I TE ROOPUU WHAMANA I TE TIRITI

WAI 2575
WAI 682
WAI 1464/1546
Wai 2831

KEI RARO I TE MANA O te ture o te Tiriti o Waitangi 1975

AA

I TE TAKE O te pakirehua, Health Services and Outcomes Wai 2575)

AA

I TE TAKE O he kereeme naa Rewiti Paraone raatou ko Erima Henare, ko Pita Tipene ko Waihoroi Shortland, moo Te Ruunanga o Ngaati Hine me ngaa uri o Torongare and Hauhaua (Wai 682)

AA

I TE TAKE O he kereeme naa Te Riwhi Whao Reti raatou ko Hau Hereora, ko Romana Tarau, ko Karen Herbert ko Edward Cook, ko Pearl Reti moo Te Kapotai (Wai 1464/1546)

AA

I TE TAKE O he kereeme naa Te Ruunanga Nui o Te Aupoouri Trust (Wai 2831)

CLOSING SUBMISSIONS

I teenei raa, i te raa 3 o Hune 2025

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KIA WHAKAAE MAI TE ROOPUU WHAKAMANA I TE TIRITI:

1.0 Kua ngaro kee te Tiriti o Waitangi

> I te whakakorenga o Te Aka Whai Ora, ka whakakorenga anō hoki ngā take Tiriti i roto i ngā mea hauora. And then, ka tinihia ngā ture.
>
> Post Te Aka Whai Ora, kua ngaro kē te Tiriti. Kua kore kē e whai mana i roto i ā mātou mahi, i roto i a mātou whiriwhiringa. Me pēhea a muri ake nei.
>
> I te whakakorenga o Te Aka Whai Ora, kua noho manene noa iho mātou.[1]
>
> Moe Milne (Te Aka Whai Ora Stage Two Hearing)

1.1 In an exchange between Moe Milne and Tribunal member Dr Tom Roa at the stage two hearing, she explained how through the cancelling or disestablishment of Te Aka Whai Ora, te Tiriti o Waitangi has also been cancelled from the health system. The effect of this cancelling she describes as alienation, "kua noho manene noa iho matou".[2] "Manene" means to be a "stranger, one living in a strange country, immigrant, foreigner".[3]

1.2 In the same conversation, Mrs Moe Milne said "And then, ka tinihia ngā ture".[4] This is a critical point. With Te Aka Whai Ora being disestablished and te Tiriti o Waitangi no longer being present, the law or rules of play have changed.

1.3 With Te Aka Whai Ora gone and Treaty obligations absolved, the broader health system reform signalled in the Cabinet paper proactively released during the hearing, can take place with little to no

[1] Wai 2575, #ROI TBC, *Hearing transcript* (26-29 May 2025).
[2] Wai 2575, #ROI TBC, *Hearing transcript* (26-29 May 2025).
[3] Te Aka Māori Dictionary <https://maoridictionary.co.nz/>.
[4] Wai 2575, #ROI TBC, *Hearing transcript* (26-29 May 2025).

regard for Maaori health needs and te Tiriti o Waitangi interests in health.[5]

2.0 The Maaori health interest, Maaori te Tiriti interest in health

Inequity

2.1 A Maaori interest in health arises two-fold. First, from a sustained health inequity experienced only by Maaori, arising from the impacts of colonisation and the imposition of a Western system of healthcare that has never achieved equitable health outcomes for Maaori.[6] Second, from Article 2 of te Tiriti o Waitangi which promises Maaori tino rangatiratanga over themselves and their affairs, including in the provision of health,[7] and from Article 3 of te Tiriti o Waitangi which guarantees Maaori equity, including in health outcomes.[8]

2.2 The existence of sustained and unchanged health inequity at the time the Crown decided to disestablish Te Aka Whai Ora has been well traversed in both stages of the inquiry. The point that needs to be made at this stage of the inquiry is the negligence the Government has demonstrated in the year between 2024 and 2025 since Te Aka Whai Ora was disestablished. The severance of Te Aka Whai Ora would have had a negative impact on the capacity of the health system to address Maaori health inequity.

2.3 It was section 18 of the Pae Ora (Healthy Futures) Act 2022 which stated that the objective of Te Aka Whai Ora was to "**ensure** that planning and service delivery **respond to the** aspirations and **needs of whānau, hapū, iwi, and Māori** in general" and "**design, deliver,**

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[5] Wai 2575, #M65, *Cabinet paper concerning Health delivery plan* (28 May 2025).

[6] Waitangi Tribunal *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019-2021) at 2, 22; Waitangi Tribunal *Hautupua: Te Aka Whai Ora (Maaori Health Authority) Priority Report, Part 1 — Pre-publication Version* (Wai 2575, 28 November 2024) at 9.

[7] Waitangi Tribunal *Hauora*: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry (Wai 2575, 2019-2021) at 179.

[8] Waitangi Tribunal *Hauora*: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry (Wai 2575, 2019-2021) at 33; Waitangi Tribunal *Hautupua: Te Aka Whai Ora (Maaori Health Authority) Priority Report, Part 1 — Pre-publication Version* (Wai 2575, 28 November 2024) at 24.

and arrange services to achieve the best possible health outcomes for whānau, hapū, iwi, and Māori in general".[9] Section 19 of the Act set out the functions of Te Aka Whai Ora in order to achieve the section 18 objectives. Those required the Maaori Health Authority to "jointly develop", "own and operate", "improve", "collaborate", "provide policy", and so on.[10] No similar provisions exists in the Pae Ora Act today.

Te tino rangatiratanga

2.4 Attached to our opening submissions is 'Appendix A: Te Tiriti o Waitangi Framework' comprised of relevant Waitangi Tribunal jurisprudence.[11] We ask that the Tribunal consider this framework alongside te Tiriti o Waitangi guarantees.

2.5 In doing so, we also ask that when considering te Tiriti o Waitangi guarantees to Maaori, the Tribunal give weight to the body of claimant evidence that demonstrates the great capacity of Ngaati Hine, Te Kapotai and Te Aupoouri to exercise tino rangatiratanga in the provision of hauora for their people.

2.6 These groups have always been leaders in health advocacy, design and provision. A long legacy of leadership, in Ngaati Hine in particular, shows ongoing advocacy for the design and implementation of a Maaori health system, and a long history of interaction with all levels of healthcare.

2.7 An example of this is the Ngaati Hine Health Trust. This is a large-scale, Maaori-owned health provider that provides a range of hauora support services to whānau, hapū and the community. Services encompass disability support services, community and specialist nursing services, dental services, educational and social services, mental health and addictions support, restorative justice and youth programmes, and housing and accommodation support.[12]

[9] ss 18(a), 18(b)(ii).
[10] ss 19(1)(a), 19(1)(b), 19(1)(c), 19(1)(d), 19(1)(i).
[11] Wai 2575, #3.3.180(a), *Appendix A: Te Tiriti o Waitangi Framework* (13 May 2025).
[12] Wai 1040, #M27, *Te Whanga Tuawha – Tangata* (29 July 2014).

2.8 There is also the integral role that Ngaati Hine leadership played in the establishment and intended operation of the Manaia and Te Tai Tokerau Primary Health Organisations.[13]

2.9 In addition to this is the evidence of Pita Tipene where he explains that he was at a number of hui held between Minsters of Parliament and Ngaati Hine, who were actively advocating for the establishment of a Maaori Health Authority. He describes how through that sphere of influence and as Treaty partners, they ultimately established Te Aka Whai Ora in July 2022.[14]

2.10 What this demonstrates is the significant degree of agency and tino rangatiratanga that iwi and hapuu have in the health sphere. A legacy that ought to be respected by the Crown in its te Tiriti o Waitangi relationship with the claimants.

Hautupua on te tino rangatiratanga

2.11 During oral closing submissions, counsel took the Tribunal to an extract on the Treaty principle of tino rangatiratanga in *Hautupua*. Granted it is a finding from this Tribunal, it is submitted it is most appropriate in terms of a framework for assessing the issues for this stage of the inquiry; the primary question being whether the Government's alternative plans post-Te Aka Whai Ora are consistent with te Tiriti o Waitangi? In order for any alternative plans to be consistent with te Tiriti o Waitangi, counsel submit they must provide for tino rangatiratanga.

2.12 On the Treaty guarantee of tino rangatiratanga, the Tribunal in *Hautupua* said:[15]

> As we stated in *Hauora*, te Tiriti/the Treaty's guarantee of tino rangatiratanga provides for Maaori self-determination and mana motuhake in the **design**, **delivery**, and **monitoring** of

[13] Wai 2575, #ROI TBC, *Statement of claim on behalf of Ngāti Hine* (21 July 2024) at [4.8].
[14] Wai 2575, #M5, *Kōrero taunaki o Pita Tipene* (18 December 2023) at [5]-[6].
[15] Waitangi Tribunal *Hautupua: Te Aka Whai Ora (Maaori Health Authority) Priority Report, Part 1 — Pre-publication Version* (Wai 2575, 28 November 2024) at 17-18.

health care.[27] Maaori are guaranteed tino rangatiratanga rights in respect of hauora Maaori, which encompasses Maaori organisations and their models of care, and Maaori people who need to access their services.

2.13 There are three key facets of tino rangatiratanga encompassed in this section, and that is the right of Maaori to be involved in the design, delivery and monitoring of healthcare.

2.14 We put to the Tribunal that when assessing whether the alternative options to provide for the Maaori health interest and Maaori te Tiriti interest are consistent with te Tiriti o Waitangi, all three facets must be clear and able to be exercised effectively, so as to address and reduce Maaori health inequity.

2.15 What we know from previous Tribunal inquiries is that if te Tiriti o Waitangi is not in legislation, it is unlikely to be given effect to. Not only that, but *how* te Tiriti o Waitangi is provided for in legislation is important. The language and intent must be clear so as to give weight and effectiveness to the implementation of any Treaty provisions.

2.16 It is our submission that unless the Maaori health interest and Maaori te Tiriti interest is provided for in legislation, then it is unlikely that te Tiriti o Waitangi will be present in the policy and operations of a government department. A top down approach is required so that all decision makers and actors in the system are clear about the regard that should be had for Maaori and te Tiriti o Waitangi in practice.

Removal of te tino rangatiratanga

2.17 With the above framework in mind, the oral submissions suggested that a simple comparative exercise between the legislative provisions that existed for Te Aka Whai Ora (prior to repeal and disestablishment) and in the Pae Ora Act demonstrates that the design and decision-making agency of tino rangatiratanga no longer remains.

2.18 The current provisions provide for Maaori to have a role in monitoring, planning and advising, with design and decision-making functions now

non-existent. These include sections 29, 42, 51 and 89 of the Pae Ora Act, which state for example that:

(a) **sections 42(1), 42(3)** – "**The Minister must prepare and determine a Hauora Māori Strategy**" and that "The purpose of the Hauora Māori Strategy is to **provide a framework to guide health entities in improving Māori health outcomes**";[16]

(b) **section 51(h)(iii)** – "The New Zealand Health Plan must **set out how Health New Zealand will engage with Māori**, protect Māori interests and aspirations, **and empower Māori to improve their health**";[17] and

(c) **section 89(1)** – "The Minister must establish a Hauora Māori Advisory Committee to **advise the Minister on any matter relating to hauora Māori that the Minister requests**."[18]

2.19 When comparing the current provisions with the previous iteration of the Act, particularly sections 18 and 19, it is clear that the legislative functions which sat tino rangatiratanga agency within Te Aka Whai Ora are unable to be found in the remaining provisions of the Pae Ora Act.

2.20 There is no recognisable tino rangatiratanga authority, design or decision-making power to address the Maaori health interest and Maaori te Tiriti interest.

2.21 As our opening submissions traversed, there is no watering down of the Crown's Treaty obligations to address health inequity by providing for the exercise of tino rangatiratanga, by the standard of reasonableness expressed in the Crown's submissions.[19]

2.22 Mrs Irwin-Easthope raised in her closing submissions that the Crown used Lord Cooke's dicta in the *Broadcasting Assets* case to establish

[16] ss 42(1), 42(3).
[17] s 51(h)(ii).
[18] s 89(1).
[19] Wai 2575, #3.3.180, *Opening submissions on behalf of Wai 682, Wai 1464/1546 & Wai 2831* (13 May 2025) at [3.7]-[3.10].

that the standard of reasonableness for Crown action's must be considered in accordance with the prevailing circumstances.[20] Mrs Irwin-Easthope rightly emphasised that the Crown has failed to demonstrate their meeting of this standard, taking into account that the prevailing circumstances are of Maaori health inequity being particularly heightened at this time. These prevailing circumstances determine what Crown action is required, and that is to actively address inequity and disparity within the healthcare system.

2.23 Moreover, as observed by a number of counsel, not only did Te Aka Whai Ora hold a meaningful degree of tino rangatiratanga, it was representatively Maaori. It was as Mrs Milne described, "the pou that we looked to in order to work through the systemic health issues faced by Maaori and the weaving we utilised to drive system change in a way that was right for Maaori."[21] Counsel submit that within the Maaori Health Directorate, Hauora Maaori Advisory Committee, Iwi Maaori Partnership Boards, and Health New Zealand, none are the same or even similar in nature as Te Aka Whai Ora. All existing structures and options have less autonomy and agency than Te Aka Whai Ora had.

2.24 It must also be considered when determining whether the alternative plan or system is requisite to what was taken away when Te Aka Whai Ora was disestablished, that Te Aka Whai ora was a critical touchstone in a long-fought journey seeking change to the health system. Te Aka Whai Ora was a turning point. It promised a trajectory of positive change. It was inevitable that Te Aka Whai Ora would get the wheels turning for the transformational change that Maaori so desperately needed in the health system. That momentum was severed when Te Aka Whai Ora was disestablished. That loss of momentum and potential must form part of the analysis of prejudice.

[20] Wai 2575, #ROI TBC, *Hearing transcript* (26-29 May 2025); *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 (PC) ("Broadcasting Assets case") at 51.
[21] Wai 2575, #M17(a), *Koorero taunaki o Moe Milne* (13 May 2025) at [13].

3.0 What can we take from the stage two hearing regarding wider system reform and the impact on the Maaori health interest and Maaori te Tiriti interest?

3.1 Mr Whaanga pointed to the various legislative and policy settings that may provide for Maaori, which have been well-traversed by counsel in closing submissions. These include legislative requirements placed on health agencies, system level strategies and plans to improve Maaori health. In particular, that:[22]

(a) Health New Zealand has a duty to understand kaupapa Maaori services, and cultural safety and responsiveness of services;

(b) Sections 6 and 7 of the Pae Ora Act remain intact. These require the Minister of Health, Ministry of Health, and health entities to be guided by health sector principles that aim to improve the Maaori health sector and Maaori health outcomes; these health sectors principles having been influenced by the Treaty principles;

(c) The Ministry of Health has a number of responsibilities, including to "ensure that Te Tiriti o Waitangi and Maaori health equity are embedded in the health sector", particularly in respect of the Hauora Maaori Strategy, Maaori health outcomes, and Maaori health priorities; and

(d) System strategies and plans have been developed to improve Maaori health, including through the Government Policy Statement for Health, the New Zealand Health Plan, and related accountability documents, encompassing He Korowai Oranga: Maaori Health Strategy 2014, Pae Tuu: Hauora Maaori Strategy 2023 and Whakamaua: Maaori Health Action Plan 2020–2025. As part of this, the evidence also outlines an intention to enhance the scope, functions and roles of key

[22] Wai 2575, #M34(d), *Updated brief of evidence of John Norman Whaanga* (26 May 2025) at [16], [18], [19], [23], [25], [39], [41].

system settings and entities, specifically Iwi Maaori Partnership Boards and the Hauora Maaori Advisory Committee.

3.2 The general argument of Mr Whaanga and Mr Linkhorn is that these legislative requirements and system settings are sufficient to address the Maaori health interest and Maaori te Tiriti interest.

3.3 The inquiry has carried out a micro-level analysis of these system settings which is appropriate because the key question is 'now that you have taken Te Aka Whai Ora away, what is being put in place in terms of addressing Maaori health issues and inequity?'

3.4 Of note, Mr Whaanga's amended brief of evidence points to the majority of matters now being under review, which must also be considered by the Tribunal.[23] The relevant paragraphs are outlined below, but in short, what is under review are Ministry of Health responsibilities; the purpose, objectives and functions of Health New Zealand; provisions of the Pae Ora Act; the vision and plan for Maaori healthcare; and the role of Iwi Maaori Partnership Boards and the Hauora Maaori Advisory Committee:

(a) **[19]-[20]** – "At present the Ministry has the following specific responsibilities …". "These responsibilities and how they are reflected in legislation are also under review at the moment."

(b) **[22]** – "The current Minister is considering options to refocus the purpose, objectives, and functions of Health New Zealand and improve the efficiency of the health system which is urgently required."

(c) **[24]** – "I next describe a number of settings as these exist at the moment, noting the Pae Ora legislation and these system settings are under review at this time as indicated in paragraphs 20 and 22 above."

[23] Wai 2575, #M34(d), *Updated brief of evidence of John Norman Whaanga* (26 May 2025).

(d) **[36]** – "Together with the broader system settings as above, Cabinet endorsed a vision and plan for Maaori health on 26 June 2024.[19] The future of this vision and plan is presently under review by the Minister."

(e) **[38]** – "The Cabinet paper outlined a staged approach to delivering the strategic refresh, in which IMPBs and HMAC play a key role. The current Minister is continuing this work to review the roles of IMPBs and HMAC."

(f) **[41]** – "The previous Minister indicated an intention to enhance the scope and functions of other key Maaori Health settings, particularly the roles of IMPBs and the HMAC.[23] The current Minister is continuing this work to review the roles of IMPBs and HMAC."

3.5 Counsel submit that this hearing has not achieved an open and frank conversation about how Maaori will be impacted by these changes. There have been few acknowledgements from the Crown, and there has been no discussion about we are at from a reasonable, balanced perspective. There has been a coming away from looking at the wider lens of the systemic issues that exist for Maaori health and the broader picture of what is in train that is and will impact Maaori by perpetuating health inequity and circumventing tino rangatiratanga.

Proactive release

3.6 The proactively released Cabinet paper, produced almost a year post the disestablishment of Te Aka Whai Ora, is 27 pages long and provides an overview of the Minister of Health's amended priorities and delivery plan for healthcare services.[24] In addition to the significant process issues explained by Ms Irwin-Easthope in relation to the production of these Crown documents, much can be gleaned from the Cabinet paper. It does not look good for Maaori.

[24] Wai 2575, #M65, *Cabinet paper concerning Health delivery plan* (28 May 2025).

3.7 What we can tell from the proactive release is that there are significant changes coming for the New Zealand health system. The reform proposes a number of structural, policy and budgetary amendments, ultimately focused on the healthcare needs of all New Zealanders. The reform also signals privatisation.[25]

3.8 A review of the Cabinet paper highlights that there is no meaningful consideration of the Maaori health interest or Maaori te Tiriti interest within the proposed reform. There is no reference to te Tiriti o Waitangi, unless it is under the redacted information, but that does not appear to be the case.

3.9 There is one mention of Maaori in the entire paper:[26]

> **Population implications**
>
> It is well known that some population groups experience greater issues accessing healthcare. **Those experiencing socio-economic deprivation, rural populations, Māori, Pacific peoples and disabled people are all population groups with longstanding access challenges linked to worse health outcomes.**
>
> A patient centred approach, a relentless focus on achieving our health targets **for all New Zealanders**, combined with addressing the backlog of electives and improving access to primary care may impact positively on those with longstanding access challenges. Where digital technology improvements are proposed, the Ministry of Health and Health NZ are working through the access implications for those who lack access to or confidence with digital devices, those with language barriers, and disabled people.

[25] Wai 2575, #M65, *Cabinet paper concerning Health delivery plan* (28 May 2025) at [76]-[77].
[26] Wai 2575, #M65, *Cabinet paper concerning Health delivery plan* (28 May 2025) at [128]-[129].

3.10 The provisions are not specific to Maaori, but instead form a more general perspective that Maaori will be captured within the general umbrella of "all New Zealanders".

Wider system changes

3.11 The evidence elicited through cross-examination by Ms Irwin-Easthope raises serious concerns about the structural integrity of the Crown's health governance model following the establishment of the Health Assurance Unit in early 2025.[27] This unit, commissioned under the State Services Commission, has assumed a primary advisory role to the Minister of Health – displacing the Ministry of Health, which has traditionally held that role. More troubling, is that Mr Whaanga acknowledged that this unit has not formally engaged with the Maaori Health Directorate.[28]

The Coalition Government's pattern of policy and lawmaking

3.12 Ms Sykes rightfully brought into this inquiry the wider political environment. Since the formation of the Coalition Government in late 2023, we have witnessed an unprecedented, ideologically driven agenda to dismantle Maaori-specific policies across multiple ministries and sectors. We are not facing isolated breaches, but rather what the Tribunal in *Wai 3300 (Ngā Mātāpono)* rightly called "an alarming pattern of the Crown using the policy process and parliamentary sovereignty against Māori instead of meeting its Tiriti obligations."[29] This pattern of policy and lawmaking by the Coalition Government, as acknowledged by the Tribunal in a number of urgent and priority inquiry reports since late 2023, is outlined in **Appendix A** attached to these submissions.

3.13 Ms Sykes' cross-examination of Mr Whaanga highlighted that the Crown's current approach to Maaori health under the Pae Ora Act is both structurally and politically compromised, exposing the deep flaws

[27] Wai 2575, #ROI TBC, *Hearing transcript* (26-29 May 2025).
[28] Wai 2575, #ROI TBC, *Hearing transcript* (26-29 May 2025).
[29] Waitangi Tribunal *Ngā Mātāpono/The Principles* (Wai 3300, 2024) at xviii.

in the Crown's handling of Maaori health reform to date.[30] In response to Ms Sykes, Mr Whaanga acknowledged that decisions affecting Maaori health are now occurring elsewhere in the health system, outside of the Ministry of Health's control.

3.14 In particular, Mr Whaanga acknowledged that an advisory group is being established to provide advice on the review of Treaty provisions to a newly formed Ministerial oversight group, consisting of the Minister of Justice (Hon Goldsmith), the Minister of Regional Development (Hon Jones), and the Attorney-General (Hon Collins).[31] Ms Sykes emphasised that this Ministerial oversight group, who will be responsible for amending sections 6 and 7 of the Pae Ora Act, which outline the Minister of Health, Ministry of Health, and health entities' obligation to give effect to the Treaty principles, are void of any health expertise or specific healthcare responsibility.[32]

3.15 As established by Ms Irwin-Easthope and Ms Sykes, and what the hearing has highlighted, is that there is a lot more at play than the single act of disestablishing Te Aka Whai Ora. What is occurring in relation to Te Aka Whai Ora and Maaori health more generally is part of a broader governmental approach, underpinned by coalition agreements and policies, to strip agencies of special mention of te Tiriti o Waitangi and of mechanisms that carry any meaningful degree of tino rangatiratanga for Maaori.

4.0 Conclusion

4.1 The claimants seek a finding that the Crown has breached te Tiriti o Waitangi by failing to ensure that the alternative plans in the period since the disestablishment of Te Aka Whai Ora until now, address the Maaori health interest and Maaori te Tiriti interest, and by failing to provide for tino rangatiratanga.

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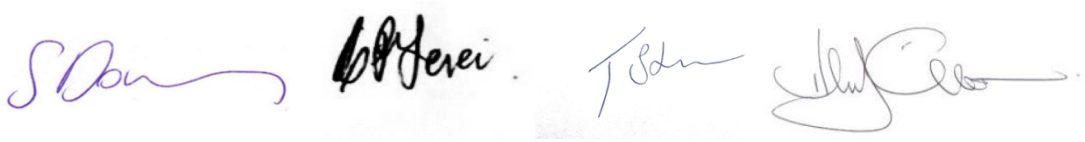
[30] Wai 2575, #ROI TBC, *Hearing transcript* (26-29 May 2025).
[31] Wai 2575, #ROI TBC, *Hearing transcript* (26-29 May 2025).
[32] Wai 2575, #M34(d), *Updated brief of evidence of John Norman Whaanga* (26 May 2025) at [18.1].

4.2 The claimants seek recommendations which facilitate the full implementation of the Crown's Treaty obligations to Maaori, with a particular focus on recommendations that recognise and provide for the exercise of tino rangatiratanga as set out in *Hautupua*.

4.3 There ultimately needs to be focus on the wider impacts in terms of how these current reforms and cuts are going to be affecting Maaori health experiences and outcomes.

I TEENEI RAA, te raa 3 o Hune 2025



Dr Season-Mary Downs/Chelsea Terei-Tipene/Tatijana Simon Larsen/Heather Jamieson
Ngaa rooia moo ngaa kaikereeme