IN THE WAITANGI TRIBUNAL **Wai 2575**
I TE ROOPUU WHAKAMANA I TE TIRITI O WAITANGI **Wai 2619**

In the Matter	of the Treaty of Waitangi Act 1975
And	
In the Matter	of the Health Services and Outcomes Kaupapa Inquiry (Wai 2575)
And	
In the Matter	of a claim by Dr Huhana Hickey on behalf of herself and other Maaori Disabled (Wai 2619)

CLOSING SUBMISSIONS IN RESPECT OF THE SECOND PHASE OF THE INQUIRY INTO THE DISESTABLISHMENT OF TE AKA WHAI ORA

Dated 3 Hune 2025

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MAY IT PLEASE THE TRIBUNAL

1. These Closing Submissions are filed on behalf of Wai 2619, a claim by Dr Huhana Hickey on behalf of herself and other Maaori Disabled (**Claimant**), in respect of the alternative plans for Maaori health, the second stage (**Stage Two**) of the inquiry into the disestablishment of Te Aka Whai Ora / the Maaori Health Authority (**Inquiry**).

PROCEDURAL MATTERS

2. The scope of this phase of the Inquiry is encompassed by the following 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 the Maaori health authority consistent with te Tiriti o Waitangi and its principles?.

3. These Closing Submissions rely on the following documents filed on behalf of the Wai 2619 Claim for this Inquiry:

    a. Opening Submissions for the Stage Two of the Inquiry, dated 13 May 2025 (Wai 2575, #3.3.177);

    b. Brief of Evidence of Dr Huhana Hickey, dated 20 February 2024;

    c. Brief of Evidence of Frankie Karetai Wood-Bodley, dated 13 May 2025 (Wai 2575, #M50).

[1] Wai 2575, #2.6.201 at [14].

4. Claimant and Counsel also rely on the submissions made by other counsel, both filed in writing, and presented at last week's AVL hearing on 29 May 2025.[2] We generally tautoko and endorse the general tenor of those submissions, where those submissions also apply to Whaanau Hauaa Maaori / Taangata Whaikaha Maaori / Maaori disabled (henceforth **Whaanau Hauaa Maaori**).

TE TIRITI AND ITS PRINCIPLES RELEVANT TO THIS PHASE

5. We adopt and endorse the submissions of counsel for Wai 3307 in respect of the te Tiriti and its principles, their applicability to this phase of the Inquiry and alleged breaches and submit these extend to Whaanau Hauaa Maaori me o raatou whaanau me haapori. The applicability of te Tiriti and its principles are articulated in full in our closing submission for Wai 2619 in the first stage of this Inquiry, regarding the disestablishment of Te Aka Whai Ora (**Stage One**).[3]

6. We also rely on the Tribunal's articulation of te Tiriti and its principles in the *Hautupua: Te Aka Whai Ora (Maaori Health Authority) Priority Report Part 1* (**Hautupua Report**).[4]

KEY SUBMISSIONS FOR WAI 2619

7. At the outset and on a general level, we submit that central to the issues faced by Whaanau Hauaa Maaori is the continued invisibilisation of them, their whanau and their communities. This is well traversed in the closing submissions of the Wai 2619 Claimants in the lived experience of disabilities phase (**Disabilities Phase**) of the Wai 2575: Health Services and Outcomes Kaupapa Inquiry (**Health Inquiry**).[5]

8. Furthermore, the oppression and prejudice faced by Whaanau Hauaa Maaori are multi-layered. Not only do Whaanau Hauaa Maaori deal with

[2] RN Smail *Closing Submissions* dated 29 May 2025; For example, the oral closing submissions presented on 29 May 2025 by various counsel: Roimata Smail, Emma Whiley, Maia Te Hira, Horiana Irwin-Easthope, Tara Hauraki, Stephanie Roughton and Dr Season-Mary Downs.
[3] Wai 2575, #3.3.142 at [13].
[4] Waitangi Tribunal *Hautupua: Te Aka Whai Ora (Maaori Health Authority) Priority Report Part 1* (2575, 2024).
[5] Wai 2575, #3.3.120 at [80]-[105].

prejudice associated with being Maaori, or the prejudice associated with being disabled, but, and as expanded on in the closing submissions for the Disabilities Phase, there is a specific prejudice that is only experienced by Whaanau Hauaa Maaori.[6]

9. It is through this lens in which we make further submissions that are specific to the Wai 2619 claim, and is pertinent to Whaanau Hauaa Maaori, as outlined below.

ISSUE ONE: ALTERNATIVES FOR MAAORI HEALTH IN LIEU OF TE AKA WHAI ORA

10. We adopt and endorse the submissions of the Wai 3307 Claimants and counsel in so far as it applies to Whaanau Hauaa Maaori. As had been outlined,[7] there are no alternative plans for Maaori. This is clear from the evidence provided by the Crown, both in the written evidence and in response to questions during the hearing.[8] The Crown is instead relying on the plans in place when the Pae Ora (Disestablishment of Maaori Health Authority) Amendment Act 2024 (**Disestablishment Act**) was enacted and when Te Aka Whai Ora was disestablished.[9]

11. What is further apparent from the evidence provided by the Crown is that Whaanau Hauaa Maaori are once again invisibilised.[10] As noted by witness, Frankie Karetai Wood-Bodley, in their evidence:[11]

> *In my view,* ***Mr Whaanga's evidence does not address, even at a high-level, what the Māori Health Directorate within Manatuu Hauora is or will be doing to support whaanau hauaa / taangata whaikaha.*** *Brief mention is made of disabled people in Appendix Two at [7] and [8] with regard to the Government Policy Statement on Health 2024-27, but no further information is provided* [emphasis added].

[6] Wai 2575, #3.3.120 at [88]-[90].
[7] RN Smail *Closing Submissions* dated 29 May 2025; Wai 2575, #3.3.177.
[8] Wai 2575, #M34(d); see RN Smail *Closing Submissions* dated 29 May 2025 for specific references during the hearing.
[9] As noted by the Crown counsel during oral Crown closing submissions and during an exchange with his Honour, Kaiwhakawaa Stone.
[10] We note that the Frankie Wood-Bodley's Brief of Evidence was filed prior to the updated brief of evidence of John Whaanga, however, Appendix Two as referred to in the following sentence remains the same.
[11] Wai 2575, #M50 at [9].

12. Where there is an absence of policies and strategies *specific* to Whaanau Hauaa Maaori in respect of their hauora, not only does this invisibilise them, but it has also meant, in our submission, that their hauora is deprioritised by the health and disability system in general. As said by Takuta Huhana Hickey in her evidence:[12]

> ***Te Aka Whai Ora's potential lies in its continued effort to involve Maaori disabled voices more prominently in the health discourse****. Its disestablishment therefore takes away the opportunity for Maaori disabled to rebuild those relationships from scratch with primary health providers and to work towards a system that is enabling rather disabling.* ***We lose our opportunity to gain equity in the health system that we desperately need.*** [emphasis added].

13. We further submit that, as noted by counsel for Te Roopu Waiora in her oral closing submissions,[13] that Whaanau Hauaa Maaori are already also having to deal with other reforms, specifically the reforms of Whaikaha – the Ministry of Disabled People, that impact their hauora and how they interact with the health and disability system. In our submission, Te Aka Whai Ora was a beacon of hope for Whaanau Hauaa Maaori in the face of a Crown-enabled process that had (as had been argued in the disabilities phase of the Health Inquiry) stripped their own Ministry of its own autonomy.[14]

14. Counsel therefore submit that it is open to the Tribunal to make a finding that the Crown has breached te Tiriti and its principles, specifically the principles of tino rangatiratanga, active protection and equity, in respect of its obligations to Whaanau Hauaa Maaori as guaranteed by te Tiriti.

ISSUE TWO AND THREE: TIRITI CONSISTENCY OF PROCESS AND SUBSTANCE

15. We, again, endorse and adopt the submissions of counsel for Wai 3307, in that, as there is no alternative plan, the process and substance of said 'plans' cannot be Treaty consistent, and that there is no evidence provided by the Crown to prove the contrary.[15] The lack of evidence from the Crown

[12] Wai 2575, #M18 at [7].
[13] T Bennion / E Whiley / Kudrat *Closings Roadmap* dated 29 May 2025 at [5.2], as presented by Ms Whiley.
[14] Wai 2575, #M18.
[15] RN Smail *Closing Submissions* 29 May 2025 at [9]-[10].

was even noted by Frankie Wood-Bodley:

> *I had expected that the Crown would provide evidence from Te Whatu Ora – Health New Zealand's Hauora Maaori Services directorate to provide a high level view of what is happening, or planned to happen, in commissioning and implementation of Maaori health services in lieu of Te Aka Whai Ora. Though there is a division of functions and responsibilities between Manatuu Hauora and Te Whatu Ora, there is a serious interdependency between them when it comes to Māori health outcomes and delivering an alternative to Te Aka Whai Ora.*
>
> *Essentially, Manatuu Hauora views itself as the most important player in the health system when it comes to delivering an alternative to Te Aka Whai Ora.*

16. In our submission, the choice to put only one witness on behalf of the Crown, who has a role that sits in Manatuu Hauora that limits his ability to answer questions, shows the Crown's disregard of the Waitangi Tribunal process and ensuring complete accountability of its acts and omissions.

17. Furthermore, we submit that even when the Disestablishment Act was before the House as a Bill, it was noted that there was a lack of consultation with Whaanau Hauaa Maaori regarding the changes in the Disestablishment Act, also known now as the 'alternative plans'.[16] Furthermore, the suggestion to provide by way of legislation an opportunity for Whaanau Hauaa Maaori to have representation on the Hauora Maaori Advisory Committee (**HMAC**) went unheeded.[17] That is not to say that the existence of the HMAC is an indication of Tiriti-compliance, however, as submitted by other counsel in this Inquiry.[18]

18. In other words, in our submission, there were many opportunities to bring Whaanau Hauaa Maaori voices into existing parts of the health and disability system in lieu of Te Aka Whai Ora, but even those parts – which arguably fall short of Tiriti-compliance – were not even given to Whaanau Hauaa Maaori. This is contrary to what Te Aka Whai Ora had achieved during its short existence, as described by Takuta Hickey:

[16] (27 February 2024 (continued on Wednesday, 28 February 2024)) 773 NZPD 1608.
[17] (27 February 2024 (continued on Wednesday, 28 February 2024)) 773 NZPD 1608.
[18] T Bennion / E Whiley / Kudrat *Closings Roadmap* dated 29 May 2025 at [3].

> ***Maaori disabled were slowly building trust with Te Aka Whai Ora. Through work such as organisations like Te Ao Maarama Aotearoa*** *led by Dr Tristram Ingham (who was a witness for this claim in the Disabilities Phase)[footnote removed],* ***Te Aka Whai Ora was steadily integrating Maaori disabled voices within its structures*** [emphasis added]***.***

19. Therefore, we submit that these missed opportunities for Whaanau Hauaa Maaori to have the same/similar ability as Maaori in general to, at a bare minimum, influence the health and disability system, is an example of further prejudice experienced by them specifically, in breach of te Tiriti and its principles.

WHAT TE AKA WHAI ORA REPRESENTED FOR WHAANAU HAUAA MAAORI

20. In closing these submissions, Takuta Huhana Hickey said it best when she stated:

> *Te Aka Whai Ora holds significant potential to positively impact Maaori healthcare experience, and therefore Maaori disabled healthcare experience.* ***It is designed to address the specific healthcare needs of Maaori, recognising and integrating cultural aspects into care. This means healthcare services can be more responsive and tailored to specific and unique needs, which has the great potential to create better health outcomes and experiences****. It is obvious that responses tailored to specific needs have great potential to create better outcomes for all groups; how much more so then for Maaori, and within them, Maaori disabled?* [emphasis added].

21. We remind all parties that, in our submission, what's good for Whaanau Hauaa Maaori is good for all. Counsel and the Claimant also implore the Tribunal to be brave and bold in making the strong recommendations as outlined by the Wai 3307 Claimants.[19]

PREJUDICE

22. Similar to others' submissions,[20] the lack of an alternative plan for Maaori health in lieu of Te Aka Whai Ora, after having disestablished it is prejudicial

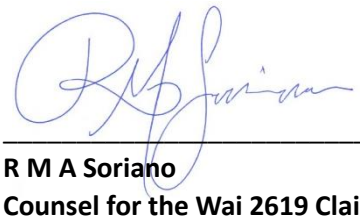
[19] RN Smail *Closing Submissions* 29 May 2025 at [68].
[20] RN Smail *Closing Submissions* 29 May 2025 at [33].

for Whaanau Hauaa Maaori as well. Furthermore, we submit that the continued invisibilisation of Whaanau Hauaa Maaori is an additional prejudice they, their whaanau and communities experience.

RECOMMENDATION SOUGHT

23. Counsel and the Claimant continue to support the recommendations sought by the Wai 3307 Claimants, to the extent that they apply to Whaanau Hauaa Maaori me o raatou whaanau me haapori, as well as the recommendations sought by the Wai 3073 Claimants specific to Whaanau Hauaa Maaori.[21]

Dated at Te Whanganui-a-Tara this 3rd day of Hune 2025



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[21] RN Smail *Closing Submissions* 29 May 2025 from [36] onwards; T Bennion / E Whiley / Kudrat *Opening Submissions* dated 13 May 2025 at [30].