and recommendations of this Tribunal. Instead, these submissions seek to address the remaining question, namely, are the Crown's "alternative plans" to address Maaori health in lieu of a Maaori health authority consistent with Te Tiriti and its principles?

8. In answering this question, we first turn to the relevant principles, that of tino rangatiratanga, partnership,[3] active protection,[4] options, equity, and the duty to consult[5], and say that the Crown has failed to provide an alternative that is a comparable alternative to Te Aka Whai Ora that ensures that hauora Maaori is provided for. Further, it has failed in its actions in respect of an alternative, to preserve the right for Maaori to exercise tino rangatiratanga over health services, failed to actively protect kaupapa Maaori service provision and increase the Maaori workforce and as a result, today, Maaori are more likely to experience harm and health inequity.

TRIBUNAL JURISPRUDENCE

9. As a starting point, the below principles are relevant to the question of whether the "alternative plans" are te Tiriti/Treaty compliant and include the principles of tino rangatiratanga, active protection, partnership, equity, options and the duty to consult.

Tino Rangatiratanga

10. The Treaty principle of rangatiratanga involves a Crown guarantee for Maori to exercise authority and decision-making over their taonga and affairs to the

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[3] *Joint Amended Statement of Claim for Wai 762, 861, 1477, 1531, 1886, 2063, 2206, 2217, 2377, 2382, 2671, 2729, 2747, 2776, 2778, 2890, 2894, and 3096* dated 23 July 2024, Wai 762, #1.1(q), at [24]-[28].
[4] *Joint Amended Statement of Claim for Wai 762, 861, 1477, 1531, 1886, 2063, 2206, 2217, 2377, 2382, 2671, 2729, 2747, 2776, 2778, 2890, 2894, and 3096* dated 23 July 2024, Wai 762, #1.1(q), at [68]-[73].
[5] *Joint Amended Statement of Claim for Wai 762, 861, 1477, 1531, 1886, 2063, 2206, 2217, 2377, 2382, 2671, 2729, 2747, 2776, 2778, 2890, 2894, and 3096* dated 23 July 2024, Wai 762, #1.1(q), at [29]-[34].

fullest extent possible.[6] This must be in a context-specific manner[7] that aligns with tikanga.[8] Rangatiratanga itself is a taonga.[9] In *He Whakaputanga me Te Tiriti*, the Tribunal found in regards to the agreements reached under te Tiriti o Waitangi in 1840 that, among other factors:[10]

a. The rangatira who signed te Tiriti did not cede sovereignty, nor the authority to make and enforce law over their people and territories.

b. Rangatira agreed to share power and authority with Britain over their respective peoples; and

c. Rangatira consented to te Tiriti on the basis that they would be equals with the Governor and have different roles in different spheres of influence.

11. The Tribunal in *Te Paparahi o Te Raki* further emphasised that in accordance with Te Tiriti, Maaori were to have their own authority in their sphere of influence equal to that of the Crown in its sphere, and where questions of relative authority rose, they were to be negotiated through discussion and agreement between parties.[11] Counsel note with caution the wider application of the findings of *Te Paparahi o Te Raki*, as the findings were applicable in this instance to a specific district. However, it is submitted that it is plausible to extend the reading of this finding to all who signed the Treaty, as the meaning and rationale given to rangatira throughout the motu would have been the same, or similar, to the northern rangatira.

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[6] Waitangi Tribunal, *Haumaru: The COVID-19 Priority Report* (Wai 2575, 2023), at 41.
[7] Waitangi Tribunal, *Haumaru: The COVID-19 Priority Report* (Wai 2575, 2023), at 41-42.
[8] Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019), at 28.
[9] Matike Mai Aotearoa, *He Whakaaro Here Whakaumu Mo Aotearoa: The Report of Matike Mai Aotearoa – The Independent Working Group on Constitutional Transformation* dated January 2016, at 112.
[10] Waitangi Tribunal, *He Whakaputanga me te Tiriti: The Declaration and the Treaty* (Wai 1040, October 2014), at xxii.
[11] Waitangi Tribunal, *Tino Rangatiratanga me te Kawanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry, Part I* (Wai 1040, 2022), at 69.

12. Rangatiratanga tempers the Crown's kaawanatanga right to change its policies and resource allocations.[12] This principle guarantees Maaori the right to choose how or through which organisations they express their tino rangatiratanga.[13] Tino rangatiratanga also provides for Maaori self-determination and mana motuhake in the design of health care.[14] Tino rangatiratanga over hauora Maaori encompasses Maaori organisations and their models of care, and Maaori people who need to access their services.[15] Importantly, the exercise of rangatiratanga is weakened by exclusion of Maaori health organisations from health sector governance.[16] Ad hoc Maaori advisory committees do not and cannot be a viable substitute for direct communication with Maaori organisations representing the rangatiratanga of Maaori communities.[17]

Active Protection

13. The Crown has a duty to actively protect the Treaty rights and interests of Māori,[18] to the fullest extent reasonably practicable.[19] This means the Crown both cannot interfere with Maaori tino rangatiratanga (whether over people, lands or taonga), and must positively support it, only as desired by Maaori.[20] The Tribunal in *Napier Hospital* accepted that:[21]

> The various components of customary health knowledge and healing practice can be argued to constitute intangible taonga or cultural assets. The connect with fundamental values, in particular, the

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[12] Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001), at 249.
[13] Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019), at 28.
[14] Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019), at 163.
[15] Waitangi Tribunal, *Haumaru: The COVID-19 Priority Report* (Wai 2575, 2023), at 43.
[16] Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001), at 317.
[17] Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001), at 317.
[18] Waitangi Tribunal, *He P[aa]harakeke, he Rito Whakak[ii]kinga Wh[aa]ruarua: Oranga Tamariki Urgent Inquiry* (Wai 2915, 2021), at 19.
[19] Waitangi Tribunal, *K[aa]inga Kore: The Stage One Report of the Housing Policy and Services Kaupapa Inquiry on M[aa]ori Homelessness* (Wai 2750, 2023), at 87.
[20] Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe P[oo]tae Claims* (Wai 898, 2023), Vol 1, at 211.
[21] Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001), at 49.

concepts of mauri (life essence) and wairua (spirituality). The taonga include three general types of resource:

- associations of place, such as wai tapu (protected sources of water);
- access to materials used for healing, such as rongoa (medicinal flora); and
- specialist knowledge of healing, in particular the technical and spiritual knowledge possessed by tohunga or traditional healers. Commonly, such taonga were and are known within particular hapu or groups of hapu. How ever, to the extent that Maaori healing knowledge and practice have evolved into a more generalised specialism, their status is no less valid as taonga. Whether of local or wider currency, such taonga are subject to a duty of protection by the Crown.

14. Accordingly, Kaupapa Maaori Service provision, access to healing materials such as rongoaa and specialist knowledge such as toohunga are taaonga[22] Furthermore, vulnerable taaonga, especially where the vulnerability is attributable to Crown treaty breaches obliges the Crown to take "especially vigorous action" in its active protection of that taaonga.[23] Furthermore, as stated by the Crown in their opening submissions, the yardstick for the protective obligations flowing from te Tiriti, is what is reasonable in the circumstances.[24] Counsel highlights the remainder of the *Broadcasting Assets* decision where the Court stated:[25]

> While the obligation of the Crown is constant, the protective steps which it is reasonable for the Crown to take change depending on the situation which exists at any particular time…if …a taonga is in a vulnerable state, this has to be taken into account by the Crown in

[22] Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001), at 49.
[23] *New Zealand M[aa]ori Council v Attorney-General* [1994] 1 NZLR 513 at 517, Wai 2575, #M47 [Tab 4, at 10].
[24] Crown Law, *Opening Submissions for the Crown – Part Two of Priority Inquiry* dated 23 April 2025, Wai 2575, #3.3.176, at [7].
[25] *New Zealand M[aa]ori Council v Attorney-General* [1994] 1 NZLR 513 (PC) ["Broadcasting Assets Case"], Wai 2575, #M47 [Tab 4, at 6].

> deciding the action it should take to fulfil its obligations and may well require the Crown to take especially vigorous action for its protection. This may arise, for example, if the vulnerable state can be attributed to past breaches by the Crown of its obligations, and may extend to the situation where those breaches are due to legislative action. Indeed any previous default of the Crown could, far from reducing, increase the Crown's responsibility.

15. Accordingly, active protection requires that the Crown acts to achieve equitable outcomes for Maaori, through facilitating services and informing itself of Maaori needs and outcomes.[26]

Partnership

16. The principle of partnership comes from the Treaty's basic objective of creating "the framework for two peoples to live together in one country,"[27] by providing protections for tino rangatiratanga. The principle of partnership thereby applies to Maori collectively, not just iwi authorities.[28] A sense of Pakeha and Maori cultures "enriching and informing the other" is integral to partnership.[29] Partnership is a right derived from te Tiriti directly and means, as treaty partners, Maori and the Crown should move forward together and beside one another. They are to negotiate and manage their individual spheres of authority but should also negotiate and work together when their spheres intermingle.[30]

17. It is not for the Crown to decide what Maori interests are and where the sphere of tino rangatiratanga ends – that is for Maori and the Crown to negotiate. The Crown is rather under a duty to engage with Maori, not just consult, on how rangatiratanga should be recognised and, where agreed, how to give effect to it in New Zealand's law. Similarly, the Crown is obliged to include Maori in

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[26] Waitangi Tribunal, *Haumaru: The COVID-19 Priority Report* (Wai 2575, 2023), at 43.
[27] Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001), at 48.
[28] Law Commission, *Justice: The Experiences of Maori Women* (NZLC R53, 1999) at [372].
[29] Waitangi Tribunal, *The Wananga Capital Establishment Report* (Wai 718, 1999), at xi.
[30] Waitangi Tribunal, *Tino Rangatiratanga me te Kawanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry, Part I* (Wai 1040, 2022), at 70.

partnership when making decisions of law that may affect or impact Maori and Maori communities.[31] The Te Paparahi o te Raki Tribunal found that the Crown will not have met the threshold for partnership if they have left Maori feeling disempowered or trapped in processes that do not in substance reflect true partnership.[32]

18. In this regard, the Crown and Maaori must work in partnership as co-designers of the governance, delivery, and monitoring of the health system and health services which Maaori may access, in a manner that fully recognises their tino rangatiratanga.[33] This applies to both mainstream and Kaupapa Maaori services. Co-design is more than Maaori consultation on a Crown design, and likely includes Maaori involvement in both policy design and implementation.[34] Consultation is sometimes the very least of the Crown's Treaty duty.[35] Where Maaori will be the consumers of a Crown system and their buy-in is critical, it is crucial for the Crown to involve Maaori at an early conceptual stage, rather than consultation at the end. For example, it breaches the Crown's Treaty obligations for the Crown to draft policy and afterwards consult with [Maaori] claimants.[36] Maaori engagement should be much more than limited consultation especially where a Crown policy affects only Maaori.[37] Furthermore, partnership in the hauora Maaori context requires enabling Maaori perspectives to influence the delivery of health services to Maaori in a manner that does not impose a model on Maaori communities, but rather supports their own development in a tikanga-

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[31] Waitangi Tribunal, *Tino Rangatiratanga me te Kawanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry, Part I* (Wai 1040, 2022), at 62.
[32] Waitangi Tribunal, *Tino Rangatiratanga me te Kawanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry, Part I* (Wai 1040, 2022), at 63.
[33] Waitangi Tribunal, *Haumaru: The COVID-19 Priority Report* (Wai 2575, 2023), at 42.
[34] Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019), at 141.
[35] Waitangi Tribunal, *Report on Whakatika ki Runga, a Mini-Inquiry Commencing Te Rau o te Tika: The Justice System Inquiry* (Wai 3060, 2023), at 23.
[36] Waitangi Tribunal, *Report on Whakatika ki Runga, a Mini-Inquiry Commencing Te Rau o te Tika: The Justice System Inquiry* (Wai 3060, 2023), at 45-46.
[37] Waitangi Tribunal, *Report on Whakatika ki Runga, a Mini-Inquiry Commencing Te Rau o te Tika: The Justice System Inquiry* (Wai 3060, 2023), at 56-57.

affirming way.[38] Partnership also requires Maaori employment in the health sector workforce.[39]

Equity

19. The Treaty principle of equity imposes an obligation on the Crown to ensure that Maaori do not suffer inequity.[40] Equity under Te Tiriti has been articulated as both formal and substantive equality, namely equality of process, outcomes and autonomy.[41] In the hauora Maaori context, although the Tribunal in the Napier hospital accepted that beneficial health outcomes cannot be assured for individual Maaori, the principle of equity means that:

   a. Maaori are assured of equal *standards* of healthcare;[42] and

   b. a general equality of health outcomes for Maaori as a whole.[43]

20. This principle also broadly guarantees freedom from discrimination, whether conscious or not.[44] In *Haumaru,* this Tribunal has noted a Crown duty to actively address racism both personal, institutional and intersectional oppression.[45]

Options

21. The principle of options enables Maaori to choose between traditional ways, non-Maaori ways, or both.[46] Under this principle, the Crown is obliged to provide Maaori with sufficient options to express their customary rights.[47] In applying this to the present inquiry, whether Maaori choose to access Kaupapa Maaori

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[38] Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001), at 59.
[39] Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001), at 61.
[40] Waitangi Tribunal, *He P[aa]harakeke, he Rito Whakak[ii]kinga Wh[aa]ruarua: Oranga Tamariki Urgent Inquiry* (Wai 2915, 2021), at 21.
[41] TJ Hearn, *The Economic Rehabilitation of M[aa]ori Military Veterans* dated 15 May 2018, Wai 2500, #A248, at 5-6, and Waitangi Tribunal, *Haumaru: The COVID-19 Priority Report* (Wai 2575, 2023), at 43.
[42] Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001), at xxvii.
[43] Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001), at xxvii.
[44] Waitangi Tribunal, *Haumaru: The COVID-19 Priority Report* (Wai 2575, 2023), at 43.
[45] Waitangi Tribunal, *Haumaru: The COVID-19 Priority Report* (Wai 2575, 2023), at 43.
[46] Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* (Wai 22, 1988), at 195.
[47] Waitangi Tribunal, *The Marine and Coastal Area (Takutai Moana) Act 2011 Inquiry Stage 2 Report* (Wai 2660, 2023), at 15.

Services or mainstream healthcare services, tino rangatiratanga rights in respect of the choice of services exists.[48] The Crown is therefore obliged to ensure the survival of KMS in a manner that ensures sufficient options for access, where and when Maaori require. Importantly, the New Zealand Health Strategy echoes this sentiment, in that the principle of options means "providing for and properly resourcing kaupapa Maaori services".[49]

The Duty of Consultation

22. Consultation is a duty arising as an expression of the te Tiriti principles of partnership and active protection.[50] This duty is in recognition that kaawanatanga is "subject to the limitations of the special interests of tino rangatiratanga", making consultation vital to the Treaty and its spirit.[51] Accordingly, the Crown must also ensure agencies exercising delegated authority consult Maaori to the Treaty standard.[52] "The duty to consult is central to good faith partnership."[53]

23. A Treaty conception of consultation requires the Crown to do more than merely inform or explain.[54] It requires sufficient time and genuine effort, as well as the Crown adequately informing Māori to enable provision of intelligent and useful responses.[55] Where Treaty obligations are engaged, the Crown must usually separately and specifically consult with Māori, outside of open public

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[48] Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry,* (Wai 2575, 2023), at 182.
[49] Manat[uu] Hauora, *New Zealand Health Strategy 2023* (Wellington, Ministry of Health, 2023), at 17.
[50] Waitangi Tribunal, *The Ngai Tahu Sea Fisheries Report 1992* (Wai 27, 1992), at 237; Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001), at 66-67.
[51] Waitangi Tribunal, *Report of the Waitangi Tribunal on Claims Concerning the Allocation of Radio Frequencies* (Wai 26, Wai 150, 1990), at 42.
[52] Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001), at 241.
[53] Waitangi Tribunal, *The M[aa]ori Wards and Constituencies Urgent Inquiry Report* (Wai 3365, 2024), at 18.
[54] Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001), at 70.
[55] Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001), at 71.

consultation.[56] Crown consultation with Maaori should take a bicultural framework,[57] which is itself determined in consultation with Maaori.[58]

24. The Crown is particularly required to consult Maaori about major changes in the status of a health service institution that is important to a sizeable community,[59] and on proposals to substantially change the range or location of health services.[60] The Crown must also consult Maaori where a health service is statutorily required to investigate and assess health needs, even where that statute does not specifically mention Maaori.[61] The Crown must consult with Maaori in the design and provision of health services.[62] This is indispensable for the appropriate design of bicultural and equitable health service options.[63] The equitable delivery of health services requires consultation with Maaori accessing those services,[64] for example specifically with taangata whaikaha as a distinct group of service users with distinct needs.

ARE THE PLANS TE TIRITI COMPLIANT

Introduction

25. The submission of the Claimants and Interested Parties is that the plan that was implemented, as set out above at [4], continues to fail to provide a comparable replacement to Te Aka Whai Ora. Furthermore, there has been little effort to reduce or to mitigate the causes of health inequities faced by Maaori in the (nearly) eighteen months since the Amendment Bill was passed. In many cases, the actions of the Crown have made things worse for Maaori and inequities have

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[56] Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001), at 72.
[57] Waitangi Tribunal, *Te Wh[aa]nau o Waipareira Report* (Wai 414, 1998), at 224.
[58] Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001), at 73.
[59] Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001), at 68.
[60] Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001), at 241.
[61] Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001), at 69.
[62] Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019), at 28.
[63] Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001), at 67.
[64] Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wai 692, 2001), at 67.

proliferated and continue to do so. Below we traverse four aspects of the alternative plans that are prejudicial to the Claimants and Interested parties:

a. The Loss of Tino Rangatiratanga, Maaori Leadership and Kaupapa Maaori Service Development.

b. Wider Workforce Issues.

c. Inadequate Monitoring of Hauora Maaori Services; and

d. Inadequate Ongoing Engagement and Consultation with Maaori.

26. The submissions of the Claimants and Interested Parties is that the plan and the policies relied upon by the Crown are not te Tiriti/Treaty compliant, and do not come close to being a comparable alternative to Te Aka Whai Ora.

The Loss of Tino Rangatiratanga, Maaori Leadership and Kaupapa Maaori Service Development

27. The establishment of Te Aka Whai Ora was the Crown giving Maori the right to exercise tino rangatiratanga as they promised in te Tiriti. Its disestablishment stripped Maori of their right to exercise tino rangatiratanga in their sphere of influence, without negotiation and discussion, through the removal of a body with the clear intention of indigenising the healthcare system and providing Maori with the tools necessary to achieve healthcare rangatiratanga.[65] The disestablishment also brought with it the removal of the governing body who had a collective knowledge of te ao Maori, tikanga Maori and whanau-centred community approaches to Hauora Maori.[66] The issues that arise with the disestablishment concern the repudiation by the Crown of their obligations to Maori. This repudiation hinders the ability of Maori to lead their response to addressing health inequities experienced through mainstream service provision.

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[65] Te Aka Whai Ora, *Te Aka Whai Ora Statement of Intent* dated September 2022, accessed at <https://www.tewhatuora.govt.nz/assets/Uploads/Te-Aka-Whai-Ora-Statement-of-Intent.pdf>, at 27.
[66] Te Aka Whai Ora, *Te Aka Whai Ora Statement of Intent* dated September 2022, accessed at <https://www.tewhatuora.govt.nz/assets/Uploads/Te-Aka-Whai-Ora-Statement-of-Intent.pdf>, at 38.

This, in part, is due to the approach of the incumbent Government in their interpretation of their Treaty obligations.

Te Aka Whai Ora being the best place to make for Maori, by Maori decisions

28. The formation of Te Aka Whai Ora allowed Maori to exercise their rangatiratanga on health-based issues.[67] In his speech to Parliament, Hon Peeni Henare acknowledged that the status quo did not work for Maori and has not for the past 20 or 30 years.[68] To him, the establishment of Te Aka Whai Ora was the beginning of addressing health inequities that had harmed Maori for decades.[69] It was clear from the Government of the day that the intention was to strengthen the Maori response to the disparities faced in the traditional healthcare system.[70] This intention was present in the purpose section of the empowering legislation.[71]

29. At the heart of the statement of intent of Te Aka Whai Ora was the goal to enable tino rangatiratanga and mana Motuhake in Maori healthcare.[72] This shift to acknowledging the rangatiratanga of Maori to determine their own means of healthcare was an effort by the Crown to take a different approach.

30. In their evidence in the last phase of this urgent inquiry, Dr Came and Professor McCreanor stated:[73]

> Te Aka Whai Ora is a rare expression of tino rangatiratanga within the Crown. Their disestablishment, effectively the removal of Maori leadership, compromises the ability of the health sector to uphold te Tiriti.

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[67] (7 June 2022) 760 NZPD 10160.
[68] (7 June 2022) 760 NZPD 10164.
[69] (7 June 2022) 760 NZPD 10165.
[70] Hon P Henare, *Te Aka Whai Ora and Pae Ora Act reforms on track to deliver real change for Maori* (Press Release, Wellington, dated 3 August 2023).
[71] Pae Ora (Healthy Futures) Act 2022, s 3(b), as at 27 July 2023 (*Repealed*)
[72] Te Aka Whai Ora, *Te Aka Whai Ora Statement of Intent* dated September 2022, accessed at <https://www.tewhatuora.govt.nz/assets/Uploads/Te-Aka-Whai-Ora-Statement-of-Intent.pdf>, at 7.
[73] Dr H Came, Prof T McCreanor, *Joint Unsworn Affidavit of Professor Tim McCreanor and Dr Heather Came,* dated 20 February 2024, Wai 2575, #M25, at [25].

31. They further acknowledged the unique position that Te Aka Whai Ora had in bringing cultural expertise to Maori communities,[74] backed by the call from indigenous communities to have indigenous-led health policies, linking indigenous well-being with identity, connection, balance and self-determination.[75] This koorero was advanced by other witnesses including Dr Elana Curtis, who said that:[76]

> Te Aka Whai Ora creates a stronger platform to have Maori voices heard and acted on. The establishment of Te Aka Whai Ora is the Crown's acknowledgement of the need to do things differently to deliver healthcare, and to honour the centrality of the principles of Te Tiriti o Waitangi- Tino Rangatiratanga, Partnership, Active Protection, Equity, and Options to realise this change.

32. The removal of Te Aka Whai Ora was in effect a removal of the right to exercise tino rangatiratanga. This was acknowledged by Dr Came and Professor McCreanor, who stated about the disestablishment legislation that:[77]

> [t]he Disestablishment Act is likely to be profoundly damaging to Crown relationships with Maaori. It failed to respect Maaori tino rangatiratanga, Maaori expertise and maatauranga Maaori.

33. As noted by Dr Came and Professor McCreanor, Te Aka Whai Ora presented Maori with a once in a lifetime opportunity for Maori to express their tino rangatiratanga to address Maori health injustice and enhance outcomes for all people in Aotearoa. Disestablishment without a clear replacement has led to regressive measures and has done nothing to improve the health outcomes of Maori.[78] It is submitted that the closure of Te Aka Whai Ora not only led to a

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[74] Dr H Came, Professor McCreanor, *Joint Unsworn Affidavit of Professor Tim McCreanor and Dr Heather Came,* dated 20 February 2024, Wai 2575, #M25, at [34].
[75] Dr H Came, Prof T McCreanor, *Joint Unsworn Affidavit of Professor Tim McCreanor and Dr Heather Came,* dated 20 February 2024, Wai 2575, #M25, at [30].
[76] Dr E T Curtis, *Affidavit of Elana Curtis* dated 20 February 2024, Wai 2575, #M27, at [21].
[77] Dr H Came, Prof T McCreanor, *Joint Brief of Evidence of Dr Heather Came and Professor Tim McCreanor* dated 4 April 2024, Wai 2575, #M36, at [22].
[78] Dr H Came, Prof T McCreanor, *Joint Brief of Evidence of Dr Heather Came and Professor Tim McCreanor* dated 4 April 2024, Wai 2575, #M36, at [26].

removal of a modern, innovative expression of tino rangatiratanga, but also led to a degradation of the relationship between the Crown and Maaori. A loss of the authority regressed evidenced-based efforts to address Maori health inequities, made worse by no clear replacement plan by the Crown.

Te Aka Whai Ora and indigenous leadership

34. In the report on Stage One of the Health Services Kaupapa Inquiry, the Tribunal recommendations for what ultimately became Te Aka Whai Ora were in observance of tino rangatiratanga and mana motuhake.[79] The Tribunal further observed that these recommendations were advanced as the Crown "must do better in meeting its obligations to Maori arising out of the Treaty relationship."[80] A part of this obligation must extend to ensuring that indigenous leadership is supported to lead and respond to Maori health inequities.

35. It has become a habit of this incumbent Government to misinterpret their Treaty obligations. For instance, in response to the Treaty Principles Bill, an open letter from te reo Maori specialists condemned the interpretation that the Government have ascribed to the principles of te Tiriti, that their interpretation of recent legislation such as the proposed Treaty Principles Bill are "based on extremely inaccurate translation of te Tiriti o Waitangi."[81] Dr Came and Professor McCreanor noted that Maori were underrepresented in senior leadership roles across the health sector, and that senior appointments were not considerate of cultural or Treaty expertise.[82]

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[79] Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa* Inquiry (Wai 2575, 2023), at 165.
[80] Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa* Inquiry (Wai 2575, 2023), at 165.
[81] Waatea News, *An open letter has been sent to the Government expressing significant concerns over its proposed Treaty Principles Bill* dated 4 July 2024, accessed at <https://waateanews.com/2024/07/04/an-open-letter-has-been-sent-to-the-government-expressing-significant-concerns-over-its-proposed-treaty-principals-bill/>.
[82] Dr H Came, Prof T McCreanor, *Joint Unsworn Affidavit of Professor Tim McCreanor, Dr Heather Came,* dated 20 February 2024, Wai 2575, #M25, at [22].

36. They noted that the establishment of Te Aka Whai Ora addressed some concerns in this respect:[83]

> To address health inequities requires and uphold Te Tiriti requires Maori input into decision-making at all levels. Te Aka Whai Ora was a structural measure to enable Maori leadership within the health sector. The organisation is (mainly) comprised of people derived from Maori communities, who have an understanding of Maori needs and are in the best position to allocated and distribute resources equitably to Maori communities. The removal of Te Aka Whai Ora will further marginalise Maori in strategic health decision-making and to improve Maori health outcomes.

37. Many of the functions of Te Aka Whai Ora were transferred to Te Whatu Ora. It is submitted to be concerning that system leadership has defaulted back to the systems that have perpetuated systemic issues without adopting clear Maori leadership within them. Maori leadership and control of Maori health is the true expression of tino rangatiratanga,[84] and any reversion back to the Crown must be seen as an attack on tino rangatiratanga.

38. Dr Came and Professor McCreanor share concern with these functions defaulting back to Te Whatu Ora:[85]

> Given the Ministry's track record, in relation to failing to address health inequities, institutional racism or uphold Te Tiriti, what has changed since 2019 to now make the Ministry well-placed or competent to provide systems leadership for Maaori health?

39. The removal of indigenous voices from the table does not cease with the removal of Te Aka Whai Ora. To ensure the voice of Maori remain embedded in the systems that affect them, more must be done to retain and increase the

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[83] Dr H Came, Prof T McCreanor, *Joint Unsworn Affidavit of Professor Tim McCreanor, Dr Heather Came,* dated 20 February 2024, Wai 2575, #M25, at [24].
[84] Dr H Came, Prof T McCreanor, *Joint Brief of Evidence of Dr Heather Came and Professor Tim McCreanor* dated 12 May 2025, Wai 2575, #M60, at [16].
[85] Dr H Came, Prof T McCreanor, *Joint Brief of Evidence of Dr Heather Came and Professor Tim McCreanor* dated 12 May 2025, Wai 2575, #M60, at [50].

number of Maori at the decision-making table of Te Whatu Ora. Without Maori leadership, at the helm risks undoing the positive steps to address inequities faced in the health system. Counsel tautoko the koorero of Dr Came and Professor McCreanor in this regard, where they state:[86]

> We believe the Health New Zealand would benefit from a minimum of 50% representation of Maaori on their board. All board members need to have relevant political and cultural competencies to fulfil their roles. This means having done comprehensive te Tiriti o Waitangi, equity and/or antiracism training within the last five years. This is an essential developmental step in addressing systemic health inequities, institutional racism and preventing further te Tiriti breaches.

The Role of Iwi Maaori Partnership Boards

40. The government proposed to put greater reliance on IMPBs to engage with whanau, hapuu and iwi at a local level, in line with the previous Minister's health localism strategy.[87]

41. The Pae Ora Act prescribed that IMPBs function as a local-level monitoring body. [88] Since disestablishment, the IMPBs now report to Te Whatu Ora as an oversight body. The intention with disestablishment was to shift Te Aka Whai Ora operations to Te Whatu Ora while increasing the capability and capacity of IMPBs over time.[89] The utilisation of IMPBs themselves cannot be said to breach the Crown's Treaty obligations. To the contrary, proper utilisation of IMPBs could empower tino rangatiratanga at a local level.[90] However, the

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[86] Dr H Came, Prof T McCreanor, *Joint Brief of Evidence of Dr Heather Came and Professor Tim McCreanor* dated 12 May 2025, Wai 2575, #M60, at [31].
[87] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d), at [52]-[56].
[88] Pae Ora (Healthy Futures) Act 2022, s 30(1).
[89] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, #M34(b) [Tab 4, 55].
[90] Dr H Came, Prof T McCreanor, *Joint Brief of Evidence of Dr Heather Came and Professor Tim McCreanor* dated 12 May 2025, Wai 2575, #M60, at [36]-[41].

method of control and forced subservience placed onto IMPBs limit the true expression of tino rangatiratanga.

42. In his evidence, Dr Jansen noted that the Crown has no intention of correctly utilising IMPBs, and that the current Maori health strategy in lieu of Te Aka Whai Ora did nothing more than re-shuffle the system without thought for the wider picture. He stated that this reallocation shows a clear intention from the Crown to return to the status quo.[91] Dr Jansen further notes regarding Te Aka Whai Ora that:

> In its short time in existence, Te Aka Whai Ora was influential. It was able to influence and drive not just the strategies, policy and planning within the health system, but also the operational implementation of those strategies and plans. In my view, this is a critical point and one that has been significantly diminished in the watered down framework that the Crown now has in place.

43. In the presentation of his evidence on 27 May 2025, Dr Christopher Tooley identified that the "only tools left in a toolbox that has been gutted".[92]

44. The current ambit of IMPBs is outlined in sections 29 and 30 of the Pae Ora Act. The statutory purpose and functions of IMPBs since disestablishment have not substantively changed, notwithstanding the amendments that require IMPBs to work with Te Whatu Ora rather than Te Aka Whai Ora.[93] However, the expectations on IMPBs is higher than before disestablishment, given IMPBs now have been prescribed a monitoring role[94] but continue to lack any explicit authority or focus in regards to Maaori provider or Kaupapa Maaori Service commissioning or development.[95] It was noted in Manatuu Hauora's briefing to

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[91] R M Jansen, *Brief of Evidence of Dr Rawiri McKree Jansen* dated 12 May 2025, Wai 2575, #M23(b), at [14]-[15].
[92] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 2* dated 27 May 2025, accessed at <https://www.youtube.com/live/HxPco4k7p9I.> at 6.10.22.
[93] Pae Ora (Healthy Futures) Act 2022, s 30(1).
[94] Dr Shane Reti, *Milestone for Iwi M[aa]ori Partnership Boards* (Press Release, Wellington, dated 11 December 2024).
[95] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 21, 196], at [56].

the incoming minister that IMPBs, in light of the Coalition Agreement to disestablish Te Aka Whai Ora, were seeking:[96]

a. certainty in having a role in the future of Maaori health.

b. to be involved in the process for changes to their statutory functions, with the potential to expand their functions to include commissioning; and

c. to retain their role in the HMAC nomination process.

45. In press releases, Dr Reti, the previous Minister of Health, recognised that IMPBs had a mixed level of readiness and therefore aimed to provide merely a minimum viable package.[97] He noted that the 2024 Government Policy Statement on Health ("**GPS**") would recognise and enable IMPBs to do more, including further monitoring and to support better outcomes for Maaori.[98] A key function that was discussed was to include strategic commissioning, direct influence over planning, design and monitoring but not procurement.[99] Currently, the functions of IMPBs include but are not limited to:[100]

a. represent the needs and aspirations of Maaori in relation to Hauora Maaori.

b. how the health sector is performing in relation to those needs and aspirations.

c. the design and delivery of services and public health interventions in their local area; and

[96] Te Aka Whai Ora, *Information Request: Attendance at IMPB Chairs Hui on 6 December 2023* dated 6 December 2023, at [8] (Obtained under Official Information Act 1982 Request to the Minister of Health, MHA33386).
[97] Dr S Reti, *Speech to Iwi-Maaori Partnership Boards* (Press Release, Rotorua, dated 5 July 2024).
[98] Dr S Reti, *Speech to Iwi-Maaori Partnership Boards* (Press Release, Rotorua, dated 5 July 2024).
[99] Dr S Reti, *Speech to Iwi-Maaori Partnership Boards* (Press Release, Rotorua, dated 5 July 2024).
[100] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d), at [51].

d. set out community health plans that set out how the IMPB seeks to carry out its legislative functions.[101]

46. Dr Reti had indicated in his press releases that it was the Government's intention to broaden the remit of IMPBs.[102] This is in line with the advice that was provided to Minister Reti in conferring additional responsibilities within their current statutory functions.[103] Notwithstanding, counsel have interpreted the amendments to Mr Whaanga's evidence to mean that this is not the view of the current Health Minister.

Limited Capacity and Functionality of Iwi-Maaori Partnership Boards

47. Due to the transfer of KMS commissioning powers to Te Whatu Ora, the advice IMPBs can provide is less effective than before disestablishment.[104] While previously, Te Aka Whai Ora made commissioning decisions relating to KMS independent of Te Whatu Ora,[105] in consultation with IMPBs, the current system provides no commissioning or procurement powers to IMPBs nor the ability to influence commissioning decisions.

48. Strategic commissioning is a term used by Minister Reti that enables IMPBs to play a role in Te Whatu Ora's business planning and service design, giving the ability to "influence the planning, design and monitoring of health services".[106] This stops short of the commissioning power previously held by Te Aka Whai Ora, and as such, IMPBs have been pushed to performing their statutory functions of:

a. developing priorities for improving Hauora Maaori; and

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[101] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 19, 165], at [2.a].
[102] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d), at [51].
[103] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 4, 53], at [4].
[104] Pae Ora (Healthy Futures) Act 2022, s 30(1)(e).
[105] Te Aka Whai Ora, *Te Aka Whai Ora Establishment Plan* dated July 2022, at 11.
[106] Dr S Reti, *Speech to Iwi-Maaori Partnership Boards* (Press Release, Rotorua, dated 5 July 2024).

b. engaging with Te Whatu Ora and supporting its stewardship of Hauora Maaori.

Neither of these functions afford any decision-making powers but instead involve guiding Te Whatu Ora in the right direction. However, as at March 2025, there is no established procedure for any IMPB to contribute to Te Whatu Ora planning and service design.[107] In this regard, Dr Jansen noted the lack of movement in integrating IMPBs within the business planning, service design and monitoring processes, which was intended to begin in January 2025, with full integration by July 2025.[108] Dr Came and Professor McCreanor note further that IMPBs did not get given charge of administering procurement, contract management or budget-holding.[109]

49. So, having lost opportunities to have an active assistance role alongside Te Aka Whai Ora, IMPBs seem to be a mere advisory committee with limited scope, who are now responsible to Te Whatu Ora. In his evidence, the Reverend Dr Te Rire noted the shift in attitude toward engagement with IMPBs. He provided an example of the recent closure of the birthing unit in Whakataane, where his IMPB was not consulted with prior to the closure and found out about the loss of the sole obstetrician and gynaecologist at Whakataane hospital at the same time as the public.[110] He noted the shift to a reactive relationship with Te Whatu Ora rather than a relationship of co-design.[111] The Reverend Dr Te Rire also expressed a loss of confidence with the new system due to a lack of meaningful engagement:[112]

> The bottom line is this: if Te Whatu Ora want to be welcomed in our communities, they need to be honest and inclusive from the start.

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[107] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 23, 212], at [32].
[108] R M Jansen, *Brief of Evidence of Dr Rawiri McKree Jansen* dated 12 May 2025, Wai 2575, #M23(b), at [41].
[109] Dr H Came, Prof T McCreanor, *Joint Brief of Evidence of Dr Heather Came and Professor Tim McCreanor* dated 12 May 2025, Wai 2575, #M60, at [41].
[110] J Te Rire, *Brief of Evidence of Reverend Dr Jonathan (Hone) Hirini Arapeta Te Rire* dated 12 May 2025at [18]-[19].
[111] J Te Rire, *Brief of Evidence of Reverend Dr Jonathan (Hone) Hirini Arapeta Te Rire* dated 12 May 2025 at [26].
[112] J Te Rire, *Brief of Evidence of Reverend Dr Jonathan (Hone) Hirini Arapeta Te Rire* dated 12 May 2025 at [31].

> Not just say they're working with us — actually work with us. Even when we in the IMPBs have no idea what is going on because we have been excluded, our people hold us accountable. I walk into Kawerau and it's like a gauntlet. At the shops, it's "Oi, cuz, what's going on?" And if a press release says we were involved when we weren't — we become the scapegoats. Again.

50. During an exchange between his Honour Judge Stone and Mr Craig Linkhorn on 28 May 2025, his Honour raised the commentary by Dr Christopher Tooley that IMPBs are advisory in nature.[113] The Crown submitted that IMPBs have some decision-making powers as they determine how they engage with their communities and how they conduct their monitoring activities.[114] The notable point here is that as indicated by his Honour, IMPBs do not have the legislative function to make any changes based on that monitoring.[115] Meaning, that whilst IMPBS may have the ability to make some operational decisions on how they conduct their activities, the results of those activities can never go beyond merely advising Te Whatu Ora. Furthering this point, during closing submissions on 29 May 2025, Ms Te Hira described IMPBs as a "toothless tiger" and that they do not have the power nor the resources to complete the projects that Te Aka Whai Ora was able to.[116]

51. This new mode of reactive engagement, where IMPBs consider themselves as scapegoats, and no longer assist with co-design cannot be seen to be an expression of tino rangatiratanga. Dr Came and Professor McCreanor noted this very point, stating that the control of Maaori over Maaori health was the

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[113] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 3* dated 28 May 2025, accessed at <https://www.youtube.com/live/fj4UJqXW7OE> at 7.18.32.
[114] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 3* dated 28 May 2025, accessed at <https://www.youtube.com/live/fj4UJqXW7OE> at 7.18.42.
[115] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 3* dated 28 May 2025, accessed at <https://www.youtube.com/live/fj4UJqXW7OE> at 7.22.15.
[116] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 4* dated 29 May 2025, accessed at <https://www.youtube.com/live/CCw-GpGi9pU> at 3.16.06.

centrality to express tino rangatiratanga, and that so-called “engagement” with Te Whatu Ora does not reflect the rangatira status of Maaori.[117]

<u>The Monitoring Role of Iwi-Maaori Partnership Boards</u>

52. A key concern of the approach to empower IMPBs in lieu of Te Aka Whai Ora is the expansion of the role of IMPBs. As expressed above at paragraph [45], there is an expansion of the duties of IMPBs. This requires expertise and workforce development that has not been accounted for. In the Community Health Plans (“**CHPs**”), many IMPBs acknowledged a need for support in their monitoring function,[118] as it was a function that was previously held by Te Aka Whai Ora and not the IMPBs.[119]

53. The CHPs themselves have been a significant burden on the IMPBs, particularly within the three-month timeframe to do so.[120] In illustrating the burdensome nature of CHPs, the Government’s own analysis determined that many of the 15 community health plans that were submitted, that “more than half” were satisfactory, and four requiring “significant support”.[121] Prior to disestablishment, the technical staff of Te Aka Whai Ora would provide support and do much of the work that is now being expected of IMPBs, but without the staffing and expertise that was held by Te Aka Whai Ora.

54. The CHP approach demonstrates the top-down, structural power imbalance that Te Whatu Ora has imposed upon IMPBs. In isolation, a top-down approach is not inherently harmful, but within the context of providing autonomy and decision-making powers to Maaori for Maaori, IMPBs have been pushed to align

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[117] Dr H Came, Prof T McCreanor, *Joint Brief of Evidence of Dr Heather Came and Professor Tim McCreanor* dated 12 May 2025, Wai 2575, #M60, at [39].
[118] J Whaanga, *Bundle of Supporting Documents to John Whaanga’s Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 18, 134], at [5].
[119] Pae Ora (Healthy Futures) Act 2022, s 19(l)-(m), as at 27 July 2023 (*Repealed*).
[120] J Whaanga, *Bundle of Supporting Documents to John Whaanga’s Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 18, 136], at [1].
[121] J Whaanga, *Bundle of Supporting Documents to John Whaanga’s Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 18, 137], at [9] – [12].

their vision with the approach and priorities of the Government.[122] By way of example, Dr Hone Te Rire recounts his experience as co-chair of Te Moana a Toi IMPB, describing how an alignment with the Government's vision materialised for their IMPB:[123]

> When we had that hui in Whakataane with Cath Cronin, we were given all these booklets: community health plans. There was one for each IMPB. All nicely bound. I was wondering, "Who put all this together?" It was the Crown, that had already created our community health plans. But those plans were supposed to come from the community. That's not our health plan.
>
> When I went back home to Kawerau and held a normal hui-aa-iwi to give an update, my people were not impressed. They said, "So you're coming to us asking for ideas, but what's this booklet, then? Seems like you've already made a plan without us, and now youre telling us it's the voice of the iwi and community. Explain yourself, cousin".

55. To alleviate the burden of the development of CHPs, a prescriptive approach was taken to ensure the CHPs could be submitted on time. However, this prescriptive approach puts into question, as Dr Hone Te Rira experienced, the authenticity of the "community" input of the community health plans. On 27 May 2025, Ms Tania Kingi, who worked on the development of the CHP for her IMPB, identified that they were given a template to fill in, and that it was not their plan.[124]

56. Notwithstanding the lack of genuine expertise and support being provided by Te Whatu Ora in respect of CHPs to express whaanau voice, there is also a lack of funding to support the expanded roles of IMPBs.

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[122] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 18, 153].
[123] Dr J Rire, *Brief of Evidence of Reverend Dr Jonathan (Hone) Hirini Arapeta Te Rire* dated 12 May 2025 at [36]-[38].
[124] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 2* dated 27 May 2025, accessed at <https://www.youtube.com/live/HxPco4k7p9I.> at 1.27.13.

57. Dr Rawiri Jansen is a chief clinical officer for an IMPB and had some involvement of the development of the CHP, which included the need for monitoring. Dr Jansen provided evidence on 27 May 2025 that that IMPB has filed a 64-page monitoring document, which identified the inability to access various aspects of data specific to Maaori health, which hinders the possibility for transparent monitoring.[125]

Funding Inadequacies

58. The government has taken advice to empower IMPBs to have a greater voice in a post-disestablishment environment. However, to do that, IMPBs need to be appropriately staffed and resourced. Dr Came and Professor McCreanor gave evidence in this regard, that what IMPBs need is:[126]

> expert support, access to data around different elements of health and wellbeing as defined by Maaori, people to support, people to understand that data and trends, so epidemiological support, kaupapa Maaori expert health competencies…
>
> so essentially, what we are envisaging there, is high quality evaluation research that can show through diverse methodological approaches that the aims and objectives of Maaori health initiatives and innovations are achievable, and well enough resourced and in the application of objectives and resources should be able to show that the interventions that are being made, are effective in enhancing and improving Maaori health and outcomes.

59. Yet, under the current settings, the Crown has not expressed an intention to enable IMPBs outside of providing support. Any fiscal gains made by the disestablishment of Te Aka Whai Ora are simply being erased by the costs to

[125] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 2* dated 27 May 2025, accessed at <https://www.youtube.com/live/HxPco4k7p9I.> at 3.10.32.
[126] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 2* dated 27 May 2025, accessed at <https://www.youtube.com/live/HxPco4k7p9I.> at 5.26.43.

empowering IMPBs. The government has placed disestablishment above any practical and pragmatic consequences of disestablishment.

60. Furthermore, counsel notes with caution, the trends expressed across briefs of evidence regarding the capability and functionality of IMPBs:

a. In his evidence, the Reverend Dr Te Rire expressed concern with the funding for IMPBs, as funding runs out after June 2026. He further noted the lack of surety from the Crown that IMPBs will continue when the funding ends.[127]

b. Dr Came and Professor McCreanor discussed the uncertainty surrounding the level of support needed for IMPBs being delivered by the Crown, both structurally and financially.[128]

c. Dr Jansen similarly notes that expected outreach to hapuu and iwi placed on IMPBs have not been met with adequate funding or resourcing.[129]

61. In the first instance, the establishment of IMPBs were intended as local advisory bodies, to be one of the key ways that whaanau, hapuu and iwi can voice local issues and to partner with central agencies.[130] It was noted in the Hauora Report that prior to the establishment of Te Aka Whai Ora, that they already "suffered from a severe lack of funding" to perform those roles.[131] The Tribunal pre-empted that in order for IMPBs to successfully fulfil a broader remit, there is an expectation that the Crown provides them with "the adequate tools, resourcing and support to carry out" their roles.[132]

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[127] J Te Rire, *Brief of Evidence of Reverend Dr Jonathan (Hone) Hirini Arapeta Te Rire* dated 12 May 2025 at [31].
[128] Dr H Came, Prof T McCreanor, *Joint Brief of Evidence of Dr Heather Came and Professor Tim McCreanor* dated 12 May 2025, Wai 2575, #M60, at [40].
[129] R M Jansen, *Brief of Evidence of Dr Rawiri McKree Jansen* dated 12 May 2025, Wai 2575, #M23(b), at [41].
[130] Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2023), at 182.
[131] Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2023), at 182.
[132] Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2023), at 182.

62. It must be noted that the fiscal background to these decisions is underlined by a tightening government fiscal position, and that a focus is to be made on baseline spending,[133] and that Te Aka Whai Ora was identified to save approximately $20m per annum.[134] These savings are only realised to the extent additional funding is not required for IMPBs. However, given the need for additional support for IMPBs in lieu of the disestablishment of Te Aka Whai Ora, the savings are expected to be reallocated regardless.[135]

63. In Minister Reti's press release, it is noted that there would be a $40m boost for IMPBs and Hauora Maaori Funding to adjust for inflation pressures and service provision.[136] The funding reallocation does not allow for greater KMS development or commissioning, but merely to maintain the current level of services, which has been determined to be insufficient.[137] Under current projections, IMPBs and the related Hauora Maaori funding levels are expected to remain constant or decrease over the next five years.[138] In order for IMPBs to actualise their expanded ambit, or continue with KMS development, greater funding will be required.[139]

64. It is submitted that IMPBs are being purposely weakened to give them a narrow remit. Where they have been given tasks, the Crown does not fund them adequately. It is uncertain whether they will be in existence after June 2026. While utilised properly by the Crown, IMPBs could adequately express tino rangatiratanga over the health system, the impotent subservience forced upon

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[133] Te Whatu Ora, *Te Whatu Ora and Te Aka Whai Ora Executive Leadership Team Paper: Internal Budget 2024 Strategy – settings, approach, planning and budgeting parameters*, at [6] (Obtained under Official Information Act 1982, Request to Te Whatu Ora, HNZ00083736).
[134] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 5, 76].
[135] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 5, 76].
[136] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 5, 76].
[137] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 21, 195], at [52].
[138] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 7, 85-86].
[139] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 21, 195], at [52].

them by the Crown has rendered them ineffective and ill-equipped to undertake this task.

Kaupapa Maaori Service Development

65. Kaupapa Maaori Services are healthcare services that centre taangata whaiora/whaikaha Maaori as well as taha Maaori (Maaori perspectives) at the core of service delivery, facilitating solutions and enacting change.[140] It is often expressed as by Maaori, for Maaori; or service delivery with Maaori, as Maaori and led by Maaori.[141]

66. Prior to its disestablishment, Te Aka Whai Ora, was legislated to "commission, innovate and develop Kaupapa Maaori Services".[142] Te Aka Whai Ora was developed to effectuate the recommendations of the Hauora Report, including its legislated purposes.[143] The Te Aka Whai Ora board "injected transformative thinking and te ao Maaori approaches into the Te Aka Whai Ora strategic and operational functions".[144] One consequence of this approach to building up the Authority was "a commissioning approach that was premised upon accepting maatauranga Maaori as a valued and credible foundation – it was a given".[145] Te Aka Whai Ora reached Maaori providers and built trust, giving Maaori leadership equal footing with Te Whatu Ora.[146] This manifested itself in a tangible manner. As referenced by Ms Emma Whiley during the presentation of oral closing submissions on 29 May 2025, there is a clear acknowledgement by the Crown, that a by Maaori for Maaori approach works.[147] This was supporting by Ms Janice Kuka who provided evidence on 26 May 2025 that Te Whatu Ora

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[140] Manatuu Hauora, *A Kaupapa Maaori Informed Approach to Commissioning Mental Health and Addiction Services: Commissioning for Pae Ora | Healthy Futures Case Study* dated January 2023, at 4.
[141] Manatuu Hauora, *A Kaupapa Maaori Informed Approach to Commissioning Mental Health and Addiction Services: Commissioning for Pae Ora | Healthy Futures Case Study* dated January 2023, at 4.
[142] Pae Ora (Healthy Futures) Act 2022, s 19(1)(f), as at 27 July 2023 (*Repealed*).
[143] Te Aka Whai Ora, *Te Aka Whai Ora Establishment Plan* dated July 2022, at 4.
[144] Hauora M[aa]ori Advisory Committee, *High-level assessment of Te Aka Whai Ora progress against Cabinet expectations, commitments and priorities for the Hauora Maaori Advisory Committee* dated 5 May 2023, at 5.
[145] S N Shea, *Brief of Evidence of Sharon Norma Shea* dated 12 May 2025, Wai 2575, #M8(a), at [14.4].
[146] R J Campbell, *Brief of Evidence of Robert James Campbell* dated 12 May 2025, Wai 2575 at [6].
[147] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 4* dated 29 May 2025, accessed at <https://www.youtube.com/live/CCw-GpGi9pU> at 3.56.31.

had given positive feedback on their tuapapa model[148]. Also in submissions on 29 May 2025, and highlighting a distinct lack of focus on a by Maaori-for-Maaori approach, Ms Tara Hauraki submitted that the ecosystem post-disestablishment has been to re-focus on mainstream services.[149]

67. In evidence provided by Lady Tureiti Moxon, she describes how, in working with Te Aka Whai Ora, that:[150]

> For the first time in all my years in the health sector we are understood and do not have to explain what it means to be, think or behave as Maaori. We do not have to contend with racism in our encounters with staff or within our contracts.

68. Ms Kingi, as working within Te Roopu Waiora, echoed the sentiments of Lady Tureiti Moxon:[151]

> During [Te Aka Whai Ora's] time, Te Aka Whai Ora provided a kaupapa Maaori stewardship role that eliminated our being referred from pillar to post. They understood fragmentation among agencies and worked to make our engagement with the government as seamless as possible.

69. By centring te ao Maaori and building an organisation that simply understood maatauranga Maaori, Te Aka Whai Ora enabled more effective kaupapa Maaori Service commissioning, development and innovation; giving this process a uniquely Maaori dimension. Te Aka Whai Ora played a coordination and planning role in collecting data and working closely with the IMPBs to amplify the voices of Maaori on a local level, while bringing those voices together with Te Whatu Ora.[152] The Authority was provided control over contracts, enabling it

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[148] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 1* dated 26 May 2025, accessed at <https://www.youtube.com/live/XYw2kcJcggc> at 6.04.37.
[149] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 4* dated 29 May 2025, accessed at <https://www.youtube.com/live/CCw-GpGi9pU> at 5.08.17.
[150] T H Moxon, *Summary of the affidavit of Lady Tureiti Haromi Moxon* dated 8 December 2023, Wai 2575, #M1(a), at [10].
[151] T Kingi, *Brief of Evidence of Tania Kingi* dated 13 May 2025, Wai 2575, #M4(c), at [4].
[152] Te Aka Whai Ora, *Te Aka Whai Ora Establishment Plan* dated July 2022, at 16.

to make commissioning and procurement decisions around Kaupapa Maaori Services.[153]

70. Further, Te Aka Whai Ora began to break down institutional barriers to KMS development by having its own line of accountability, direct to the Minister of Health.[154] Prejudice and cultural incompetency was not a feature with Te Aka Whai Ora, which allowed for greater KMS development, commissioning and procurement. The foundations for a health organisation that had the ability to express tino rangatiratanga and develop and commission services in line with Te Ao Maaori were set. On 26 May 2025, Lady Tureiti Moxon said that with the disestablishment, they were back to reporting outputs, being over audited and squeezing kaupapa Maaori approaches into a Western template. She followed on by saying that it is not hauora, it is tick boxing.[155]

<u>Transfer of Functions to Te Whatu Ora</u>

71. Te Whatu Ora has been transferred roles that previously were performed by Te Aka Whai Ora, including:[156]

    a. Planning and commissioning of Maaori health services; and

    b. Supporting Iwi-Maaori Partnership Boards, with both function and funding.

72. The ability of Te Whatu Ora to effectively perform these roles relies on cultural competency, staffing and funding, all underlined by a sufficient focus on priorities for Maaori. A direct transfer of functions was raised as a risk in respect of advice on the disestablishment of Te Aka Whai Ora.[157]

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[153] Pae Ora (Healthy Futures) Act 2022, s 19, as at 27 July 2023 (*Repealed*).
[154] R J Campbell, *Brief of Evidence of Robert James Campbell* dated 12 May 2025, Wai 2575 at [16.2].
[155] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 1* dated 26 May 2025, accessed at <https://www.youtube.com/live/XYw2kcJcggc> at 1.10.38.
[156] Te Aka Whai Ora, *Te Aka Whai Ora Establishment Plan* dated July 2022, at 11.
[157] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 1, 8], at [27].

73. At an operational level, the uplift of Te Aka Whai Ora staff to Te Whatu Ora did not amount to a simple transplant. Dr Elana Curtis notes in her evidence that through this approach, there has been a loss of:[158]

> … structural elements of the system [that] are not set up to ensure that there are clear accountability lines of Maaori health and that the system understands the role, function, responsibility and mandate of the newly developed Hauora Maaori Services within Te Whatu Ora.

74. This position was supported by Susan Taylor, who expressed that despite the government's intention to "replicate the previous duty owed by the Maaori Health Authority" within Te Whatu Ora,[159] this was not her experience with the system:[160]

> I understand that there were a lot of people who were ready to retire, who were brought back as consultants. So, to cut those contractors made sense, as Te Whatu Ora was haemorrhaging money. However it didn't make sense to use that rationale to cut roles that Te Aka Whai Ora had put in place or were intending to develop. Nor did it make sense to cut roles that were fundamental to Hauora Maaori priorities set by Te Aka Whai Ora.

75. By way of example, Ms Kingi outlines her experiences obtaining funding as a kaupapa Maaori organisation:[161]

> We have a meeting on 19 May 2025 with Whaikaha, but will then need to meet with MSD to progress our proposal since they now hold the DIAS funding. Meanwhile, we are still expected to provide these agencies as with their mainstream providers, our knowledge and experiences to shape their strategies. We're still the only kaupapa Maaori organisation that has to secure permission from a mainstream service provider to apply for disability funding from

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[158] Dr E T Curtis, *Brief of Evidence of Associate Professor Dr Elana Tai Curtis* dated 13 May 2025, Wai 2575, #M51, at [36].
[159] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d), at [16].
[160] S Taylor, *Brief of Evidence of Susan Taylor* dated 12 May 2025, Wai 2575, #M58, at [10].
[161] T Kingi, *Brief of Evidence of Tania Kingi* dated 13 May 2025, Wai 2575, #M4(c) at [8].

> Whaikaha because they are our umbrella organisation. We have been bounced from the Ministry of Health, to Whaikaha, to Te Whatu Ora, to MSD, back to Whaikaha, and now soon to MSD.

76. The transfer of functions to Te Whatu Ora changed the structure in which advocacy for the commissioning of kaupapa Maaori services occurs.[162] Te Whatu Ora is now the ultimate decision maker in respect of kaupapa Maaori services

77. The fact that Te Whatu Ora holds the final operational decision-making authority adds a layer of bureaucracy to the large organisation that lacks the strong cultural competency that Te Aka Whai Ora previously held. Importantly in *Hauora*, this Tribunal stated that:[163]

> …the Treaty obligations of district health boards and other Crown agents go beyond becoming more competent and comfortable with maatauranga Maaori on an institutional level, as steep a learning curve as that may be for many. Crown agents need to be wholly conversant with the process and manner in which their partner wants, and needs, to engage with them. They need to have a deeper understanding of the motivations behind their partner's engagement with the Crown. Again, we draw from Ko Aotearoa Tēnei:
>
>> On the Crown's part there must be a willingness to share a substantial measure of responsibility and control with its Treaty partner. In essence, the Crown must share enough control so that Maaori own the vision, while at the same time ensuring its own logistical and financial support, and also research expertise, remain central to the effort.

78. In respect of decision making and autonomy, the Crown has placed Maaori approaches as subsidiary to the mainstream approach within Te Whatu Ora. Maaori no longer have commissioning authority, instead they are forced back into the master-servant relationship that has plagued Maaori health

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[162] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 2, 34].
[163] Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2023), at 91-92.

professionals for generations. To be clear, anything that Maaori seek must now be authorised by Te Whatu Ora. The transfer of functions means a loss in innovation, signalling a return to a more risk averse health system. This was evidenced in Mr Milner's evidence, which outlined how Te Aka Whai Ora became a space for Maaori to approach healthcare from a Te Ao Maaori lens and innovate accordingly.[164]

Funding Concerns

79. Hauora Maaori continues to be sidelined not only structurally, but also through funding. Vote Health appropriations for Hauora Maaori are expected to amount to $749m, a mere 3% of the vote.[165]

80. While prior to its disestablishment, Te Aka Whai Ora advocated for funding on behalf of the IMPBs through its support and engagement function.[166] However, now IMPBs are only able to advocate for themselves, with no centralised body to collate those voices. We see the call for greater funding in the CHPs that have been developed by IMPBs. By way of example, the Te Tiratu Iwi Maaori Partnership Board CHP has set itself a goal in:[167]

> … increasing the Hauora Maaori Appropriation from the current 3% level – and to see it increase cumulatively each year, as this will be essential to allow Hauora Maaori Providers to build and expand services to meet the extensive array of needs of whaanau and to tackle persistent inequities.

81. The transfer of functions has suppressed Kaupapa Maaori Service development and provision by disrupting the structural advantages of Te Aka Whai Ora and reverting to Te Whatu Ora taking control over commissioning decisions.

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[164] G Milner, *Koorero Taunaki o Geoff Milner* dated 20 February 2024, Wai 2575, #M15, at [9].
[165] Manat[uu] Hauora, *Vote Health - The Estimates of Appropriations 2024/25* dated 30 June 2024, accessed at <https://budget.govt.nz/budget/pdfs/estimates/v5/est24-v5-health.pdf>, Wai 2575, #N10 [Tab 9, at 242].
[166] Pae Ora (Healthy Futures) Act 2022, ss 20(1)(a)(i), 21, as at 27 July 2023 (*Repealed*).
[167] Te Tirat[uu], *Iwi M[aa]ori Partnership Board Community Health Plan* dated 30 September 2024, at 11.

Uncertainty and Destabilisation

82. A common theme across the claimant evidence emphasises that the government's approach to Kaupapa Maaori Service provision without Te Aka Whai Ora has resulted in uncertainty and a destabilisation of Kaupapa Maaori Service provision. Despite an attempt to migrate numerous staff from Te Aka Whai Ora directly into the Hauora Maaori Service Directorate, Kaupapa Maaori Service has been negatively impacted.

83. On its face, claimants have felt that the Government has been unclear with their approach and what the future of Maaori health looks like. This feeling of unease is summarised by Moe Milne: [168]

> It feels like we are in a void of no action and no decision-making. 'Kua ta pahia te matenga'. Maaori health providers do not know what their remit is. We do not understand the direction of play or where Maaori health is going.

84. The uncertainty is also reflected in the documentation that is intended to guide the health system, as elaborated upon by Neil Woodhams: [169]

> Mr Whaanga refers in paragraph 34 to a "vision and plan for Maaori Health" endorsed by Cabinet, but there is no concrete steps to support Maaori providers. The GPS speaks in generalities about services being 'tailored' to Maaori, but it does not mandate, fund or operationalise actual support to the providers who are already delivering better results. Nor does the Ministry of Health or Health New Zealand appear to have provided any practical help to those Maaori navigating the chaotic transition following the disestablishment. The providers have been left to carry the burden of change with minimal support and considerable uncertainty.

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[168] M Milne, *Koorero Taunaki o Moe Milne* dated 12 May 2025, Wai 2575, #M17(a), at [4].
[169] N B Woodhams, *Brief of Evidence of Neil Bernard Woodhams ONZM* dated 12 May 2025, Wai 2575, #M42(a), at [25].

85. At the service provision level, Susan Taylor explains how the uncertainty destabilised a previously functional approach and in turn created service gaps:[170]

> So, between 30 June 2024 and early February 2025, there was no SPPC for the Rotorua and Southern Lakes region. During that time, Te Whatu Ora did get the Bay of Plenty SPPC to record suicide data in our region, but she couldn't do what was needed. She was paakehaa and held a paakehaa worldview and wasn't located within the region. In addition, there was a significant number of Maaori deaths. Not being tangata whenua, and on the ground in our region, she just couldn't attend the urgent needs of our community. The reality was that Te Whatu Ora did not provide the region with adequate suicide postvention and prevention support during those months.

86. The impacts of disestablishment and a lack of clear alternatives not only causes tangible service gaps, but also a loss of intangible, unquantifiable advantages that were experienced Te Aka Whai Ora as expressed by Dr Elana Curtis:[171]

> Unfortunately, within the system, given the way in which Te Aka Whai Ora was disestablished and the failure to achieve clarity on the alternative approach that will be taken from here on in – I believe that generic M[aa]ori goodwill has been severely reduced. The belief you can do something and make a difference for M[aa]ori health has been significantly impacted But perhaps more importantly is the impact that this will have on Māori health commitment and action from here on in. The assault on the wairua of Māori staff who were totally committed to achieving the Te Aka Whai Ora dream (and arguably New Zealand's dream) should not be underestimated.

87. The Government failing to provide a clear, viable alternative to Te Aka Whai Ora has impacts that go further than the loss of an entity but will not only result in

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[170] S Taylor, *Brief of Evidence of Susan Taylor* dated 12 May 2025, Wai 2575, #M58, at [12]-[13].
[171] Dr E T Curtis, *Brief of Evidence of Associate Professor Dr Elana Tai Curtis* dated 13 May 2025, Wai 2575, #M51, at [33].

tangibly worse outcomes for Maaori, but also a feeling that kaupapa Maaori is being sidelined.

Conclusion

88. Te Aka Whai Ora was a chance for the Crown to give space for Maaori expressions of tino rangatiratanga, and by Maaori, for Maaori solutions. It is submitted that the disestablishment is a true step backwards for Maaori and the true expression of tino rangatiratanga.

89. The Crown's supposed alternative in IMPBs is in theory another method of expressing tino rangatiratanga, albeit limited due to the framework of the kaawanatanga. However, the lack of co-design and consultation evidenced by witnesses show the Crown's disregard for maintaining a constructive co-designed relationship with IMPBs. Counsel notes with concern the perception that IMPBs may be in the process of being phased out by the Crown due to uncertainty in funding and purpose. If this is the case, and with a lack of true alternatives, the Crown would have failed to provide Maaori with any alternative other than the status quo prior to Te Aka Whai Ora.

90. Crown attempts to remedy disestablishment by splitting its functions between Te Whatu Ora and the IMPBs has resulted in a variety of staffing, expertise and funding gaps that are a direct result of having an inadequate alternative to Te Aka Whai Ora. By transplanting the functions from Te Aka Whai Ora, there has been a loss in structure and stability that is not currently being provided to Kaupapa Maaori Service providers. While Kaupapa Maaori Services are vital to the Government's strategy in reducing health disparities between Maaori and non-Maaori, there is a lack of willingness to afford Maaori to do so in a way that suits Maaori. Instead, Te Whatu Ora remains in control, with a government that is unwilling to allocate adequate puutea to ensure that health disparities for Maaori do in fact decrease.

Wider Maaori Workforce Issues

Introduction

91. The Claimants and Interested Parties submit that the Crown has failed to partner with Maaori in ensuring continued investment in the Maaori workforce, in light of the disestablishment of Te Aka Whai Ora. By way of overview, our submission is that:

    a. Maaori health providers funded by Te Aka Whai provided much needed care and support to taangata whaikaha, and Maaori who require health support including taangata whaiora, tangata wairua tuakoi and rangatahi struggling with mental health.[172]

    b. Te Aka Whai Ora was mandated to commission kaupapa Maaori services and other services developed for Maaori in accordance with the New Zealand Health Plan.[173]

    c. Te Aka Whai Ora was mandated to design and deliver programmes with the purpose of improving the capability and capacity of Maaori health providers and the Maaori health workforce;[174] and

    d. Manatuu Hauora is incapable of fulfilling these functions and objectives.[175]

Te Aka Whai Ora Maaori Workforce Investment

92. One of Te Aka Whai Ora's key responsibilities was the development of the Maaori workforce, sector leadership strategies and work programmes, in

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[172] J Stevens, *Brief of Evidence of Jane Elizabeth Stevens* dated 20 February 2024, Wai 2575, #M22, at [17].
[173] *Joint Amended Statement of Claim for Wai 762, 861, 1477, 1531, 1886, 2063, 2206, 2217, 2377, 2382, 2671, 2729, 2747, 2776, 2778, 2890, 2894, and 3096* dated 23 July 2024, Wai 762, Wai 2575, #1.1(q), at [63.e]
[174] *Joint Amended Statement of Claim for Wai 762, 861, 1477, 1531, 1886, 2063, 2206, 2217, 2377, 2382, 2671, 2729, 2747, 2776, 2778, 2890, 2894, and 3096* dated 23 July 2024, Wai 762, Wai 2575, #1.1(q), at [63.i]
[175] *Joint Amended Statement of Claim for Wai 762, 861, 1477, 1531, 1886, 2063, 2206, 2217, 2377, 2382, 2671, 2729, 2747, 2776, 2778, 2890, 2894, and 3096* dated 23 July 2024, Wai 762, Wai 2575, #1.1(q), at [64].

partnership with and in support of Manatuu Hauora and Te Whatu Ora.[176] It is well established that Maaori are underrepresented within the health and disability workforce.[177] Te Aka Whai Ora recognised how important growing the Maaori health workforce is, and how integral it is to re-indigenising the health system and achieving mana motuhake.[178] Kerri Nuku provided evidence on the seeming preference to importing international nurses rather than developing a Maaori workforce.[179] She stated that this is a failing that Te Aka Whai Ora was seeking to redress.[180] The disestablishment will set back this needed corrective and demonstrates that this policy of ethnic cleaning of our health sector is a return to a one size fits all approach that has failed Maaori for over 180 years. It will fail again.[181]

93. Te Aka Whai Ora enabled critical investment into the Maaori workforce and allowed Maaori to be at the centre of change.

94. Kerri Nuku provided evidence on the importance of Te Aka Whai Ora commissioning kaupapa Maaori health services. She stated that this is huge for Maaori PHOs and Maaori Providers because instead of dealing with the Ministry of Health, we are dealing with a Maaori body that understands what we do and that we are excellent at what we do. In the 2022/23-year Te Aka Whai Ora invested 15 million dollars into growing the Maaori workforce.[182] This included Te Aka Whai Ora commissioning $5.8 million dollars of services to support four Maaori workforce development initiatives.[183] This saw 19 partners from across the motu deliver workforce solutions.[184] These solutions were focused on nursing and midwifery leadership, hauora Maaori Tuakana Teina

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[176] Te Aka Whai Ora, *Establishment Plan* dated July 2022, at 6.
[177] S Roughton, C-R Smith, A Crawford, L Redward, L Oliver, S Rickard, Q Radich, *Joint Closing Submissions of the Claimants* dated 16 September 2024, Wai 2575, #3.3.118, at [697] - [701].
[178] Te Aka Whai Ora, *Te P[uu]rongo [aa]-Tau Annual Report 2022–2023* dated November 2023, at 66.
[179] K Nuku, *Exhibit "A" disestablishment of Te Aka Whai Ora* dated 21 February 2024, Wai 2575, #M26(a).
[180] K Nuku, *Exhibit "A" disestablishment of Te Aka Whai Ora* dated 21 February 2024, Wai 2575, #M26(a).
[181] K Nuku, *Exhibit "A" disestablishment of Te Aka Whai Ora* dated 21 February 2024, Wai 2575, #M26(a).
[182] Te Aka Whai Ora, *Te P[uu]rongo [aa]-Tau Annual Report 2022–2023* dated November 2023, at 66.
[183] Te Aka Whai Ora, *Te P[uu]rongo [aa]-Tau Annual Report 2022–2023* dated November 2023, at 66.
[184] Te Aka Whai Ora, *Te P[uu]rongo [aa]-Tau Annual Report 2022–2023* dated November 2023, at 66.

programmes, kaiaawhina workforce training and development programmes, and priority population (taangata whaikaha, kaumaatua, rangatahi) initiatives.[185]

Education and Training

95. Te Aka Whai Ora began investing in the critical need for more education support for Maaori, in line with the recommendations set out in the 2019 Health and Disability System review ("**System Review**").[186] The System Review supported the need to invest in kaupapa Maaori and maatauranga Maaori training opportunities, support for local initiatives to promote science-based subjects for Maaori and linking them with internships.[187] Maaori face barriers to education starting as early as primary and secondary school[188] and are much more likely to leave school with no qualification compared to non Maaori.[189] Statistics show that for every 100 Maaori school leavers 19 have no qualifications compared to only 9 of every 100 non-Maaori.[190] Maaori are further underrepresented in science, technology, engineering and maths subjects, reflecting broader educational system failure.[191] It is vital that investment is made in improving educational outcomes within these subjects for Maaori, so that Maaori are able to pursue career opportunities within the health workforce.

96. Te Aka Whai Ora commissioned $6 million in Maaori, Science, Technology, Engineering, Mathematics and Maatauranga ("**STEMM**") programmes to encourage young Maaori to pursue careers in health and wellbeing.[192] This included investment in Puuhoro STEMM Academy, established in 2016, to improve rangatahi engagement and achievement in preparation for university

[185] Te Aka Whai Ora, *Te P[uu]rongo [aa]-Tau Annual Report 2022–2023* dated November 2023, at 66.
[186] Health and Disability System Review, *Health and Disability System Review Final Report – P[uu]rongo Whakamutunga* dated March 2020, at 196.
[187] Health and Disability System Review, *Health and Disability System Review Final Report – P[uu]rongo Whakamutunga* dated March 2020, at 196.
[188] E T Curtis, E Wikaire et al, *Addressing indigenous health workforce inequities: A literature review exploring 'best' practice for recruitment into tertiary health programmes* (International Journal for Equity in Health, Vol 11, No. 13, 2012), at 9.
[189] S Green, H Schulze, *Education Awa Education outcomes for M[aa]ori* dated August 2019, at 2.
[190] S Green, H Schulze, *Education Awa Education outcomes for M[aa]ori* dated August 2019, at 2.
[191] T Kukutai, T McIntosh, A Boulton et al, *Te P[uu]tahitanga, A Tiriti–Led Science-Policy Approach for Aotearoa New Zealand* dated 15 March 2024, accessed at <https://doi.org/10.57935/AGR.26001496.v1>, at 17.
[192] Te Aka Whai Ora, *Te P[uu]rongo [aa]-Tau Annual Report 2022–2023* dated November 2023, at 67.

study and eventually the workforce.[193] Puuhoro STEMM is a by Maaori for Maaori Academy developed to encourage Maaori participation in science technology industries.[194] Te Aka Whai Ora recognised that these pipelines for Maaori are vital to growing kaimahi, and invested accordingly, to ensure Maaori have a clear pathway into health.[195]

97. Although there are several different admission schemes for university, and only the scheme targeting admission of Maaori and Pacific students is mentioned in the coalition agreement, it stipulates that it will "Examine the Maaori and Pacific Admission Scheme (MAPAS) and Otago equivalent to determine if they are delivering desired outcomes."[196] Peter Crampton confirmed that:[197]

> As an independent statutory entity Te Aka Whai Ora would have been able to provide independent evidence-based advice to government on these crucial health workforce policies to inform the government's review of the selection policies at the universities of Auckland and Otago.

98. On 26 May 2025, Mr Peter Crampton described affirmative action policies as the "single most powerful tool to address health workforce imbalances" and that despite this, the National / Act Coalition agreed to examine the existing affirmative programmes.[198] He emphasised that an independent statutory agency (such as Te Aka Whai Ora) could question this, whereas a government department like Manatuu Hauora is obliged to follow the Crown's lead. Professor Peter Crampton also used the analogy that no one debates that women in

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[193] P[uu]horo, *Te Aka Whai Ora investing to support rangatahi M[aa]ori into STEMM careers* dated 7 September 2023, accessed at <https://www.puhoro.org.nz/post/te-aka-whai-ora-investigating-to-support-rangatahi-maori-into-stemm-careers>.
[194] P[uu]horo, *Te Aka Whai Ora investing to support rangatahi M[aa]ori into STEMM careers* dated 7 September 2023, accessed at <https://www.puhoro.org.nz/post/te-aka-whai-ora-investigating-to-support-rangatahi-maori-into-stemm-careers>.
[195] P[uu]horo, *Te Aka Whai Ora investing to support rangatahi M[aa]ori into STEMM careers* dated 7 September 2023, accessed at <https://www.puhoro.org.nz/post/te-aka-whai-ora-investigating-to-support-rangatahi-maori-into-stemm-careers>.
[196] P R Crampton, *Brief of Evidence of Peter Roy Crampton CNZM* dated 12 May 2025, Wai 2575, #M43(a), at [3].
[197] P R Crampton, *Brief of Evidence of Peter Roy Crampton CNZM* dated 12 May 2025, Wai 2575, #M43(a), at [6].
[198] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 1* dated 26 May 2025, accessed at <https://www.youtube.com/live/XYw2kcJcggc> at 5.18.57.

leadership roles in all parts of the system helps to meet the needs of women and that parallel observations should apply in this context.

99. In this context, the loss of Te Aka Whai Ora puts the development of the Maaori health workforce at risk.

100. Another example of investment made into the workforce is Raukawa Whaanau Ora, who were funded by Te Aka Whai Ora to design and implement the Horowhenua Maaori Workforce Development Prototype ("**Prototype**").[199] The aim of the Prototype is to support the revitalisation, expansion, and practice of mātauranga Maaori within a hauora Maaori context.[200] The areas of priority for the Prototype were: [201]

a. Focusing on the development of rangatahi through internships, rangatahi events, and opportunities to learn about health professions while also supporting NCEA achievement.

b. Focusing on the delivery of scholarships and student placements for tertiary students; and

c. Focusing on building the capability of Raukawa Whānau Ora kaimahi in family harm, clinical practitioners, and wider pūkenga.

The investment in Puuhoro STEMM and Raukawa Whaanau Ora are just two examples of the critical educational initiatives Te Aka Whai Ora began to invest in. These initiatives and others like these are vital for Maaori participation and achievement within the health workforce. Te Aka Whai Ora were making positive strides in increasing pathways for rangatahi to achieve their health career goals.

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[199] Te Aka Whai Ora, *OPQ Background Material: Horowhenua M[aa]ori Workforce Development Prototype* dated 12 December 2023, at 1.
[200] Te Aka Whai Ora, *OPQ Background Material: Horowhenua M[aa]ori Workforce Development Prototype* dated 12 December 2023, at 3.
[201] Te Aka Whai Ora, *OPQ Background Material: Horowhenua M[aa]ori Workforce Development Prototype* dated 12 December 2023, at 3.

101. Other educational initiatives Te Aka Whai Ora were investing in include: [202]

a. Te Pitomata, a health-related study scholarship programme.

b. Te Rau Puawai, a scholarship programme based in Massey University which, engages all levels of academia through to PhD in psychology, nursing, rehabilitation, social work, Maaori health, Maaori studies, and health sciences.

c. Te Kurahuna - Maatauranga Maaori training, with a total of 5,530 training opportunities for 2023/2024; and

d. Opportunities for rangatahi and tauira Maaori to have paid work experience opportunities in the health system that are within their own rohe with primary and community hauora Maaori partners.

102. The Crown's evidence acknowledges that there is a chronic underrepresentation of Maaori in the health workforce.[203] The Crown has stated that to tackle this issue the Government Policy Statement ("**GPS**") sets out a series of three-year objectives, with specific objectives relevant to Maaori.[204] They Crown has further stated that the Hauora Maaori strategy must include priorities for services and health sector improvements relating to hauora Maaori, including workforce development.[205] Yet this strategy is on pause.

103. Lastly, they Crown has noted that one of the objectives of the Hauora Maaori Service Directorate is to build a strong hauora Maaori workforce.[206] This is the extent of the evidence that the Crown have provided to demonstrate how they will address critical workforce shortages in lieu of Te Aka Whai Ora. Importantly, Crown evidence has failed to show what steps they will take in achieving this.

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[202] Te Aka Whai Ora, *OPQ Background Material: Horowhenua M[aa]ori Workforce Development Prototype* dated 12 December 2023, at 7.
[203] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d), at [30.4].
[204] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d), at [31].
[205] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d), at [39.3].
[206] J Whaanga, *Appendix One Hauora Maaori Service directorate of Health New Zealand* dated 24 May 2025, Wai 2575, #M34(d), app A, at [1.4]

104. It is also important to note that at the inception of Te Aka Whai Ora a significant proportion of the Maaori health workforce transferred from Te Whatu Ora to Te Aka Whai Ora, leaving the Te Whatu Ora workforce particularly vulnerable to critical shortages of its Maaori workforce. At that point, Te Whatu Ora should have invested into expanding its Maaori workforce, which did not occur. With the transfer of Te Aka Whai Ora kaimahi into the Hauora Maaori Services, the mainstream services remain monocultural and with shortages in its Maaori workforce. Dr Elana Curtis emphasised this when she said:[207]

> We needed more investment in M[aa]ori health staff capacity and expertise (e.g. adding in additional Māori staff with appropriate expertise) right across the sector rather than shifting that expertise out of Te Whatu Ora into Te Aka Whai Ora

With a contrast in approach, whilst Te Aka Whai Ora implemented clear strategies and programmes to improve workforce shortages, the Crown has done little beyond identifying the critical shortages.

<u>Government Policy Statement</u>

105. In regard to the GPS there is only one objective contained within the workforce section which specifically references outcomes for Maaori.[208] Objective 4.2 states that, the Crown will strengthen health system leadership, with the expectation that leadership programmes will be developed, including investing in aspiring Maaori health leaders and rangatahi.[209] The Crown will measure the success of this objective through the proportion of Maaori, Pacific and other priority groups in governance roles in health statutory committees.[210] The expected outcome will be that the proportion of priority groups across

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[207] Dr E T Curtis, *Brief of Evidence of Associate Professor Dr Elana Tai Curtis* dated 13 May 2025, Wai 2575, #M51, at [11].
[208] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 24, 257].
[209] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 24, 257].
[210] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 24, 273].

governance roles are reflective of the population.[211] The Crowns grouping of Maaori with other 'priority groups' assimilates Maaori health equity goals into a broader and undefined category group. Such approach to performance indicators makes it difficult to ascertain whether there are in fact gains being made for Maaori. Without Maaori specific measures and outcomes the Crown cannot adequately monitor increase in Maaori leadership. Such grouping further dilutes the Crowns duty to ensure Maaori-led leadership. The Crown must improve monitoring and outcomes beyond statistical representation within priority groups.

106. Further contained within Vote Health is how performance will be assessed and the end of year reporting requirements.[212] One of the assessments of performance was the increase in the proportion of Maaori and Pacific people in leadership and governance roles in Te Whatu Ora, compared with 2022/23.[213] However, it notes that this measure has been discontinued following difficulty in collecting the data.[214] This further exemplifies that the Crowns measures are insufficient and unable to show actual improved outcomes for Maaori.

107. In contrast, Te Aka Whai Ora recognised that growing the capability of Maaori health leaders is vital to improving health outcomes for Maaori.[215] Te Aka Whai Ora began to implement this vision through investment into Maaori leadership within the nursing and midwifery sector. [216]This included investment into Ngaa Manukura, a marae based kaupapa Maaori leadership course. This course

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[211] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 24, 273].
[212] Manatuu Hauora, *Vote Health - The Estimates of Appropriations 2024/25* dated 30 June 2024, accessed at <https://budget.govt.nz/budget/pdfs/estimates/v5/est24-v5-health.pdf>, Wai 2575, #N10 [Tab 9, at 266].
[213] Manatuu Hauora, *Vote Health - The Estimates of Appropriations 2024/25* dated 30 June 2024, accessed at <https://budget.govt.nz/budget/pdfs/estimates/v5/est24-v5-health.pdf>, Wai 2575, #N10 [Tab 9, at 267].
[214] Manatuu Hauora, *Vote Health - The Estimates of Appropriations 2024/25* dated 30 June 2024, accessed at <https://budget.govt.nz/budget/pdfs/estimates/v5/est24-v5-health.pdf>, Wai 2575, #N10 [Tab 9, at 267].
[215] Te Aka Whai Ora, *Te P[uu]rongo [aa]-Tau Annual Report 2023-2024* dated October 2024, at 49.
[216] Te Aka Whai Ora, *Te P[uu]rongo [aa]-Tau Annual Report 2022–2023* dated November 2023, at 49.

allows Maaori nurses and midwives to learn strategies of leadership, how to lead to make a difference and current issues that Maaori leaders face.[217]

108. The second objective contained within the GPS that Crown may assert will improve outcomes for the Maaori workforce is objective 4.1, which states that the Crown will improve training pathways and develop a more culturally safe and competent workforce.[218] However, the Crown does not refer to improving training pathways specifically for Maaori. The language is ambiguous allowing multiple interpretations of what these pathways will be and who they will benefit. Furthermore, the measures of success are again grouped with other 'priority groups'.[219] This further exemplifies the Crown's failure to provide specific measures and outcomes that will in reality, improve the Maaori workforce.

109. The Crown has submitted that the evidence they have provided is focused on the principles driving the policy's designed to address Maaori health in lieu of the Te Aka Whai Ora.[220] However, we reiterate the position that it is unhelpful for the Crown to compartmentalise its alternative plans.[221] The Crown ought to put in evidence that it considers necessary to show the alternative plans are te Tiriti compliant.[222] We therefore, submit that the Crown has not provided evidence that demonstrate alternative plans, which are te Tiriti complaint. The Crown has provided high level aspirational documents that lack in specificity allowing space for interpretation and measures of what success looks like. The Crown has further not provided any other evidence that shows how these aspirations will be implemented and what steps the Crown are, in fact, taking to

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[217] Digital Indigenous, *Ng[aa] Manukura Training Programme - Clinical Leadership Training* dated 2025, accessed at <https://www.digitalindigenous.co.nz/general-5>.
[218] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 24, 257].
[219] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 24, 272].
[220] Crown Law, *Opening Submissions for the Crown – Part Two of Priority Inquiry* dated 23 April 2025, Wai 2575, #3.3.176 at [4].
[221] Waitangi Tribunal, *Memorandum-Directions of Judge D Stone Concerning Next Steps for the Te Aka Whai Ora Priority Inquiry* dated 8 April 2025, Wai 2575, #2.6.202, at [37].
[222] Waitangi Tribunal, *Memorandum-Directions of Judge D Stone Concerning Next Steps for the Te Aka Whai Ora Priority Inquiry* dated 8 April 2025, Wai 2575, #2.6.202, at [37].

ensure improved training pathways for Maaori and greater representation of Maaori in leadership positions.

Guaranteed Representation of Maaori

110. Te Aka Whai Ora not only invested in growing the Maaori workforce, but they themselves were a by Maaori for Maaori organisation, who ensured Maaori were at the centre of change. Te Aka Whai Ora also enabled Maaori to be at the decision-making table, involved in health policy, which is vital to the delivery of health outcomes.[223]

Te Aka Whai Ora Workforce

111. As of 29 November 2023, Te Aka Whai ora had 290 employees excluding contractors and subcontractors.[224] Of the 280 employees that disclosed their ethnicity, 76.4 percent identified as Maaori.[225] Te Aka Whai Ora recognised the importance of having Maaori at the centre of change. During 1 November 2023 to April 2024, 49 of these kaimahi resigned.[226] There have further been 22 kaimahi that have taken voluntary redundancy packages.[227] That is 71 kaimahi who longer wished to work for Te Aka Whai Ora after the announcement of its disestablishment.

112. The remaining Te Aka Whai Ora workforce were transitioned to the Hauora Maaori Service Directorate within Health New Zealand.[228] Within the Hauora Maaori Service Directorate currently there are 186 kaimahi who have identified as Maaori[229] which indicates a loss of Maaori in the workforce despite the critical need for the increase of Maaori kaimahi. On 27 May 2025, Dr Rawiri Jansen

[223] H Came, T McCreanor, et al, *Maaori and Pasifika leaders' experiences of government health advisory groups in New Zealand* (Kotuitui: New Zealand Journal of Social Sciences Online, Vol 1, Issue 1, 2018), at 134.
[224] Te Aka Whai Ora, *Te P[uu]rongo [aa]-Tau Annual Report 2023-2024* dated October 2024, at 49.
[225] Te Aka Whai Ora, *Te P[uu]rongo [aa]-Tau Annual Report 2023-2024* dated October 2024, at 49.
[226] D Coe, *Letter to S Roughton and CRS Smith, Taamaki Legal* dated 01 May 2025 (Obtained under Official Information Act 1982 Request to Health New Zealand HNZ83736) at 2.
[227] D Coe, *Letter to S Roughton and CRS Smith, Taamaki Legal* dated 01 May 2025, at 2 (Obtained under Official Information Act 1982 Request to Health New Zealand HNZ83736) at 2.
[228] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d), at [17].
[229] D Coe, *Letter to S Roughton and CRS Smith, Taamaki Legal* dated 01 May 2025(Obtained under Official Information Act 1982 Request to Health New Zealand HNZ83736) at 2.

referred to the "lift and shift" of Te Aka Whai Ora staff followed by "repeated restructuring" which meant that they are not getting the job done.[230] In a follow up question, Mr Craig Linkhorn referred to this as "disruptive".

113. During questions on 26 May 2025, Sharon Shea stated that there is the capability within the Maaori health workforce as some of the same people are in the health sector, but with losing some, there is a loss of capacity. She identified that a key issue is the loss of Maaori roles at a decision-making level, which Te Aka Whai Ora held.[231]

<u>Maaori Health Directorate / Te Pou Hauora Maaori</u>

114. Mr Whaanga confirmed in cross-examination on 28 May 2025 that staff were pulled from Te Pou Hauora Maaori to Te Aka Whai Ora and then transferred back after its disestablishment.[232] While Mr Whaanga identified that his own team has been restructured, he was unable to provide specific details around the number of staff prior to the disestablishment and current.

115. The Hauora Maaori directorate was in place prior to the disestablishment of Te Aka Whai Ora and has an advisory role to the Minister of Health. As it was in place prior to disestablishment, without noticeable change to its remit since, it cannot be argued that the Hauora Maaori directorate is an alternative plan for Maaori health. The Hauora Maaori directorate's functions carried out while Te Aka Whai Ora was established included being the principal advisor to the Minister of Health on Te Tiriti and Maaori health equity. It also undertook Maaori health monitoring that focuses on Maaori health needs and supported HMAC.[233] The Hauora Maaori directorate was responsible for leading Maaori/Crown

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[230] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 2* dated 27 May 2025, accessed at <https://www.youtube.com/live/HxPco4k7p9I.> at 3.07.31.
[231] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 1* dated 26 May 2025, accessed at <https://www.youtube.com/live/XYw2kcJcggc> at 3.50.40.
[232] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 3* dated 28 May 2025, accessed at <https://www.youtube.com/live/fj4UJqXW7OE> at 2.08.11.
[233] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 2, 34].

relationship across the health sector as well as facilitating Waitangi Tribunal process as well as health sector input into wider Crown/Maaori relationship.[234]

116. The Te Whatu Ora website describes the Hauora Maaori directorate's functions as:[235]

> Te Pou Hauora M[aa]ori exercises the Ministry's kaitiakitanga function for Māori health. As the Minister's chief steward for Māori health, this function provides assurance that the health system is meeting its obligations under Te Tiriti, addressing Māori health aspirations, and achieving equity for Māori.

117. It is unclear if the functions of the Hauora Maaori directorate have expanded since the disestablishment of Te Aka Whai Ora, although based on the information available, it appears as though they have not. It follows that the Hauora Maaori directorate cannot replace the functions of Te Aka Whai Ora, as it was in place prior to the disestablishment and its remit has not expanded.

Hauora Maaori Service Directorate

118. Although the Hauora Maaori Service Directorate is "newly formed",[236] it is unclear what their function is and how they address the issue of the critical shortage of Maaori in the health workforce. Mr Whaanga's evidence indicates that one of their key deliverables is "strengthening the workforce"[237] but no information has been provided on how they will address this issue. During cross-examination by Ms Smail on 29 May 2025, Mr Whaanga agreed with Ms Smail that when looking at the table for the Hauora Maaori Services team restructure, the numbers reflect that there is a loss of staff.[238] It is unclear from the evidence

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[234] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 2, 34].
[235] Ministry of Health, *Ministry directorates* dated 19 December 2024, accessed at <https://www.health.govt.nz/about-us/organisation-and-leadership/ministry-directorates>.
[236] D Coe, *Letter to S Roughton and CRS Smith, Taamaki Legal* dated 01 May 2025(Obtained under Official Information Act 1982 Request to Health New Zealand HNZ83736) at 2.
[237] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d), app A, at [2.6].
[238] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 3* dated 28 May 2025, accessed at <https://www.youtube.com/live/fj4UJqXW7OE> at 3.14.30.

proffered by the Crown as to the extent of influence within Te Whatu Ora that the Hauora Maaori Service Directorate has.

119. Concerningly, and as iterated in the Brief of Evidence of Janice Panoho, there are ongoing cuts to Te Whatu Ora resources and staff generally, and specifically the Hauora Maaori Service.[239] These cuts have been identified by health workers as harming patients[240] and the Public Service Association identified that there is a strategic change in direction away from equity, inclusion and the use of a Treaty focussed lens in planning and delivery of healthcare.[241]

Guaranteed Representation

120. In addressing health inequities, it is critical that health policy incorporates solutions from Maaori leaders, as it is vital to the delivery of health outcomes for Maaori.[242] Under the Pae Ora Act as it was enacted, section 22 established that the Minister in appointing board members must have been satisfied that the board collectively had knowledge of and expertise in relation to te Tiriti o Waitangi, tikanga Maaori, maatauranga Maaori, kaupapa Maaori services and cultural safety and responsiveness of services. This provision ensured that those who were making decisions for Maaori would collectively have the expertise and knowledge of te Tiriti. Although this provision did not guarantee representation of Maaori, it guaranteed that those appointed would be grounded in maatauranga Maaori and te Tiriti. Under the Pae Ora Act, the HMAC was also established, whereby members were to be appointed by the Minister on the nomination from all IMPB's.[243] The Crown acknowledged that this approach provided for strong Maaori decision making.[244] Together HMAC and Te Aka

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[239] J Panoho, *Unsigned Brief of Evidence of Janice Panoho in Support of Statement of Claim* dated 21 May 2025, Wai 2575, #M63, at [5].
[240] J Panoho, *Unsigned Brief of Evidence of Janice Panoho in Support of Statement of Claim* dated 21 May 2025, Wai 2575, #M63, at [8].
[241] J Panoho, *Unsigned Brief of Evidence of Janice Panoho in Support of Statement of Claim* dated 21 May 2025, Wai 2575, #M63, at [38].
[242] H Came, T McCreanor, et al, *M[aa]ori and Pasifika leaders' experiences of government health advisory groups in New Zealand* (Kotuitui: New Zealand Journal of Social Sciences Online, Vol 1, Issue 1, 2018), at 134.
[243] Pae Ora (Healthy Futures) Act 2022, s90(1)(a), as at 27 July 2023 *(Repealed).*
[244] Crown Law, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 4, 57].

Whai Ora board lay the foundations for Maaori representation within the governance of health policy.

121. With the disestablishment of Te Aka Whai Ora Board, Maaori lost the guarantee that those making decisions regarding their health outcomes would be grounded in maatauranga and te Tiriti. Further since the repeal of section 90, members of HMAC are now appointed by the Minister of Health after consulting the Minister for Maaori Development.[245] The repeal of section 90 has weakened the role of Maaori in shaping who represents them within policy decisions. Ms Janice Panoho has identified that the proposed restructures removes Maaori and Pacific leadership pipelines, and centralises authority without transparent mechanisms for iwi, hapuu, and whaanau inclusion.[246]

122. Previously, IMPB played a direct role in nominating members to HMAC, enabling wider consultation and input from iwi on such nominations. While IMPBs were not without their limitations, in that they do not represent all Maaori voices, they enabled greater consultation than what is in place currently. Under the new legislation the appointment of members relies solely on the centralised power of Ministers in appointing and removing members. The Crown were advised that this option would reduce the ability of iwi and Maaori at a community level to represent local and regional views.[247] They were advised that it presents some reputational risk in removing the legislative capacity for Maaori to have a say in who is appointed to the Committee.[248] Despite the clear advice that the removal of appointments from IMPBs would reduce legislative capacity for Maaori the Crown chose to do so anyway.

123. The Crown were further advised that by maintaining IMPBs role in the appointment of members to HMAC would enable the committee to provide

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[245] Pae Ora (Healthy Futures) Act 2022, s89(2).
[246] J Panoho, *Unsigned Brief of Evidence of Janice Panoho in Support of Statement of Claim* dated 21 May 2025, Wai 2575, #M63, at [18].
[247] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 4, 57].
[248] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 4, 57].

independent advice the reflects the views of Maaori. The Crown were further advised that this would show the governments recognition of the importance of Maaori input into solutions for Maaori.[249] The Crown instead of choosing an option that would enhance and improve Maaori voices in governance decisions, intentionally reduced Maaori ability to do so. This option not only allows minimal input and consultation with Maaori, but it gives the Crown the ability to appoint members who align in favour of political interests removing representation that aligns with Maaori interests. As a result of the changes since disestablishment, claimant evidence paints a dim picture of the state of Maaori representation and the wider Maaori health workforce:

a. John Kearns noted that as the only Maaori on the Kidney Society Board, he felt like a lone voice;[250] and

b. Susan Taylor's evidence shines a concerning light on the reduction of the Maaori workforce in the mental health space. Her evidence referred to the loss of roles in the Suicide Prevention Office and Victim Support Postvention Support- roles that came under Te Aka Whai Ora.[251]

Conclusion

124. In conclusion, Te Aka Whai Ora enabled critical investment into the Maaori workforce and allowed Maaori to be at the centre of change. The Crown has not provided evidence demonstrating that its alternative plans are compliant with te Tiriti. Instead, it has presented high-level aspirational documents that lack specificity, leaving room for broad interpretation and offering no clear measures of success.

125. Te Aka Whai Ora further created opportunities for greater representation of Maaori voices at the governance level. HMAC as it stands now, under the amended legislation, provides less opportunity for Maaori input into who will

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[249] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 1, 11].
[250] J Kearns, *Amended Brief of Evidence of John Kearns* dated 12 May 2025, Wai 2575, #M57(a), at [7].
[251] S Taylor, *Brief of Evidence of Susan Taylor* dated 12 May 2025, Wai 2575, #M58, at [18].

represent their voices at the decision-making level. Maaori at the decision-making table is vital to ensuring health policy that represents the needs of Maaori. However, instead the Crown have intentionally reduced the ability of legislative capacity for Maaori.[252]

Inadequate Monitoring of Hauora Maaori Services

Introduction

126. One of the roles that Te Aka Whai Ora held was to assess how the health system performed for Maaori. This monitoring role included evaluating hauora Maaori service delivery and publicly reporting on outcomes.[253] Manatuu Hauora and Te Puni Kookiri[254] were to assist Te Aka Whai Ora in developing an approach to monitoring and accountability[255] which upheld Te Tiriti and evaluated health outcomes from a taha Maaori perspective.[256] This role also focused on holding the health system accountable in three key areas:[257]

    a. First, it assessed how well Crown entities delivered services, and its ability to support equity and hauora Maaori in their decision-making.

    b. Second, it monitored the health system as a whole and its ability to achieve outcomes that align with Maaori health priorities.

    c. Third, it reviewed how Te Whatu Ora and other providers delivered hauora Maaori services and whether they met expected performance standards.

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[252] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b), at 57.
[253] Pae Ora (Healthy Futures) Act 2022, s 19(l).
[254] Pae Ora (Healthy Futures) Act 2022, s 19(m).
[255] Te Aka Whai Ora, *Briefing to the Incoming Minister* dated 1 February 2023, accessed at <https://www.beehive.govt.nz/sites/default/files/2023-03/BIM%20-%20Minister%20of%20Health%20-%20Te%20Aka%20Whai%20Ora.pdf>, at 13.
[256] Te Puni K[oo]kiri, *System Performance Monitoring,* dated 13 September 2022, accessed at <https://www.tpk.govt.nz/en/a-matou-whakaarotau/equitable-effective-government-performance/system-performance-monitoring>.
[257] Te Aka Whai Ora, *Te Aka Whai Ora Statement of Intent* dated September2022, accessed at <https://www.tewhatuora.govt.nz/assets/Uploads/Te-Aka-Whai-Ora-Statement-of-Intent.pdf>, at 43.

127. Te Aka Whai Ora played an independent role in overseeing the health system's performance for Maaori, with the authority to identify gaps, assess accountability, and advocate for improved outcomes.[258] Mr Campbell during the hearing expressed that Te Aka Whai Ora exercised an independent monitoring role of the behaviour of Te Whatu Ora, which is different to being simply located within Te Whatu Ora and subject to its organisational structure and management.[259]

Monitoring of Hauora Maaori Since Disestablishment

128. Post-disestablishment, Te Aka Whai Ora's monitoring functions were transferred to Manatuu Hauora, Te Whatu Ora, IMPBs and HMAC.[260] The specific tasks that each agency/entity in responsible for (in terms of the monitoring role) are:

    a. Manatuu Hauora monitors overall system performance, publicly reports on Maaori outcomes,[261] and advises on the Strategic Monitoring Framework in the Government Policy Statement **("GPS")** to set Maaori health priorities.[262]

    b. Te Whatu Ora monitors service delivery and provider performance for Maaori,[263] develops the New Zealand Health Plan[264] and assists Manatuu Hauora by providing the health and funding priorities for hauora Maaori and kaupapa Maaori services.[265]

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[258] C Aspin, Dr Came et al, *Pae Ora (Disestablishment of M[aa]ori Health Authority) Amendment Act 2024: further Crown breaches of Te Tiriti o Waitangi* (New Zealand Medical Journal, Vol 137, Issue 1595, 2024), at 95.
[259] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 1* dated 26 May 2025, accessed at <https://www.youtube.com/live/XYw2kcJcggc> at 3.07.17.
[260] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 24, 240].
[261] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 24, 266].
[262] Manat[uu] Hauora, *Briefing, Update on the strategic monitoring framework,* dated 28 March 2024, accessed at <https://www.health.govt.nz/system/files/2024-10/H2024038271%20Briefing%20-%20Update%20on%20the%20strategic%20monitoring%20framework.pdf>, at 4.
[263] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d), at [15.4].
[264]Pae Ora (Healthy Futures) Act 2022, s51.
[265] Pae Ora (Healthy Futures) Act 2022, s36(1).

c. IMPBs engage with Maaori in their rohe[266] and are to represent local Maaori perspectives on how the health sector is performing in relation to the needs and aspirations of Maaori.[267]

d. HMAC is to monitor Maaori health outcomes by publishing periodic reports on the performance of the health system vis-à-vis the nine health priorities as set by the Minister. It will do this by obtaining information from Te Whatu Ora. Its monitoring approach will begin in phases and focus on the current nine health priorities, while identifying areas for improvement.[268]

<u>Manatuu Hauora</u>

129. Manatuu Hauora monitors Te Whatu Ora by identifying key performance issues and recommending improvements.[269] The Ministry establishes routine reporting cycles for Te Whatu Ora including quarterly results, weekly target reviews, monthly and ad hoc reporting.[270] Mr Whaanga's evidence suggests that Manatuu Hauora plays a key role in setting hauora Maaori priorities alongside HMAC.[271] Manatuu Hauora has responsibility to assess IMPBs' monitoring frameworks to ensure they align with local health needs[272] and supports the Minister in developing the Crown's Maaori health strategies.[273]

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[266] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 24, 240].
[267]Pae Ora (Healthy Futures) Act 2022, s 30(1); J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d), at [51].
[268] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d), at [52].
[269] Ministry of Health, *2023/24 Annual Review, Heath Select Committee Post-hearing Questions*, dated February 2025, accessed at <https://www.parliament.nz/resource/en-NZ/54SCHEA_EVI_d247330f-d263-4bb6-75be-08dcf30216c1_HEA8841/05013939a99490b523a83e1b092d7aae36fa2796>, at 126.
[270] Ministry of Health, *2023/24 Annual Review, Heath Select Committee Post-hearing Questions*, dated February 2025, accessed at < https://www.parliament.nz/resource/en-NZ/54SCHEA_EVI_d247330f-d263-4bb6-75be-08dcf30216c1_HEA8841/05013939a99490b523a83e1b092d7aae36fa2796>, at 128.
[271] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d) at [47].
[272] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 2,156].
[273] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d), at [23].

130. The Government Policy Statement **("GPS")** sets out three-year objectives, expectations and targets[274] with long-term aims of improved life expectancy and quality of life.[275] The five priority areas within the GPS include access, timeliness, quality, workforce, and infrastructure.[276] Measures for monitoring Maaori health outcomes include factors such as age, ethnicity, gender, geographic location, and rurality and yet monitoring only occurs where data is available.[277] In addition, as part of the Crown's monitoring role, the Maaori Monitoring Group **("MMG")** supports the Ministry in monitoring and accountability obligations.[278]

131. Manatuu Hauora is to monitor the government's implementation of the Strategic Monitoring Framework **("Framework")** in the GPS. The Framework tracks short, medium and long-term health system objectives and outcomes including the nine population priorities set by the Minister.[279] Over time, it would incorporate three layers of measures: outcomes and trends, health system responses, inputs/enablers which would collectively explain the "why" behind changes that occur, how the system responds, and the support driving system response.[280] In relation to Maaori, Manatuu Hauora is to monitor the GPS' commitment to implement the existing Maaori health strategies of *Pae Tuu: Hauora Maaori Strategy,* and *Whakamaua: Maaori Health Action Plan 2020–2025.*[281]

132. However, Manatuu Hauora has had a significant role in monitoring and improving hauora Maaori outcomes for decades and has not improved the

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[274] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 24, 266].
[275] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 24, 234].
[276] J Whaanga, *Brief of Evidence of John Norman Whaanga*, dated 24 May 2025, Wai 2575, #M34(d), at [28].
[277] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d), at [32].
[278] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d) at [27].
[279] Manat[uu] Hauora, *Briefing, update on the strategic monitoring framework*, dated 28 March 2024, accessed at <https://www.health.govt.nz/system/files/2024-10/H2024038271%20Briefing%20-%20Update%20on%20the%20strategic%20monitoring%20framework.pdf >, at [3].
[280] Manat[uu] Hauora, *Briefing, update on the strategic monitoring framework,* dated 28 March 2024, accessed at <https://www.health.govt.nz/system/files/2024-10/H2024038271%20Briefing%20-%20Update%20on%20the%20strategic%20monitoring%20framework.pdf>, at 2.
[281] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d) at [30]

inequities faced by Maaori. So, despite the GPS seeking to implement *Pae Tuu* and *Whakamaua*, and containing measures for accountability, the GPS does not provide any clarity or guidance on how it is intended that culturally appropriate tools or maatauranga Maaori approaches are to be used in the monitoring of hauora Maaori. In this respect, during questioning of Mr Whaanga, it was confirmed that Manatuu Hauora provided advice to the previous Minister on the inclusion of its Te Tiriti framework within the GPS.[282] Mr Whaanga also confirmed that the HMAC and the MMG had provided advice to Manatuu Hauora on their concern with the exclusion of this framework from the GPS. This can be seen from the written advice provided to the Minister.[283]

133. Despite this, Mr Whaanga's evidence stated that the MMG will be one of the sources (along with HMAC) to provide specialist Maaori health advice[284] to ensure that the Ministry is actively responding to Maaori health needs.[285] However, despite the involvement of these Maaori bodies, their influence in the Ministry's strategies is not apparent. Dr Jansen regards the MMG and Ministry's collaboration as a "superficial engagement process," given that the Ministry either ignored advice from HMAC and MMG concerning the absence of a Te Tiriti framework in the GPS, or its own advice to the Minister to include the framework was ineffectual given that to date the GPS has no such framework.[286]

134. Mr Whaanga confirmed that Te Aka Whai Ora's monitoring functions moved to Manatuu Hauora which he described as a "consolidation".[287] However, in closing submissions, Mr Craig Linkhorn recognised that Te Aka Whai Ora had a

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[282] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 3* dated 28 May 2025, accessed at <https://www.youtube.com/live/fj4UJqXW7OE> at 5.20.30.
[283] J Whaanga, *(Part 2) Bundle of supporting documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c), at [Tab 28, 428].
[284] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d) at [27]. See also Footnote 14.
[285] Manat[uu] Hauora, *Covid-19 M[aa]ori Health Protection Plan,* dated 2021, accessed at <https://www.health.govt.nz/system/files/2021-12/13450_covid-19_action_plan_final_0.pdf>, at 20.
[286] Dr R M Jansen *Brief of Evidence of Dr Rawiri McKree Jansen* dated 12 May 2025, Wai 2575, #M23(b), at [25]; J Whaanga, *Bundle of supporting documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 28, 428].
[287] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 3* dated 28 May 2025, accessed at <https://www.youtube.com/live/fj4UJqXW7OE> at 3.05.15.

Maaori specific lens in their monitoring, whereas Manatuu Hauora considers all health matters.[288] This loss of specific monitoring is a loss adds a vulnerability to hauora Maaori. When asked by Ms Tara Hauraki on 28 May 2025 if he would agree that Te Aka Whai Ora provided an independent voice across the system that was a significant and different intervention that no longer exists in the current monitoring functions, Mr John Whaanga agreed.[289]

135. It is unclear how Manatuu Hauora is or will be capable to monitor inequities faced by Maaori when it ignores clear advice from HMAC and MMG on its own te Tiriti compliance within its own documents. This is supported by Mr Kearns' evidence that:[290]

> It doesn't seem to me as though monitoring renal health outcomes is a priority for Manatuu Hauora or Te Whatu Ora. Maaori get lost in monitoring and my view is that it's just not a concern for the government.

Te Whatu Ora

136. Te Whatu Ora is responsible for monitoring the performance of the services it funds and commissions.[291] It must report to Maaori on health system performance for Maaori,[292] develop the New Zealand Health Plan,[293] and deliver national health priorities as set by the Minister in the GPS.[294] Te Whatu Ora also works alongside the HMAC and IMPBs to deliver Maaori health outcomes. John Whaanga gave evidence that Te Whatu Ora is required to engage with IMPBs, advise and support them in carrying out their functions.[295]

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[288] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 4* dated 29 May 2025, accessed at <https://www.youtube.com/live/CCw-GpGi9pU> at 9.16.
[289] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 3* dated 28 May 2025, accessed at <https://www.youtube.com/live/fj4UJqXW7OE> at 3.11.38.
[290] J Kearns, *Amended Brief of Evidence of John Kearns* dated 12 Mei 2025, Wai 2575, #M57(a), at [16].
[291] Pae Ora (Healthy Futures) Act 2022, s14(1)(o).
[292] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d) at [15.4].
[293] Pae Ora (Healthy Futures) Act 2022, ss 50 - 53.
[294] Pae Ora (Healthy Futures) Act 2022, ss 34 - 40.
[295] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d) at [49].

137. Te Whatu Ora is both the funder and monitor of health services. Without an independent Maaori-led entity, there is no external oversight to provide a check on Te Whatu Ora's ability to carry out these dual responsibilities to genuinely reflect the needs and aspirations of Maaori communities.

138. By contradistinction, Ms Kuka's evidence from stage one of this priority inquiry highlighted that Te Aka Whai Ora gave Maaori a voice and placed significant responsibility for monitoring and reporting to Maaori, which *Hauora* identified the health system was failing at.[296] It appears to us that since disestablishment, we have regressed to where monitoring and reporting to Maaori-on-Maaori health outcomes is not occurring. By way of example, Te Whatu Ora is only required to share performance data with IMPBs "from time to time." [297] This limits transparency and restricts Maaori from holding the system accountable for addressing health inequities. With Maaori no longer involved in co-designing system priorities, there is no assurance that any disparities identified through monitoring will be met with targeted and appropriate investment. Previously, Te Aka Whai Ora shared responsibility with Te Whatu Ora in developing the Health Plan,[298] and was consulted by the Minister on the GPS.[299] This ensured Maaori involvement in setting national priorities and funding decisions where monitoring would help guide investment. Now, Te Whatu Ora develops the Health Plan alone,[300] and the Minister is only required to consult Te Whatu Ora in preparing the GPS.[301] There is no obligation to involve IMPBs, HMAC or any other Maaori entity in these processes.

Hauora Maaori Advisory Committee

139. Mr Whaanga's evidence outlines HMAC's monitoring approach will be in phases which involves considering opportunities for improvement in the health system, reporting on performance and providing direct advice to the Minister of

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[296] J Kuka, *Affidavit of Janice Kuka* dated 8 December 2023, Wai 2575, #M2, at [14].
[297] Pae Ora (Disestablishment of the M[aa]ori Health Authority) Amendment Act 2024, s16A(b).
[298] Pae Ora (Healthy Futures) Act 2022, s53(1), as at 27 July 2023 (*Repealed).*
[299] Pae Ora (Healthy Futures) Act 2022, s35(c), as at 27 July 2023 (*Repealed).*
[300] Pae Ora (Healthy Futures) Act 2022, s14(1)(a).
[301] Pae Ora (Healthy Futures) Act 2022, s35(c).

Health.[302] HMAC's expanded role goes beyond its original scope which dilutes its effectiveness and displaces Maaori-led monitoring. HMAC initially was to monitor Te Aka Wai Ora, advise on issues requested by the Minister, meet regularly with the Minister, and advise on other issues the Committee sees necessary.[303]

140. While the Committee holds cultural expertise, it lacks independent authority to hold the Crown accountable for Maaori health. The Committee has eight members and relies on Crown-controlled systems and data. It has limited access to data from Health New Zealand and monitors Maaori health priorities set by the Minister.[304] Claimant evidence noted that "regardless of how effective and useful the Committee's advice is, the Crown will still have the power to decide whether it chooses to implement it or not." [305] This is confirmed by the rejection of HMAC's concerns regarding the lack of a te Tiriti framework within the GPS. In line with this, Mr Kearns' evidence was that HMAC has "no real teeth" and is under-resourced.[306] Mr Kearns went on to say that the HMAC cannot monitor its priority of rangatahi mental health due to system-wide funding cuts.[307]

141. Responding to Ms Roughton's question on 28 May 2025 on the frequency of meetings between the minister and HMAC, Mr John Whaanga confirmed that HMAC meets with the Minister quarterly, although there is the possibility for HMAC to request meetings.[308] Just four set hui per year between HMAC and the Minister is gravely insufficient to progress hauora Maaori needs, and to adequately respond to any issues with the performance of the health system. This starkly contrasts the previous weekly meetings between the Minister and Te Aka Whai Ora, as iterated by Ms Roimata Smail in response to the Crown's

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[302] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d) at [44].
[303] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d) at [45].
[304] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d) at [47].
[305] Dr H Came, Prof T McCreanor, *Joint Brief of evidence of Dr Heather Came and Professor Tim* McCreanor dated 12 May 2025, Wai 2575, #M60, at [35].
[306]J Kearns, *Amended Brief of evidence of John Kearns* dated 19 May 2025, Wai 2575, #M57(a) at [10].
[307]J Kearns, *Amended Brief of evidence of John Kearns* dated 19 May 2025, Wai 2575, #M57(a), at [11].
[308] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 3* dated 28 May 2025, accessed at <https://www.youtube.com/live/fj4UJqXW7OE> at 5.22.52.

closing submissions on 29 May 2025.[309] Practical difficulties abound as the scope of the HMAC's mahi has been expanded to reviewing all the health system instead of Maaori specific services, without an increase in resourcing. Further, as identified by Ms Roimata Smail on 29 May 2025, the HMAC team is not fully staffed.[310]

142. The HMAC's new appointment process is a significant structural shift.

143. Previously, members were nominated by IMPBs and Maaori organisations[311] which is "an important expression of tino rangatiratanga," according to claimant evidence.[312] Members are now appointed by the Minister of Health at his pleasure. This change undermines the HMAC's ability to independently monitor Maaori health outcomes, as Maaori are excluded from decision-making in selecting committee members which is breach of partnership and tino rangatiratanga. Susan Taylor highlighted in her evidence that: [313]

> I have read Mr Whaanga's evidence, and I would expect that the Hauora Maaori Advisory Committee would have to be on a national level, with a broad mandate to monitor Maaori health needs like Te Aka Whai Ora, so it could serve the needs of all Maaori around the motu. I am not surprised that the Board's mandate and authority is restricted in the way that it is. **It has always been the case that Maaori haven't been taken seriously or had a voice.** [Emphasis Added]

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[309] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 4* dated 29 May 2025, accessed at <https://www.youtube.com/live/CCw-GpGi9pU> at 2.05.57.
[310] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 4* dated 29 May 2025, accessed at <https://www.youtube.com/live/CCw-GpGi9pU> at 2.05.57.
[311]Manat[uu] Hauora, *Hauora Maaori Advisory Committee Terms of Reference* dated 24 June 2024 at [4], accessed at <https://www.health.govt.nz/system/files/2025-01/terms-reference-hauora-maori-advisory-committee-jun24.pdf>.
[312] Dr Came, Professor T McCreanor, *Joint Brief of evidence of Dr Heather Came and Professor Tim McCreanor* dated 12 May 2025, Wai 2575, #M60 at [34].
[313] S Taylor, *Brief of Evidence of Susan Taylor* dated 12 Mei 2025, Wai 2575, #M58, at [22].

Iwi-Maaori Partnership Boards

144. In late 2023, Manatuu Hauora outlined a staged approach to involve IMPBs in commissioning health services as required under the Pae Ora (Healthy Futures) Act 2022.[314] Initially, IMPBs were to assess local health needs, engage with whaanau and hapuu, review current health services and identify local Maaori health priorities.[315] From Mr Whaanga's evidence, it seems apparent that the IMPB's responsibilities and involvement in hauora Maaori do not equate to a pathway for Maaori control or influence in monitoring. This was raised by Dr Elana Curtis[316] who stated that the label of IMPBs is a false pretence to Maaori communities, as the Government can legislate IMPBs away, just as they did with Te Aka Whai Ora.[317]

145. Dr Curtis also noted that IMPBs are "set up to fail" due to under-resourcing and unclear responsibilities.[318] The failure of IMPBs is not only presumed, but is a reality, as IMPB monitoring plans submitted in September 2024[319] fell short of expectations (despite being satisfactory in other domains) and required further support when assessed against criteria developed by Manatuu Hauora.[320] Many boards will need further resourcing, and vary in capacity.[321] Dr Curtis expands on this point stating that some IMPBs prioritise health expertise, maatauranga Maaori or community expertise, and a number have become Whanau Ora commissioning agencies which diverts their focus from fully undertaking their legislated functions which they were designed for.[322]

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[314] Pae Ora (Healthy Futures) Act 2022, s30(1).
[315] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d) at [53]-[54].
[316] Dr E T Curtis, *Brief of Evidence of Associate Professor Dr Elana Tai Curtis* dated 13 May 2025, Wai 2575, #M51.
[317] Dr E T Curtis, *Brief of Evidence of Associate Professor Dr Elana Tai Curtis* dated 13 May 2025, Wai 2575, #M51, at [45].
[318] Dr E T Curtis, *Brief of Evidence of Associate Professor Dr Elana Tai Curtis* dated 13 May 2025, Wai 2575, #M51, at [48].
[319] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 18, 156], at [2].
[320] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 18, 156], at [2], [5].
[321] (27 February 2024) 773 NZPD 1577.
[322] Dr E T Curtis, *Brief of Evidence of Associate Professor Dr Elana Tai Curtis* dated 13 May 2025, Wai 2575, #M51, at [46].

146. Joint claimant evidence from Wai 3019, who are IMPB providers, expressed that the minimal engagement from IMPBs makes it unclear how well they can report on community needs.[323] The lack of decision-making powers or mechanisms for accountability with monitoring outcomes makes IMPB monitoring ability tokenistic. Their lack of influence undermines the credibility of the proposed "by Maaori, for Maaori" oversight model and renders its monitoring function as symbolic rather than substantive.

147. To add insult to injury, IMPBs can only access performance data from "time to time" via Te Whatu Ora and have no guaranteed or regular access.[324] Mr Whaanga acknowledged that IMPBs hold valuable Maaori expertise and are formally recognised by Order in Council.[325] Yet, IMPBs must rely on the very agency they monitor for the data they need to provide their monitoring function. This compromises their independence. Further, IMPBs' limited access to data impairs their ability to assess whether services meet Maaori local needs.[326] During his evidence presentation on 27 May 2025, Dr Jansen referred to the lack of data provided to IMPBs and that they will have "significant challenges" if they cannot access the required data.[327] He also identified that they are interested in monitoring other parts of the health sector and not just Te Whatu Ora, but they would need to be adequately resourced, to do so.[328]

148. This scope of IMPBs powers falls significantly short of Te Aka Whai Ora's capacity to intervene where health services underperformed for Maaori.[329] Any insights must go through Te Whatu Ora who will then decide if the feedback should then be passed on to the HMAC. We refer to our above submissions on

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[323] K Burne-Vaughn, S L R Ponga, *Joint Brief of Evidence of Korina Burne-Vaughn and Sarina Louise Rawhira Ponga* dated 12 May 2025, Wai 2575, #M21(c), at [29].
[324] Pae Ora (Disestablishment of the M[aa]ori Health Authority) Amendment Act 2024, 16A(b).
[325] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d), at [51].
[326] Pae Ora (Disestablishment of the M[aa]ori Health Authority) Amendment Act 2024, 16A(b).
[327] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 2* dated 27 May 2025, accessed at <https://www.youtube.com/live/HxPco4k7p9I.> at 3.23.50.
[328] *Wai 2575- The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 2* dated 27 May 2025, accessed at <https://www.youtube.com/live/HxPco4k7p9I.> at 3.24.29.
[329] Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019), at 207.

the effectiveness of the HMAC monitoring advice to the Minister. Therefore, IMPBs protective role is impeded by the lack of authority, capacity and access to timely data. Lastly, IMPBs were envisioned to shape locality plans and approve local priorities to ensure Maaori voices informed service design and delivery.[330] This function was a tangible expression of partnership and Maaori community-led planning.[331] However, work on locality plans by IMPBs has been paused. It is apparent that localities have been removed completely without any replacement. The removal of localities also removes IMPBs and Maaori input approving local priorities as intended[332] and input into monitoring underperformance of health services in their communities.

149. Further, IMPBs lack statutory powers to monitor national health priorities. They cannot contribute to the Government Policy Statement **(GPS)** which sets national health priorities[333] and the development of the New Zealand Health Plan.[334] Their influence is restricted to Te Whatu Ora priorities.[335]

150. Claimant evidence described that localities gave a real voice to community providers, allowing them to work together, agree on priorities, and provide direct feedback to the Minister and Te Whatu Ora. [336] Therefore, despite the Crown acknowledgments that Maaori experience consistently poorer health outcomes and promises that this would be a priority in the revised system,[337] Crown actions have all but silenced those who are best placed to assess and address their communities' needs, namely, iwi and hapuu Maaori.

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[330] Pae Ora (Healthy Futures) Act 2022, s30(1)(c).
[331] Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019), at 208.
[332] (27 February 2024) 773 NZPD 1561.
[333] Pae Ora (Healthy Futures) Act 2022, s35.
[334] Pae Ora (Healthy Futures) Act 2022 as at 25 October 2024, s50.
[335] J Whaanga, *Bundle of supporting documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 19, 165], at 2.
[336] K Burne-Vaughn and S L R Ponga, *Joint Brief of Evidence of Korina Burne-Vaughn and Sarina Louise Rawhira Ponga* dated 12 May 2025, Wai 2575, #M21(c), at [42].
[337] J Whaanga, *Brief of Evidence of John Norman Whaanga* dated 24 May 2025, Wai 2575, #M34(d) at [13].

Conclusion

151. The exclusion of Maaori leadership in the design, implementation and oversight of health system priorities amounts to a breach of tino rangatiratanga, partnership and active protection. Te Aka Whai Ora previously provided an independent, Maaori-led voice in developing the GPS and the New Zealand Health Plan to guide priorities and Kaupapa Maaori investment. Neither IMPBs, HMAC, nor MMG are mandated participants in strategic health decision-making. HMAC is controlled by the Crown, as the Minister can use its discretion to follow its advice, and IMPBs are excluded from locality planning and contributing to national health documents such as the GPS and New Zealand Health Plan. Without Maaori governance at the centre of monitoring, the system reverts to a Crown-centric model that sidelines Maaori voices and perpetuates structural inequity. The absence of culturally grounded, maatauranga Maaori monitoring tools reinforces the Crown's failure to uphold its Tiriti obligations which ultimately, erodes the credibility and effectiveness of its commitment to hauora Maaori.

Inadequate Ongoing Engagement and Consultation with Maaori

Introduction

152. Fundamental to the principle of partnership is the practical reality of how one treaty partner engages with the other. Consultation is fundamental to this. Regrettably, the Claimants and Interested Parties posit that the absence of a meaningful ongoing engagement mechanism is inconsistent with te Tiriti/the Treaty and its principles. Notably, prior to disestablishment, Te Aka Whai Ora was mandated with ensuring planning and service delivery responds to the aspirations and needs of Maaori and to achieve the best possible health outcomes for Maaori.[338] In addition, the Pae Ora Act referred to both Te Aka Whai Ora and IMPB's as having distinct engagement responsibilities[339] and

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[338] Pae Ora (Healthy Futures) Act 2022, s 18.
[339] Pae Ora (Healthy Futures) Act 2022, ss 20, 30(1)(a).

following disestablishment, this legislative mandate for engagement with Maaori has fallen to Te Whatu Ora[340] while IMPBs are to engage with their local communities despite having no formal process to provide any feedback or advice to Te Whatu Ora. In this way, the engagement appears to be one-sided.

Te Aka Whai Ora's Engagement Mandate

153. Below, we discuss the previous engagement mechanism held by Te Aka Whai Ora to show what has been lost. The Pae Ora Act set out that Te Aka Whai Ora would:

   a. have systems in place for the purpose of engaging with Maaori in relation to their aspirations and needs for hauora Maaori and allowing these responses to inform the performance of their functions ("**mechanism 'a'**").[341]

   b. engage with Maaori organisations when developing the New Zealand Health Plan, advising on the Government Policy Statement and any health strategies, and preparing their statements of intent and performance expectations ("**mechanism 'b'**").[342]

   c. report back to Maaori from "time to time" on how engagement had informed the performance of their functions ("**mechanism 'c'**").[343]

154. In relation to paragraph 153.b above, the term 'Maaori organisation' included:[344]

> iwi-Māori partnership boards, iwi and hapū authorities, rūnanga, trust boards, Māori health professionals' organisations, and **representatives of whānau and hapū [emphasis added]**

[340] Pae Ora (Healthy Futures) Act 2022, s 16A.
[341] Pae Ora (Healthy Futures) Act 2022, s 20(1)(a).
[342] Pae Ora (Healthy Futures) Act 2022, s 20(1)(b).
[343] Pae Ora (Healthy Futures) Act 2022, s 20(1)(c).
[344] Pae Ora (Healthy Futures) Act 2022, s 20(2).

When conducting engagement as a Crown entity, Te Aka Whai Ora would have been guided by the *Guidelines for Engagement with M[aa]ori* ("**Engagement Guidelines**") created by Te Arawhiti (now known as Te Tari Whakatau).[345] The Engagement Guidelines emphasise that for the Crown, effective engagement is key to achieving better outcomes and realising their partnerships with Maaori.[346] Effective engagement is also stated as helping to acknowledge Maaori rangatiratanga and reaffirm Maaori capability and the value of maatauranga for solving problems that disproportionately impact Maaori.[347] The overarching principle on *who* to engage with is "those who will be affected are entitled to be involved in the process".[348] *How* to engage is influenced by the significance of the kaupapa – the more significant the kaupapa, the more intensive the involvement from Maaori should be.[349]

Current Requirements to Engage with Maaori

155. Since disestablishment, Te Aka Whai Ora's broad-ranging engagement mandate has disappeared entirely. Notably, responsibility for mechanisms 'a' and 'c' transferred to Te Whatu Ora,[350] an organisation *currently* without the requisite knowledge or connections to engage with Maaori in a similar manner to how Te Aka Whai Ora was able to. Mechanism 'b' has been completely removed from existence; meaning that at the present time, the only consultation requirements when developing policy and strategies are between:[351]

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[345] On 24 February 2025, the Maaori Crown Relations portfolio, including ensuring public service capability to engage effectively with Maaori, was transferred from Te Arawhiti to Te Puni Kookiri and Te Arawhiti was renamed in line with its redefined role focused on resolving historical te Tiriti settlements and Takutai Moana determinations. The Guidelines for Engagement with Maaori are not found within the Te Arawhiti materials migrated at Te Puni Kookiri.
[346] Te Ara Whiti The Office for Maaori Crown Relations, *Guidelines for engagement with M[aa]ori* (2018) at 2.
[347] Te Ara Whiti The Office for Maaori Crown Relations, *Guidelines for engagement with M[aa]ori* (2018) at 2.
[348] Te Ara Whiti The Office for Maaori Crown Relations, *Guidelines for engagement with M[aa]ori* (2018) at 4.
[349] Te Ara Whiti The Office for Maaori Crown Relations, *Guidelines for engagement with M[aa]ori* (2018) at 6.
[350] Pae Ora (Disestablishment of Maaori Health Authority) Amendment Act 2024, s 13.
[351] Pae Ora (Disestablishment of Maaori Health Authority) Amendment Act 2024, s 14.

a. Te Whatu Ora and Manatuu Hauora, other health entities and individuals, and organisations Te Whatu Ora "consider appropriate" when preparing the New Zealand Health Plan.[352]

b. The Minister with organisations and individuals he "considers appropriate" when preparing the Government Policy Statement;[353] and

c. There is no requirement for the Minister to engage with any other party when determining any health strategy.

156. As it stands, engagement with Maaori on key documents is at the discretion of Te Whatu Ora and the Minister and is determined by whether they consider it "appropriate".

157. Given the flagrant disregard the Crown has shown towards honouring its te Tiriti/Treaty obligations, counsel submits that engagement with Maaori is not occurring at the level at which was occurring during the tenure of Te Aka Whai Ora. The wide ambit of "Maaori organisation" in relation to mechanism 'b' meant that Te Aka Whai Ora's engagement on key health policy documents extended much farther than what is currently mandated. Ultimately, there has been a significant loss of opportunity for Maaori voices to be heard within the development of health policy documents including the Hauora Maaori Strategy.

IMPB's Engagement Mandate

158. IMPB's were recognised in the Pae Ora Act and prescribed the purpose of representing local Maaori perspectives about: [354]

a. hauora Maaori needs and aspirations.

b. how the health sector is performing; and

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[352] Pae Ora (Healthy Futures) Act 2022, s 53.
[353] Pae Ora (Healthy Futures) Act 2022, s 35.
[354] Pae Ora (Healthy Futures) Act 2022, s 29.

c. the design and delivery of health services and interventions.

159. Previous functions of IMPB's included engaging with whaanau and hapuu about local health needs and communicating this information to Te Whatu Ora and Te Aka Whai Ora, and importantly, reporting back to their community on the activities of Te Aka Whai Ora.[355] As to *how* IMPBs undertook engagement with Maaori was elaborated on by Dr Sarfati in her evidence during the Disability Phase.[356] As she acknowledged, IMPBs are not required to engage with each individual Maaori in their area, but must engage with communities, hapuu and iwi, and it is up to each individual IMPB to determine the processes they will use to undertake these functions and how they will report back what they learn from engagement.[357] Dr Sarfati discussed that as part of the process for being formally recognised as an IMPB, IMPBs were required to submit a record of engagement outlining the steps taken to engage with Maaori in their area.[358] Examples of engagement required in this record was engagement via general notices, or hui with mana whenua, neighbouring iwi and hapuuu, maataawaka, hauora Maaori providers and other relevant Maaori groups.[359]

Effectiveness of Engagement Measures

160. The Crown has historically illustrated a propensity towards engaging with large Māori constituent groups such as IMPB's with efficiencies cited as a primary reason.[360] It is our submission that IMPBs are not an adequate mechanism for engaging with Maaori on hauora issues in and of itself, and accordingly, the level of engagement within current Health policy and practice is inconsistent with Te

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[355] Pae Ora (Healthy Futures) Act 2022, s 30.
[356] D Sarfati, *Responses to Wai 2575, #2.6.168 – Memorandum-Directions of Judge D Stone Following Crown Hearing One of the Disability Inquiry* dated 29 April 2024, Wai 2575, #L13(i).
[357] D Sarfati, *Responses to Wai 2575, #2.6.168 – Memorandum-Directions of Judge D Stone Following Crown Hearing One of the Disability Inquiry* dated 29 April 2024, Wai 2575, #L13(i), at [13]-[14].
[358] D Sarfati, *Responses to Wai 2575, #2.6.168 – Memorandum-Directions of Judge D Stone Following Crown Hearing One of the Disability Inquiry* dated 29 April 2024, Wai 2575, #L13(i), at [22].
[359] D Sarfati, *Responses to Wai 2575, #2.6.168 – Memorandum-Directions of Judge D Stone Following Crown Hearing One of the Disability Inquiry* dated 29 April 2024, Wai 2575, #L13(i), at 10.
[360] E A Masterton, *Index to Exhibits: Brief of Evidence of Elizabeth Anne Masterton* dated 31 August 2020, Wai 2660, #B113(a) [Tab EAM-9, 141], at [79].

Tiriti/the Treaty and its principles as can be seen by the examination of the extent of the capability and capacity of IMPBs below.

Technical capability and capacity of IMPBs

161. From the inception of the reforms to the Pae Ora Act, Manatuu Hauora advised the Minister that while the retention of IMPBs would enable "continued engagement with Maaori", IMPBs were at different stages of development, and work was needed to grow capacity and capability to help IMPBs achieve all their legislative functions.[361] This position continued into January 2024, where in a Cabinet Committee, Dr Reti acknowledged there was a need for a better model for local input into local and community care, and enhancement of IMPB's, with advice on how to achieve this expected in April 2024.[362]

162. Following disestablishment and a change in Minister of Health from Dr Reti to Hon Mr Simeon Brown MP in January 2025, IMPB capacity and capability remained unchanged, but to some extent has worsened. A briefing from Manatuu Hauora to the incoming Minister noted that monitoring of IMPB resourcing and capability and capacity had been paused to allow IMPBs to focus on community health plans.[363] The stagnant state of developing effective engagement mechanisms continued in March 2025 where, during a HMAC meeting with Mr Brown, HMAC members acknowledged the "varying capacity and capability of IMPBs" and advocated for investment in building IMPBs up.[364]

163. The lack of action taken to build up IMPB's and establish a process for effective engagement and consultation is best articulated in a 20 March 2025 briefing from Manatuu Hauora to Mr Brown. Ministry staff advised Mr Brown of two areas requiring ongoing focus – how Te Whatu Ora will support IMPBs and how IMPBs

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[361] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 4, 52], at 68-69.
[362] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 5, 73], at 76.
[363] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 13, 104], at 108.
[364] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 14, 119], at 120.

"best 'dock in'" to Te Whatu Ora's decision making.[365] In addition, the briefing stated:[366]

> While IMPBs have been building relationships with the Health NZ regions, the Ministry is not aware of any Health NZ region that has an established procedure for IMPBs to contribute to Health NZ planning and service design. In addition, a number of IMPBs have raised concerns about not getting timely access to quality data from Health NZ.

This advice would suggest that contrary to Mr Whaanga's evidence that IMPB's have been integrated into Te Whatu Ora processes from January 2025, there are inadequate processes for IMPBs to contribute and influence service delivery and planning decision-making. Based on the above timeline, Counsel submit that IMPBs never possessed the capability and capacity to be an adequate alternative for the engagement function of Te Aka Whai Ora, and over the nine months since disestablishment (and the thirteen months since the passing of the Pae Ora (Maaori Health Authority) Amendment Bill) the Crown has not taken any substantial steps to ensure that IMPBs could be an adequate alternative.

<u>IMPBs as representatives for Maaori</u>

164. In addition to the concerns about the technical capability and capacity of IMPBs, Counsel submits that there are also broader concerns about the appropriateness of the primary method of engagement being via IMPBs.

165. As discussed above at paragraph 159, to be recognised as an IMPB for an area, each IMPB was required to submit a record of engagement taken place as part of a mandating/representation process. Dr Sarfati started that she would expect that with amendments to or expansion of IMPB roles, she would expect that an "updated mandating process" would be undertaken – presumably to ensure that

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[365] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 23, 207], at 212.
[366] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 23, 207] at 212-213.

the IMPB continues to remain representative of the area they operate in. The Crown has provided no evidence of an updated mandating process; indeed, it appears to be the case that the totality of the role and future of the IMPBs is now in question.

166. There is also a concern that a focus on IMPBs for engagement will inadvertently focus on the views of large tribal entities, to the exclusion of individual hapuu or whaanau concerns. There is no certainty that the views expressed by large tribal entities may be the view of each individual hapuu and whaanau within an area. There may be hapuu who have strained relationships with the bodies responsible for representing their local IMPB and these hapuu may not be represented in feedback presented to the Crown.

167. An update on IMPBs Community Health Plans provided to Dr Reti by Manatuu Hauora on 11 November 2024 clearly shows the potential for hapuu and whaanau voice to be missed when relying on IMPBs as the primary engagement method. The briefing notes that "most IMPBs referenced wh[aa]nau voice…three IMPBs… did not sufficiently evidence how their wh[aa]nau voice engagement had informed their priorities and plan".[367] The briefing also noted that IMPBs had expressed a lack a clarity about "who they should engage with at a local level".[368] In addition, supporting documents to Mr Whaanga's evidence indicates that the Minister is aware that a concern had arisen with previous Maaori health partnership models. Namely, that previous Maaori health partnership models have all had some role in engaging with whaanau, hapuu and iwi, however, the "ability of those models to use those insights… was mixed"[369]. Importantly, the advice proffered stated that an area for further consideration was in managing expectations for representation at the local or regional level given that "previous models were sometimes viewed as primarily

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[367] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 18, 133], at 138.
[368] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(b) [Tab 18, 133], at 139.
[369] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 21, 185], at 193.

focused on iwi and were not seen to be representative of all Maaori in the area."[370]

168. Te Aka Whai Ora, being established by Maaori for Maaori, was best placed to build trust with iwi, hapuu and whaanau Maaori. The building of trust was, and continues to be, vital given historical distrust towards the Crown. In this way, it is imperative that any alternative plans can garner trust from Maaori. Evidence from Claimants and Interested Parties have expressed hope that Te Aka Whai Ora would transcend many of the barriers experienced by Maaori when engaging with Crown agencies. Lady Tureiti Moxon stated that Te Aka Whai Ora was established to "bring about transformational change and a more equitable system for Maaori."[371] She also stated that: [372]

> … For the first time we felt able to decide for ourselves, the health solutions to the needs of our own communities. Te Aka Whai Ora work[ed] with us to co-design health plans and strategies that guide decision-making and services that support and bring about local solutions to local issues.

169. Janice Kuka stated in her evidence that direct contact between Maaori health providers and Te Aka Whai Ora had the potential to make significant impact. She considered that instead of dealing with Manatuu Hauora, they were dealing with a Maaori body that understood them.[373] Similarly, Jane Stevens stated that Te Aka Whai Ora saw a focus on Maaori models of healthcare, and the disestablishment would limit accessibility of Maaori models of care.[374] She went on to say that Maaori are now left to navigate a system that is not tikanga based or te ao Maaori focussed and will have to engage with healthcare professionals with little to no knowledge of tikanga.[375]

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[370] J Whaanga, *Bundle of Supporting Documents to John Whaanga's Brief of Evidence* dated 23 April 2025, Wai 2575, #M34(c) [Tab 21, 185] at 195.
[371] T H Moxon, *Affidavit of Lady Tureiti Haromi Moxon* dated 6 November 2023, Wai 2575, #M1, at [15].
[372] T H Moxon, *Affidavit of Lady Tureiti Haromi Moxon* dated 6 November 2023, Wai 2575, #M1, at [18].
[373] J Kuka, *Affidavit of Janice Kuka* dated 4 December 2023, Wai 2575, #M2, at [17].
[374] J E Stevens, *Brief of evidence of Jane Elizabeth Stevens* dated 20 February 2024, Wai 2575, #M22 at [16] – [17].
[375] J E Stevens, *Brief of evidence of Jane Elizabeth Stevens* dated 20 February 2024, Wai 2575, #M22 at [19].

Conclusion

170. The steps taken by the Crown to replace Te Aka Whai Ora's engagement function are inadequate for the following reasons:

171. The gap left by the loss of Te Aka Whai Ora is significant as Te Aka Whai Ora had a robust mechanism for engagement with Maaori (both larger iwi groups, and smaller entities such as hapuu, whaanau or individuals) on general health needs and aspirations as well as specific health policy documents.

    a. The Crown has not developed adequate plans for how IMPBs and HMAC are meant to take on this engagement role and to feed information back into Te Whatu Ora or other agencies, or to vice-versa receive information from agencies to update their local communities.

    b. The future of, as well as the capability and capacity of IMPBs is in question.

    c. The mandate to engage with Maaori on key health policy documents has been lost, and any engagement or consultation on these documents is now at the discretion of the Crown.

PREJUDICE

172. The Claimants and Interested Parties have suffered the following prejudice because of the Crown's actions:

    a. non-recognition by the Crown of their te Tiriti/Treaty duties.

    b. serious harm to the treaty relationship.

    c. loss of tino rangatiratanga and a diminution of mana.

    d. greater exposure to health inequity.

    e. loss of much-needed health services and supports.

f. loss of development of kaupapa Maaori services; and

g. loss of development, capability building of the Maaori workforce.[376]

RELIEF SOUGHT

Findings

173. The Claimants and Interested Parties seek findings that the Crown breached:

a. the principle of tino rangatiratanga:

i. in failing to show investment into Maaori governance since disestablishment.

ii. by preventing Maaori from fully exercising authority and decision making over the provision of hauora services and subjecting Maaori to the Crown's mainstream health system which fails to address their needs.

iii. by excluding hapu and iwi from appointing members of HMAC and providing nominating powers to the Minister of Health.

iv. by reducing Maaori authority in the hauora Maaori space and attributing to the Crown all decision-making authority.

b. the principle of partnership:

i. by failing to meaningfully engage with IMPBs; and

ii. by not partnering with Maaori in the co-design of governance, delivery, and monitoring of the health system and health services which Maaori access.

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[376] *Joint Amended Statement of Claim for Wai 762, 861, 1477, 1531, 1886, 2063, 2206, 2217, 2377, 2382, 2671, 2729, 2747, 2776, 2778, 2890, 2894, and 3096* dated 23 July 2024, Wai 762, #1.1(q), at [60c]

iii. by excluding hapu and iwi from appointing members of HMAC and providing nominating powers to the Minister of Health.

iv. by reducing Maaori authority in the hauora Maaori space and attributing to the Crown all decision-making authority.

v. by failing to partner with Maaori in ensuring that there is continued investment in education and training to ensure employment of Maaori in the workforce.

vi. by not meaningfully involving Maaori in considering monitoring options to Te Aka Whai Ora despite acknowledging the viability of such alternatives.

c. the principle of active protection:

i. by failing to protect the taonga of kaupapa Maaori services. The current approach puts the ongoing survival of kaupapa Maaori services in the hands of the Crown rather than Maaori.

ii. by failing to ensure that Maaori have authority in health service delivery and accountability.

iii. by transferring and consolidating Te Aka Whai Ora's monitoring functions to agencies, and groups who lack structural independence and cultural competency.

d. the principle of equity:

i. by sidelining development of kaupapa Maaori services.

ii. by failing to resolve the ongoing funding deficit that IMPBs continue to raise in respect of kaupapa Maaori services.

e. the principle of options:

i. by failing to provide a viable choice of services, whether that is through kaupapa Maaori services or mainstream health services.

Recommendations

174. The Claimants and Interested Parties seek the following recommendations that the Crown:

i. makes a full, public and unreserved apology for those actions and omissions found to be in breach of te Tiriti.

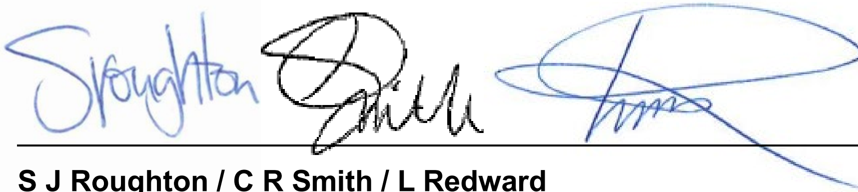
ii. empowers and fully funds relevant stakeholders to build a new whare that will replace Te Aka Whai Ora and that will be a by Maaori, for Maaori process, which embodies tino rangatiratanga. Within this recommendation we seek that the Tribunal retain interim supervisory powers to monitor developments.

iii. removes the Pae Ora (Healthy Futures) Act 2022 from the Treaty Clause review.

iv. cancels work on the legislative reform to the Pae Ora Act and if the work cannot be cancelled, that for the Minister to pause work on the legislative reform to the Pae Ora Act to enable a consultation process to be undertaken; and

v. any other such recommendation that the Tribunal considers appropriate.

DATED this **3rd** day of **Hune 2025**



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