

IN THE WAITANGI TRIBUNAL

WAI 2575

WAI 3307

IN THE MATTER The Treaty of Waitangi Act 1975

AND

IN THE MATTER of a claim to the Waitangi Tribunal by Janice Kuka and Lady Tureiti Moxon in respect of the 30 June 2024 commencement of the Pae Ora (Disestablishment of Maaori Health Authority) Amendment Act 2024

**MEMORANDUM REGARDING PAE ORA ACT CHANGES
ANNOUNCEMENT**

DATED 19 JUNE 2025

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Waitangi Tribunal

19 Jun 25

Ministry of Justice
WELLINGTON

MAY IT PLEASE THE TRIBUNAL

1. This memorandum is filed on behalf of the Wai 3307 claimants Ms Kuka and Lady Moxon. The following counsel have also indicated their support: Annette Sykes and Co, Kaahui Legal, Mahony Horner Lawyers, Phoenix Law, Bennion Law and Whaaia Legal.
2. On 14 June 2025, the Health Minister publicly announced forthcoming changes to the Pae Ora Act (**announcement**, annexed). Counsel is concerned that it was not until three days after the public announcement that the Crown communicated the changes, and the Minister's redacted Health Delivery Plan Update (**Update document**) to the Tribunal and claimants.

HMAC still only advisory

3. The announcement claims that the Minister is "confirming changes to strengthen the Hauora Maaori Advisory Committee (HMAC)".
4. However no strengthening is apparent. The Minister is clear in his announcement that HMAC it will still only be advisory. The Minister and Health NZ will hold all decision making power.
5. By contrast, during the hearing the Tribunal heard that Te Aka Whai Ora had decision making power over its own budget (now held by Health NZ) and equal decision making power with Health NZ on all other matters.¹ The Tribunal also heard that HMAC only meets with the Minister 4-7 times a year, and no meetings with the Health NZ Board were mentioned.²
6. The Update document claims that HMAC's role is being expanded by setting out in statute the areas it will advise on:

16. Currently, HMAC's role is to advise the Minister of Health on any matter the Minister requests. I propose to expand this role so it must advise both the Minister and Health NZ, to ensure HMAC's expertise is always focused directly

¹ M6(c) Brief of evidence of Rob James Campbell, 12 May 2025, para 43.

² Mr Whaanga in response to questions from Ms Roughton.

on improving health outcomes for Maaori. The statutory role of HMAc would be set out in the Act and cover advice on:

- 16.1 healthcare outcomes for Maaori based on their needs;
- 16.2 how the health sector is performing in relation to those needs and aspirations;
- 16.3 the design and delivery of services and public health interventions; and
- 16.4 any other matters that the Minister specifies by notice to the committee.

7. With respect, listing areas for advice is not an expansion. HMAc is still advisory only and has no decision making power.

8. The Update document says that HMAc will be able to advise the Health NZ Board:

15.2 clarify the role of the HMAc, which will be to provide advice to the Minister and Health NZ. The Health NZ board must take into account or consider the advice of HMAc, but there is no requirement to weight or prefer this advice above any other factors the board may consider relevant when making a decision.

9. A requirement to “take into account or consider” HMAc advice is meaningless, particularly as it is followed by explicit record that there is no requirement to give this advice weight or preference, even when the matter relates to Maaori.

10. There was no evidence presented by the Crown that HMAc has ever successfully influenced a decision by the Minister in favour of Hauora Maaori. Its effectiveness depends entirely on whether the Minister and Health NZ are willing to act on its advice. Recent decisions, such as changes to bowel cancer screening, indicate they are not. The proposed “strengthening” of HMAc is therefore, in our submission, a red herring.

11. Furthermore, in contrast to the previous Minister’s repeated assertions that IMPBs would be “strategic commissioners”, this Minister’s words confirm his disdain for Maaori input into decisions about their own health and lives:

14. ... it is unclear what Health NZ is expected to do with the information it receives from Maaori.³

³ Update document.

IMPBs pushed further from decision makers

12. The announcement and Update document both confirm that IMPBs will no longer advise Health NZ directly. Their advice will now flow only to HMAc — which, as stated, remains purely advisory.
13. This further distances Maaori communities from those making health decisions that affect them. There is no evidence that HMAc’s advice is considered or adopted, making this structural change one that further dilutes Maaori influence.

Health Sector principles and Charter repealed

14. The Update document says that the Health Sector principles and the Health Charter are to be repealed.
15. The Minister claims that this will “remove broad-sweeping and discordant focus areas that confuse decision-making”.⁴ It is submitted that in fact, what the Health Charter and the Health Sector principles have in common is a strong focus on Maaori authority and equity:

- 15.1. Mr Campbell referred to the Health Charter in his evidence,⁵ and counsel notes the Charter explicitly says that it is:

... underpinned by Te Tiriti o Waitangi principles identified by the Waitangi Tribunal in its Hauora Inquiry: tino rangatiratanga (self-determination); ōritetanga (equity); whakamaru (active protection); kōwhiringa (options); and paatuitanga (partnership).

- 15.2. The health sector principles in full are:

⁷Health sector principles

(1) For the purpose of this Act, the health sector principles are as follows:

- (a) the health sector should be equitable, which includes ensuring Maaori and other population groups—
- (i) have access to services in proportion to their health needs; and
 - (ii) receive equitable levels of service; and

⁴ Update document, Appendix One.

⁵ #M6(c), Brief of evidence of Rob James Campbell, 12 May 2025, para 47-48.

(iii) achieve equitable health outcomes:

(b) the health sector should engage with Maaori, other population groups, and other people to develop and deliver services and programmes that reflect their needs and aspirations, for example, by engaging with Maaori to develop, deliver, and monitor services and programmes designed to improve hauora Maaori outcomes:

(c) the health sector should provide opportunities for Maaori to exercise decision-making authority on matters of importance to Maaori and for that purpose, have regard to both—

(i) the strength or nature of Maaori interests in a matter; and

(ii) the interests of other health consumers and the Crown in the matter:

(d) the health sector should provide choice of quality services to Maaori and other population groups, including by—

(i) resourcing services to meet the needs and aspirations of iwi, hapū, and whaanau, and Maaori (for example, kaupapa Maaori and whaanau-centred services); and

(ii) providing services that are culturally safe and culturally responsive to people's needs; and

(iii) developing and maintaining a health workforce that is representative of the community it serves; and

(iv) harnessing clinical leadership, innovation, technology, and lived experience to continuously improve services, access to services, and health outcomes; and

(v) providing services that are tailored to a person's mental and physical needs and their circumstances and preferences; and

(vi) providing services that reflect maatauranga Maaori:

(e) the health sector should protect and promote people's health and wellbeing, including by—

(i) adopting population health approaches that prevent, reduce, or delay the onset of health needs; and

(ii) undertaking promotional and preventative measures to protect and improve Maaori health and wellbeing; and

(iii) working to improve mental and physical health and diagnose and treat mental and physical health problems equitably; and

(iv) collaborating with agencies and organisations to address the wider determinants of health; and

(v) undertaking promotional and preventative measures to address the wider determinants of health, including climate change, that adversely affect people's health.

(2) When performing a function or exercising a power or duty under this Act, the Minister, the Ministry, and each health entity must be guided by the health sector principles—

(a) as far as reasonably practicable, having regard to all the circumstances, including any resource constraints; and

(b) to the extent applicable to them.

(3) In subsection (1)(d), lived experience means the direct experience of individuals.

16. It is submitted that repeal of the Health Sector principles and the Health Charter will make it easier for the Crown to make decisions that harm Maaori and breach Te Tiriti.

Universal health targets hide failure for Maaori

17. The Update document states:

12. In order to ensure the strategic framework for the health system is clear and consistent I propose to retain all seven health strategies but introduce a legislative requirement that they must give effect to the health targets as set out in the Government Policy Statement on Health

18. A focus on universal targets is harmful for Maaori. The Tribunal heard from Dr Curtis that because Maaori are a minority, the health system can meet universal targets by focusing on the majority population, which it has traditionally served better anyway. This was also set out by Stage One witness Janet McLean in 2018.⁶ Universal targets therefore hide—and, in our submission, perversely incentivise—the system continuing to fail Maaori.

Positions no longer require knowledge of Te Tiriti or tikanga

19. All of the statutory appointment requirements for members of the Health NZ Board and Expert advisory committee on public health will be removed including knowledge of Te Tiriti, tikanga Maaori and health equity, as follows:

12 Board of Health New Zealand

(3) When appointing members, the Minister must be satisfied that the board collectively has knowledge of, and experience and expertise in relation to,—

(a) te Tiriti o Waitangi (the Treaty of Waitangi) and tikanga Maaori;

93 Expert advisory committee on public health

(4) When determining appointments to the committee, the Minister must be satisfied that the committee collectively has knowledge of, and experience and expertise in relation to, population health, health equity, te Tiriti o Waitangi (the Treaty of Waitangi), epidemiology,

⁶ #A15, Brief of Evidence of Janet Mclean dated 14 June 2018 para 36.

health intelligence, health surveillance, health promotion, health protection, and preventative health.

20. People without this knowledge do not know how to make decisions that will support hauora Maaori.

Infrastructure focus means buildings, not hauora of communities

21. The Update document states:

20. In the first phase, I intend to establish a ministerial advisory committee by July 2025 to provide advice and exercise functions relating to delivery of physical health infrastructure ...

22. ... I intend to amend the Healthy Futures Act to include infrastructure as a specific function and objective of Health NZ.

22. Maaori Primary Health Organisations and Maaori Providers care for people in communities. They need more support, not more hospitals.

Maaori not consulted

23. The Update document states only HMAAC has been consulted on the proposed changes:

37. ...only limited consultation has been undertaken and engagement with Maaori representatives has been limited to the Hauora Maaori Advisory Committee.

Be courageous

24. In our submission, the forthcoming changes are clearly designed to further sideline any Maaori voice about their own health.

25. The claimants reiterate their call for the Tribunal to be courageous in looking to the future, and making recommendations which include a New Whare.

DATED this 19th day of June 2025

A handwritten signature in blue ink, appearing to read 'R N Smail', written in a cursive style.

R N Smail
Counsel for the Claimants