BEFORE THE WAITANGI TRIBUNAL

WAI 2575
WAI 2499

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF WAI 2575 – Health Services and Outcomes Kaupapa Inquiry – Part 2 of Priority Inquiry into Disestablishment of Te Aka Whai Ora

AND

IN THE MATTER OF Wai 2499 – A claim by **RAWIRI MCKREE JANSEN AND OTHERS** on behalf of themselves as individual Māori, Te Ohu Rata o Aotearoa and on behalf of all Māori generally

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CLOSING SUBMISSIONS ON BEHALF OF WAI 2499 - PART TWO OF PRIORITY INQUIRY INTO DISESTABLISHMENT OF TE AKA WHAI ORA

3 O NGĀ RĀ O HUNE 2025

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MAY IT PLEASE THE TRIBUNAL

> *"The Boards of Te Aka Whai Ora and Te Whatu Ora, which work closely together, describe their mutual Te Tiriti-based relationship as a 'Waka Hourua': Te Aka Whai Ora and Te Whatu Ora being the waka that represent two knowledge systems and worldviews, moving together in a common direction. The interwoven sails represent the information, evidence, advice, and voice of whānau that inform one another's decisions."*[1]
>
> ***Te Aka Whai Ora, Briefing to the Incoming Minister 2023***

> *"Over my left shoulder you can see two hoe. Those are the hoe that were presented at the launch of Te Whatu Ora and Te Aka Whai Ora. There was a whole lot of imagery that said this is about waka hourua, this is about migration canoes and all of that vibe around waka. And it said we are in this together. And we are independent, and we can contest, and we build the very best we can. And you take half of that away, what do you think happens?"*[2]
>
> ***Dr Rawiri Jansen, 28 May 2025***

INTRODUCTION

1. These closing submissions are filed on behalf of the Wai 2499 claim, a claim by Dr Rawiri Jansen and others on behalf of themselves and Te Ohu Rata o Aotearoa (the Māori Medical Practitioners Association) (**Te ORA**), in part 2 of the priority hearing regarding the disestablishment of Te Aka Whai Ora / the Māori Health Authority (**Priority Inquiry**).

2. The Wai 2499 claimants filed an amended statement of claim on 23 July 2024 concerning the disestablishment of Te Aka Whai Ora.

BACKGROUND – TE ORA

3. Te ORA is the professional body representing approximately 350 Māori medical practitioners across general medical practice and the specialties.

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[1] Briefing to the Incoming Minister 2023, Te Aka Whai Ora, 2023, at p. 5 (see BIM - Minister of Health - Te Aka Whai Ora.pdf).

[2] Dr Rawiri Jansen in response to questions from Crown Counsel, Day 2 of the Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) at 3:05:15 (see Wai 2575 - The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 2).

4. Te ORA membership includes Māori medical practitioners and Māori medical students who are members of whānau and descendants of hapū and iwi as tangata whenua of Aotearoa.

5. Te ORA supports members in their working lives, assists younger colleagues through professional training, works with the Medical Council of New Zealand and the Council of Medical Colleges to develop cultural competency programmes for New Zealand (and Australian doctors) and runs and attends annual scientific meetings and international indigenous conferences for medical practitioners.

6. Te ORA's vision is to provide Māori medical leadership to the health sector to effect Māori health development.

PART 2 OF PRIORITY INQUIRY

7. These closing submissions follow on from the submissions and evidence filed on behalf of Te ORA in part 1 of this priority inquiry including:

   (a) Brief of evidence of Dr Rawiri McKree Jansen (Wai 2575, #M23);

   (b) Brief of evidence of Professor Papaarangi Reid (Wai 2575, #M24);

   (c) Opening submissions on behalf of Wai 2499, 21 February 2024 (Wai 2575, #3.3.103);

   (d) Closing submissions on behalf of Wai 2499, 17 October 2024 (Wai 2575, #3.3.154);

   and relate to the Crown's alternative plans to address Māori health in light of the disestablishment of Te Aka Whai Ora

8. The three questions put forward by the Tribunal for part 2 of this priority inquiry are:

   (a) What are the Crown's alternative plans to address Māori health in lieu of a Māori health authority (alternative plans) and what steps were taken in developing such plans?

   (b) Was the Crown's process in developing alternative plans to address Māori health in lieu of a Māori health authority consistent with Te Tiriti o Waitangi and its principles?

(c) Are the Crown's alternative plans to address Māori health in lieu of a Māori health authority consistent with Te Tiriti o Waitangi and its principles?

EVIDENCE FOR WAI 2499

9. As noted above, evidence was filed on behalf of Wai 2499 by Dr Rāwiri Jansen and Professor Papaarangi Reid in part 1 of this priority inquiry. We rely on this evidence in these submissions and draw on some of the content of this evidence:

(a) **Dr Rawiri Jansen** – Dr Jansen's first brief of evidence focused on some of the work and contribution that Te Aka Whai Ora had made since its inception and how the disestablishment would impact on the public health system.[3] Dr Jansen expanded on these issues during his oral evidence in this part of the inquiry.

(b) **Professor Papaarangi Reid** - Professor Papaarangi Reid's brief of evidence examined how Te Aka Whai Ora emerged from the recommendations from Stage One of the Wai 2575 Hauora Inquiry. She observed that, while not a perfect solution, Te Aka Whai Ora was the fundamental lever within the reimagined system to attempt to address the Crown's historical Treaty breaches and to remedy the current health inequities faced by Māori. It was disestablished without an alternative despite the overwhelming evidence that the status quo produces poor health outcomes for Māori.[4]

10. The following witnesses presented further evidence on behalf of Wai 2499 in relation to the Crown's alternative plans to address Māori in lieu of a Māori health authority:

(a) **Dr Rawiri Jansen** - Dr Rawiri Jansen is a general practitioner and an active member and a former chairperson of Te ORA. He was the Chief Medical Officer for Te Aka Whai Ora, the Māori Health Authority. Dr Jansen's evidence provided a detailed response to the brief of evidence of Mr John Whaanga filed on behalf of the

[3] Wai 2575, #M23 at [17]-[44].

[4] Wai 2575, #M24.

Crown, concluding that the Crown's alternative plans represent a retreat from previous progress and a reductive step backwards for Māori health.

(b) **Dr Elana Curtis** – Dr Elana Curtis is a Public Health Physician, Associate Professor at Te Kupenga Hauora Māori, University of Auckland and Director of Taikura Consultants Limited. Dr Curtis' evidence addressed the impact of Te Aka Whai Ora and provides comment on the public health sector following the disestablishment of Te Aka Whai Ora, the move away from targeted Māori health interventions, the "chilling effect" of the Government's approach and the inadequacy of the Government's plans to address Māori health inequities.

TE TIRITI O WAITANGI AND THE HEALTH SYSTEM

11. The Wai 2499 claimants participated in Stage One of the Wai 2575 Health Services and Outcomes Inquiry, which produced a comprehensive two-stage Tribunal report that recommended transformational change of the primary health care system to give effect to Te Tiriti and prioritise equitable Māori health outcomes.[5]

12. The Tribunal found significant Te Tiriti breaches in the way in which primary healthcare was provided in New Zealand. The relevant findings include:[6]

    (a) Failure to commit to equity: The primary healthcare framework failed to commit to achieving equity and did not require the health sector to comply with Te Tiriti.

    (b) Underfunding: Inadequate funding and failure to adequately fund Māori models of care.

    (c) Lack of accountability: A failure to have accountability mechanisms to monitor achievement of equitable health outcomes for Māori.

[5] Waitangi Tribunal *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019) [***Hauora Report***]; and Waitangi Tribunal *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry: Chapter 10* (Wai 2575, 2021) [***Hauora Report: Chapter 10***].
[6] "Hauora, Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry" (Wai 2575), Waitangi Tribunal dated 28 June 2019.

(d) Failure to partner with Māori: Institutional racism and lack of co-design with Māori that recognises "tino rangatiratanga" and "mana motuhake" (right to self-determine).

13. The Tribunal recommended that the Crown ensure that legislative and policy frameworks recognise and provide for Te Tiriti, that the Crown commit to equitable outcomes and that the following be adopted as Te Tiriti principles for the primary healthcare system, which the Wai 2499 claimants submit remain equally relevant in this part of the Inquiry:[7]

(a) **Tino rangatiratanga**: the guarantee of tino rangatiratanga, which provides for Māori self-determination and mana motuhake in the design, delivery and monitoring of primary health care.

(b) **Equity**: which requires a commitment to achieving equitable health outcomes for Māori.

(c) **Active protection**: which requires the Crown to act, to the fullest extent practicable, to achieve equitable health outcomes for Māori. This includes ensuring that it, its agents and its Te Tiriti partner are well informed on the extent, and nature of, both Māori health outcomes and efforts to achieve Māori health equity.

(d) **Options**: that the Crown is obliged to ensure that all primary health care services are provided in a culturally appropriate way that recognises and supports the expression of hauora Māori models of care; and

(e) **Partnership**: which requires the Crown and Māori to work in partnership in the governance, design, delivery and monitoring of health services. Māori must be co-designers of the health system for Māori.

14. The Wai 2499 claimants also rely on the principle of "**good government**" as outlined by this Tribunal in its *Hautupua* report, issued in relation to Part 1 of this Te Aka Whai Ora priority inquiry.

SUMMARY OF TE ORA'S POSITION

[7] "Hauora, Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry" (Wai 2575), Waitangi Tribunal dated 28 June 2019.

Findings and Recommendations

15. The Wai 2499 claimants support the closing submissions made by the Wai 3307 claimants in stage 2 of this priority inquiry, and the findings and recommendations sought by those claimants. These are not repeated here.

Summary of Wai 2499 Position

16. In order to avoid repetition, these submissions focus on the issues arising from the evidence presented on behalf of Wai 2499, and the Crown's response to the matters raised in that evidence.

17. In essence, the Wai 2499 claimants submit that, despite what the Crown has indicated a number of times in this inquiry since the disestablishment of Te Aka Whai Ora in 2024, the Crown has produced nothing that looks remotely like "**alternative plans to address Māori health in lieu of a Māori health authority**".

18. As Dr Jansen observed under cross-examination by Crown counsel:[8]

> *"We have got an absence of a plan. We do not have a plan."*

19. Instead, what the Crown has delivered is a "performative destruction of Te Aka Whai Ora",[9] a health system that is less responsive to the inequitable health outcomes faced by Māori and is, as observed by Dr Elana Curtis, "shutting down any focus on ethnicity", in what was described as a "chilling effect".[10] Dr Curtis implored Crown counsel to:[11]

> *"Please listen to me when I say, that on the ground what is happening is that people aren't even putting up the evidence. They're just absolutely not focusing on anything Māori. You can't deny the lived reality of what is going on out there in the health sector right now."*

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[8] Dr Rawiri Jansen in response to questions from Professor Linda Tuhiwai Smith, Day 2 of the Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) at 3:22:30 (see Wai 2575 - The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 2).

[9] Dr Rawiri Jansen in response to questions from Professor Linda Tuhiwai Smith, Day 2 of the Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) at 3:22:30 (see Wai 2575 - The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 2).

[10] Dr Elana Curtis in response to questions from Crown Counsel, Day 2 of the Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) at 4:44:40 (see Wai 2575 - The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 2).

[11] Dr Elana Curtis in response to questions from Crown Counsel, Day 2 of the Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) at 4:45:20 (see Wai 2575 - The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 2).

20. Because there is no plan, the remaining aspects of the issues set out in the statement of issues become somewhat redundant. There is no plan, therefore analysis of the steps taken to develop the plan and its Te Tiriti-compliance becomes contrived. Because there is no plan however, and all that is left to examine is the "lift and shift" of various functions and responsibilities of Te Aka Whai Ora to other parts of the existing health "eco-system", with no additional resourcing to support the "lift and shift" and the loss of knowledge, expertise and capacity that was present within Te Aka Whai Ora,[12] what is clear is that the Crown's conduct is in breach of the principles of Te Tiriti o Waitangi identified above. As Dr Jansen observed:

> *"It is the operational aspects of those policies that Te Aka Whai Ora was able to be engaged across an incredibly broad range of activities and support Māori providers and so on. If you take Te Aka Whai Ora away, have you got the capacity to do that in Te Whatu Ora? Have you got the intention to do that in Te Whatu Ora? Have you got the skills and experiences of people in Te Whatu Ora to do that?"*

21. The Crown's actions represent a regressive step for tino rangatiratanga in the design, delivery and monitoring of primary health care, for equitable outcomes and pro-equity activities, for active protection, for options and for partnership. The Crown's actions also represent, as the Tribunal identified in part 1 of these proceedings, a breach of the principle of good government and an exercise of poor kāwanatanga.

A Reduced, Restricted and Reductive Health "Eco-system" – With No Plan

Rationale for Te Aka Whai Ora – The Waka Hourua

22. The establishment of Te Aka Whai Ora emerged from the reality that the public health system was not working for Māori.

23. The establishment of Te Aka Whai Ora was one of the recommendations from the Tribunal in *Hauora, Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry*, as a key mechanism to combat negative

[12] See for example the evidence of Dr Elana Curtis in response to questions from Crown Counsel, Day 2 of the Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) at 4:50:40 (see Wai 2575 - The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 2).

Māori health statistics. The establishment of Te Aka Whai Ora was an acknowledgement by the Crown of that fact, and was an intervention aimed at disrupting the status quo, reinforcing and prioritising Māori health in order to address the significant poorer health outcomes for Māori and Māori indigenous rights to positive health outcomes.[13]

24. Te Aka Whai Ora was not the only policy solution, and it was not a perfect one, however it became *the* intervention in respect of responses to Hauora Māori introduced by the Pae Ora Act 2022 (**Pae Ora Act**).[14] Te ORA's position has always been nuanced in that sense, advocating for a suite of options to be explored to form a whole-of-government response.[15]

25. On this point, Te Aka Whai Ora was so critical as an intervention in the Pae Ora Act that it was described, with Te Whatu Ora Health New Zealand (**Te Whatu Ora**), as a "waka hourua".[16] This imagery was so powerful and important to the new health eco-system that it lead to the presentation of two hoe at the launch of Te Whatu Ora and Te Aka Whai Ora. These hoe were present behind by Dr Jansen during the presentation of his evidence in these proceedings. In effecting the disestablishment of one half of the waka hourua, and in particular the half of the waka dedicated to the independent Māori voice and advocate, the Crown was obliged to ensure that its alternative plans for Māori health in lieu of Te Aka Whai Ora were carefully developed, carefully actioned and clearly articulated. This is what the principle of "good government" requires. This has simply not occurred.

26. It is the submission of Te ORA that the reckless and cruel disestablishment of Te Aka Whai Ora by the government, without any obvious "alternative plans to address Māori health", has significantly destabilised the health eco-system envisaged by the 'waka hourua' analogy, and that the 'eco-system' that is the public health system is worse off since the disestablishment of Te Aka Whai Ora.

27. The following six points address why this is the case.

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[13] Wai 2575, #M51 at [8].
[14] Wai 2575, #M51 at [9].
[15] Wai 2575, #M24 at [20].
[16] Briefing to the Incoming Minister 2023, Te Aka Whai Ora, 2023, at p. 5 (see BIM - Minister of Health - Te Aka Whai Ora.pdf).

A shift in language and focus within key planning and strategy documents

28. Since the disestablishment of Te Aka Whai Ora, there has been a shift in the language used in key policy and planning documents within the public health system. Language is a key indicator and signpost of intent and focus. The change in language indicates a shift in the direction of travel, one that is away from actively promoting targeted interventions to reduce Māori health inequities.

29. As was apparent in the oral evidence of Mr Whaanga, a key concern raised by both the Māori Monitoring Group and Hauora Māori Advisory Committee was the lack of reference to the Treaty of Waitangi in the most recent Government Policy Statement (**GPS**), including in particular the Ministry of Health's own Te Tiriti o Waitangi framework.[17]

30. Dr Jansen's second brief of evidence noted this shift in language, noting for example that while the GPS "mentions discrimination, in comparison to previous plans and strategies the GPS has no reference to racism or to any measures to be taken to address and eliminate racism against Māori. References to equity have also been watered down."[18]

31. This change in language is critical, representing a clear shift away from a health system where Te Tiriti o Waitangi is embedded that is focused on addressing Māori health inequities.

32. Dr Elana Curtis' evidence was that the absence of a directive to look at ethnicity in the 2024 Cabinet circular, *CO (24) 5: Needs-based Service Provision*, coupled with an explicit directive to not look at race and placing an additional onus on officials to justify interventions based on ethnicity, has had a "chilling effect" on Māori initiatives in the health sector.[19]

33. During cross-examination, Mr Whaanga confirmed that Ministry of Health officials interpreted this Cabinet directive as an indication that Ministry officials should now not consider interventions on the basis of ethnicity. Mr Whaanga also referred to the training and adjustments that were required to educate Ministry of Health staff to implement this directive. In its

[17] Minister of Health. 2024. *Government Policy Statement on Health 2024 – 2027*. Wellington: Ministry of Health.
[18] Wai 2575, #M23(b) at [26].
[19] Wai 2575, #M51 at [21].

submissions, the Crown described that training as a positive thing. On the contrary however, this training speaks to the "chill" that Dr Curtis and others predicted and were concerned about and it is contrary to the Crown's obligations under the Treaty, particularly given the comprehensive, consistent and long-standing evidence which demonstrates that ethnicity is a stronger marker of need than other commonly accessible variables such as rurality and the New Zealand Index of Deprivation.[20]

34. The Tribunal in its Stage One *Hauora* report found that active protection in this context requires the Crown to pay specific attention to Māori health inequities and provide additional resources to address the causes of those inequities.[21] The Crown's current trajectory is not consistent with this obligation, particularly where it has actually made targeted interventions for Māori more difficult to obtain.

A focus on mainstream New Zealand has suspended a pro-equity approach

35. Despite continued statements and commitments by the Government to a pro-equity and Te Tiriti centred response, the health eco-system post disestablishment of Te Aka Whai Ora has been to re-focus on mainstream New Zealand and fails to consider and deliver to the specific needs of Māori.

36. This can be seen in the recent health national targets set by the Government which are total population focused, and do not include Māori specific targets.[22] The evidence of Dr Curtis outlined that by focusing on achievement at a total population level only, there is no need for the health system to work appropriately or differently to achieve high coverage in underserved population groups, particularly those in the numerical minority (i.e. Māori).[23] Total population targets can all be achieved with persisting low coverage among Māori.

37. An illustration of the move away from targeted Māori health interventions is the Government's recent decision to remove the bowel cancer screening

[20] See for example the evidence of Dr Elana Curtis at Wai 2575, #M51 at [24] and on Day 2 of the Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) at 4:36:55. (see Wai 2575 - The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 2).
[21] Waitangi Tribunal *Stage One Hauora of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019) at 32.
[22] Wai 2575, #M51 at [24].
[23] Wai 2575, #M51 at [39].

age extension for Māori and Pacific peoples. A number of witnesses gave evidence on this point including Dr Jansen and Dr Curtis.[24]

The ecosystem is deficient and is not Te Tiriti compliant

38. The removal of Te Aka Whai Ora as a central accountability mechanism for the health system represents a regressive and reductive step backwards to the previous status quo (pre Te Aka Whai Ora), when there is overwhelming evidence that the status quo produces poor health outcomes for Māori.

39. In submissions and evidence, the Crown placed a lot of focus on the measures and mechanisms that have remained in the ecosystem for Māori health. This is a distraction. The Crown's reliance on what has remained in the system as support for its "alternative plans for Māori health" is misguided and no answer for the issues in this inquiry, given that the measures that remain largely existed before the disestablishment of Te Aka Whai Ora, including:

    (a) Iwi Māori Partnership Boards (**IMPBs**).

    (b) Hauora Māori Advisory Committee (**HMAC**).

    (c) Ministry of Health system monitoring functions.

    (d) GPS.

    (e) New Zealand Health Plan.

    (f) Hauora Māori Strategy.

    (g) Māori Heath Action Plan.

40. Further, and for example:

    (a) IMPBs and the Haoura Maori Advisory Committee existed prior to the disestablishment of Te Aka Whai Ora.

    (b) The monitoring functions that were transferred back to the Ministry of Health were also in place while Te Aka Whai Ora was in existence.

[24] Wai 2575, #M23(b) at [24].

(c) The GPS, the New Zealand Health Plan, the Hauora Māori Strategy and the Māori Health Action Plan and other accountability documents were measures that were also required when Te Aka Whai Ora was in existence.

41. Further, when the Crown was questioned on key elements of these existing alternative measures, such as for example what additional resourcing had been provided to the HMAC to support its "enhanced monitoring" role, it was apparent that no additional resourcing or staff had been provided to support this "enhanced monitoring". In a question posed by his Honour Judge Stone, Mr Whaanga confirmed that HMAC do not have staff, that the MOH undertakes a secretariat role for the HMAC and that the HMAC budget is also managed by the MOH. Mr Whaanga was also not able to provide a figure for the total HMAC budget.[25]

42. The measures and interventions outlined above and relied upon by the Crown in the health eco-system introduced by the Pae Ora Act 2022 were intended to work in a structural environment that included Te Aka Whai Ora, acting as a counter-balance, providing independent and contested advice, ideas and initiatives.[26] It was intended that these levers would work in concert. Following disestablishment, this key context has been removed, and it is a critical difference. The health system is now exposed – a single waka cast adrift in rough seas. Hardly the actions of a responsible Te Tiriti partner.

43. To use the Crown's eco-system analogy again, the loss of diversity in an ecosystem generally results in:

(a) Reduced eco-system resilience.

(b) A decline in eco-system services.

(c) Increase vulnerability to disturbances.

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[25] Mr John Whaanga in response to questions from his Honour Judge Stone, Day 3 of the Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) at 1:06:00 (see Wai 2575 - The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 3).

[26] Pae Ora Act 2022, section 30 and BIM - Minister of Health - Te Aka Whai Ora.pdf.

[26] Dr Rawiri Jansen in response to questions from Crown Counsel, Day 2 of the Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) at 3:05:15 (see Wai 2575 - The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 2).

44. This analogy is apt, as the evidence establishes that the health system is exposed in relation to Hauora Māori without Te Aka Whai Ora, because Te Aka Whai Ora was a critical component of that eco-system.

Reassignment of monitoring functions to entities that have previously failed to produce positive Māori health outcomes

45. The previous monitoring functions of Te Aka Whai Ora have now been transferred to Te Whatu Ora and the Ministry of Health.[27] The reassignment of monitoring functions back into these entities is concerning, particularly when past experience with this approach has been poor, resulting in worse outcomes for Māori health that have persisted for decades, with a lack of specific action taken to generate improved Māori health outcomes.

46. For example, the evidence shows that under the Ministry's watch, Māori experienced worse outcomes across the cancer care spectrum (from health promotion, prevention, early diagnosis, and treatment) and shortfalls have persisted for decades. Dr Jansen's evidence was that the Ministry has persistently failed to identify, resource or facilitate the range of specific actions to achieve improved health outcomes in cancer care.[28] One example of this is the intense long-standing and ongoing battle to ensure that Māori have equitable outcomes from a national bowel cancer screening programme.[29]

47. Mr Whaanga's evidence informed the Tribunal that the Ministry is carrying out this monitoring function previously held by Te Aka Whai Ora.[30] However, there was no evidence put forward to the Tribunal to show how the Ministry's monitoring of the system for Māori health inequities is being reported on to Māori or how it is providing for positive Hauora Māori outcomes.

Successful high-level objectives and commitments in accountability documents require action

48. Crown counsel submitted that the disestablishment of Te Aka Whai Ora has not detracted from the Crown's continued commitment to improve the

[27] Wai 2575, #M34(d) at [12].
[28] Wai 2575, #M23(b) at [24].
[29] Wai 2575, #M23(b) at [24].
[30] Wai 2575, #M34(d) at [12].

health sector for Māori and improve hauora Māori outcomes in a manner consistent with obligations under Te Tiriti o Waitangi and the Pae Ora Act. In making this assertion, the Crown relied on the objectives stated in the GPS.[31]

49. However, it is actions, not objectives, which ultimately matter. The Crown already knows this. As accepted by Mr Whaanga, implementation has always been the biggest challenge for the health sector. This issue was identified by the Tribunal in its Stage One *Hauora* report when it considered, for instance, the very poor implementation of the He Korowai Oranga Hauora Maōri strategy in place at that time.[32]

50. In order for any strategies and plans to be effective in making a difference to Māori health outcomes, there must be an ability for Māori to influence the operational and day to day services being delivered in the health system. This is what Te Aka Whai Ora was designed to do – the gap it was intended to fill - with a team of 300 people that were able to be deployed across a whole lot of programmes and service delivery areas. The strategies themselves, as Dr Jansen told the Tribunal, do not get close enough to the implementation plans or operational plans, which dictate how the work will be carried out. There is a significant system distance between the high-level matters asserted in these strategies and plans and the implementation of a $20-billion plus health sector.

51. Dr Jansen's evidence squarely addressed this point. Dr Jansen said that "the difference being made by Te Aka Whai Ora was that it was working directly in partnership with Te Whatu Ora at every level, from the Board-to-Board level, to the local, district and regional teams implementing the work. The formal relationship with Te Whatu Ora across all levels meant that Te Whatu Ora had to work with and listen to the perspectives and advice from Te Aka Whai Ora. There was meaningful dialogue and a meaningful outcome from that dialogue at all layers, with day to day influence."[33]

52. Additionally, the Tribunal should not overlook the fact that this Coalition Government has failed to deliver those critical strategies (New Zealand

[31] Minister of Health. 2024. *Government Policy Statement on Health 2024 – 2027*. Wellington: Ministry of Health.
[32] Waitangi Tribunal *Stage One Hauora of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019) at 162.
[33] Wai 2575, #M23(b) at [20].

Health Plan, Hauora Māori Strategy and the Māori Health Plan) in a timely manner. There is no current New Zealand Health Plan. There is no Haoura Maori Strategy. There is no Māori Health Plan. In respect of the latter two, the Crown have informed the Tribunal that this work is now **paused** while the Health Assurance Unit carries out its work with the Minister to review the Pae Ora Act. A further review of the legislative framework, within 18 months of the enactment of legislation amending the legislative framework by disestablishing Te Aka Whai Ora, while again failing to consult with Māori, can hardly be consistent with the principles of good government, partnership or tino rangatiratanga

A constant state of restructure - uncertainty and instability have impacted the Māori public health workforce

53. Following the disestablishment of Te Aka Whai Ora, and as outlined by Mr Whaanga in response to cross-examination and addressed by other witnesses such as Dr Curtis, Dr Jansen and Ms Janice Panoho, there have been multiple ongoing restructures within the health sector as staff, functions and responsibilities are transferred and integrated into Te Whatu Ora and the Ministry of Health. Mr Whaanga also noted that some of the restructuring has resulted in roles becoming redundant.

54. Dr Curtis discussed the impact that these changes have had on former staff of Te Aka Whai Ora and those who hold Māori facing roles in the health sector, noting that it has severely impacted staff morale as people are in a state of constant fear about their job security. This has created an environment of employment fear to challenge the status quo (especially given the broader employment context).[34]

55. The influence that Te Aka Whai Ora staff could have had with a focus on independent, Māori centred advice has essentially been diminished with the removal of the mandate of Te Aka Whai Ora. This requires urgent attention. The claimant evidence in these proceedings, as well as that from the Crown, paints a picture of a sector that is stunned and paralysed.

Iwi Maōri Partnership Boards

[34] Wai 2575, #M51 at [37].

56. In the absence of Te Aka Whai Ora, Crown submissions and evidence both noted the important role that IMPBs will play as levers for hauora Māori outcomes in the health system. Yet, as outlined in the evidence of Dr Jansen and Dr Curtis, IMPBs cannot be the only or the main lever to achieve these outcomes.

57. IMPBs were intended to work in a structured environment with and supported by Te Aka Whai Ora, to carry out functions as set out in the Pae Ora Act.[35] Now that Te Aka Whai Ora has been disestablished there is a lack of clarity and consistency as to what the IMPBs' roles are and how they are supported by and work with Hauora Māori Services and Te Whatu Ora. Whilst Te ORA would agree that there should be room for regional flexibility, such a diverse approach is not helpful for Māori health overall. The mainstream system still has to be able to respond.

58. The role of IMPBs is primarily focused on iwi-led solutions. However, this is fraught in that they have a responsibility to identify issues in their IMPB boundaries and then identify how to solve those issues without power to direct or instruct Te Whatu Ora, only advise.[36]

59. Like other parts of the health eco-system with refreshed functions and powers following the disestablishment of Te Aka Whai Ora, IMPBs also appear to be under-resourced, particularly post the disestablishment of Te Aka Whai Ora, to do the job they have been tasked to do. Under the new system, the Crown expect IMPBs to deliver and take on some of previous functions and responsibilities held by Te Aka Whai Ora. This expectation is simply unreasonable and impractical as IMPBs do not have adequate resourcing, direction guidance, clear lines of authority and are comprised of individuals who are already spread thin in other roles for their respective iwi, hapū and communities. IMPBs are being set up to fail.

60. Dr Jansen signalled in his evidence that support functions for IMPBs previously held by Te Aka Whai Ora have been significantly impaired by being transferred to Te Whatu Ora. Specifically, the Tūwharetoa Iwi Māori Partnership Board expressed that Te Whatu Ora have failed to provide key information and data required for them to carry out their monitoring function,

[35] Wai 2575, #M23(b) at [39].
[36] Wai 2575, #M51 at [48].

the first most basic requirement in order for them to function effectively.[37] Equally, Dr Jansen also indicated in response to questions from Professor Smith that IMPBs would need to be very "tactical" in their approach, given the limited resources they have to carry out their broad range of functions.

CONCLUSION

> *"Literally, Friday last week we are told that the Māori Health Strategy is paused. Out of nowhere. For 18 months, we have been told we are going to have a plan, we are going to have a plan, it's coming, and suddenly it's not coming..*
>
> *..Just a performative destruction of Te Aka Whai Ora with no plan, no understanding, we didn't do a risk analysis. It's disturbing."*[38]
>
> **Dr Rawiri Jansen**

61. The evidence shows that the health system has returned to a compromised state following the disestablishment of Te Aka Whai Ora. The claimants and interested parties in these proceedings have attempted to locate alternative plans to interrogate and analyse for Te Tiriti consistency, to no avail.

62. To the degree that these proceedings have produced confusion and uncertainty, this confusion also represents an unfolding change in position by the Crown over the course of these proceedings. There was no "alternative plan". There never has been. This is not consistent with the Crown's obligations under Te Tiriti o Waitangi and amounts to a compounding breach of Te Tiriti o Waitangi and its principles.

63. The Tribunal are now aware that the Ministry of Health's development of "alternative plans", to the degree that this work can be described as such, has been paused, and we have recently been informed that there is an imminent broader review of the Pae Ora Act to take place. The Crown has indicated that this review will affect the issues before this Tribunal.

64. The Crown's recent behaviour leads to the conclusion that these proposals will again likely progress with haste and without sufficient engagement with

[37] *Monitoring Report* (Tūwharetoa Iwi Māori Partnership Board, April 2025) at 3.

[38] Dr Rawiri Jansen in response to questions from Professor Linda Tuhiwai Smith, Day 2 of the Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) at 3:22:30 (see Wai 2575 - The Health Services and Outcomes Kaupapa Inquiry (Te Aka Whai Ora) Day 2).

Treaty partners. This is problematic not only in relation to the Crown's kāwanatanga obligations but by any reasonable democratic standard. It is a breach of the principle of good government.

65. The claimant and Crown evidence has shown that, whether planned or not, the eco-system that is the public health system post the disestablishment of Te Aka Whai Ora is in a perilous and unbalanced state. The Te Tiriti consistent approach to policy development and to the operation of the health system, where engagement with Treaty partners is not an afterthought but is one that reflects partnership, that is robust and that is contested to ensure the best outcomes for Māori, has been lost.

66. The Crown has not developed any alternative plans, and even if the extent of the alternative plans is the current heath eco-system, these alternative plans still fall short of being consistent with Te Tiriti o Waitangi and its principles. In addition, engagement with Treaty partners has been insufficient and largely non-existent throughout this entire process.

67. The Crown's current approach to the Māori health eco-system is a retreat from what was possible, with a vision for Māori health that is reduced, restricted and reductive. An entire hull of the waka has been lost. It is a vision that, Te ORA says, is inconsistent with the principles of Te Tiriti o Waitangi. The Māori nation expects and has a right to expect much more.

DATED at **WELLINGTON** this 3rd day of June 2025

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