

# Briefing

## Advice about the Crown’s response to Wai 3307 Te Aka Whai Ora (Māori Health Authority) Claim and application for an urgent hearing

**Date due to MO:** 14 December 2023      **Action required by:** 18 December 2023

**Security level:** IN CONFIDENCE      **Health Report number:** H2023034056

**To:** Hon Dr Shane Reti, Minister of Health

**Consulted:** Health New Zealand:       Māori Health Authority:

### Contact for telephone discussion

Name	Position	Telephone
<b>John Whaanga</b>	Deputy Director-General, Māori Health	S9(2)(a)
<b>Geoff Short</b>	Transformation Director, Transformation Management Office	S9(2)(a)

### Minister’s office to complete:

- Approved
- Decline
- Noted
- Needs change
- Seen
- Overtaken by events
- See Minister’s Notes
- Withdrawn

Comment:

# Advice about the Crown's response to Wai 3307 Te Aka Whai Ora (Māori Health Authority) Claim and application for an urgent hearing

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**Security level:** IN CONFIDENCE                      **Date:** 14 December 2023

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**To:** Hon Dr Shane Reti, Minister of Health

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## Purpose of report

1. This briefing informs you of the statement of claim lodged with the Waitangi Tribunal and the application for an urgent hearing concerning the Crown's intention to disestablish Te Aka Whai Ora (the Māori Health Authority).
2. This briefing also seeks your decision on your preferred option to respond to the application for an urgent hearing.

## Summary

3. A claim has been lodged with Waitangi Tribunal seeking an urgent hearing that focuses on the proposed disestablishment of the Māori Health Authority.
4. The statement of claim alleges that the disestablishment of the Māori Health Authority would prejudicially affect Māori and breaches the principles of the Treaty of Waitangi (the Treaty).
5. A memorandum-direction has been issued by the Presiding Officer directing the Crown to respond to the application for an urgent hearing. The Crown must submit its response not later than 4pm Monday 18 December 2023.

6. S9(2)(g)(i)

7. S9(2)(h)

## Recommendations

We recommend you:

- a) **Confirm** your preferred option for the Crown's response to the application for an urgent hearing as the recommended option of opposing the application. **Yes/No**

- b) **Note** that the Crown's response must be made no later than 4pm Monday 18 December 2023. **Noted**
- c) S9(2)(h) [Redacted] **Noted**
- d) **Note** the allegations made by the claimants in the statement of claim that the disestablishment of the Māori Health Authority will prejudicially affect Māori and breach the principles of the Treaty of Waitangi. **Noted**
- e) **Note** the relief sought by the claimants. **Noted**
- f) S9(2)(h) [Redacted] **Noted**
- g) S9(2)(g)(i) [Redacted] **Noted**
- h) S9(2)(h) [Redacted] **Noted**



John Whaanga  
Deputy Director-General, Māori Health  
**Māori Health**  
**Ministry of Health**  
Date: 14 December 2023

Hon Dr Shane Reti  
**Minister of Health**  
Date:



Geoff Short  
Transformation Director  
**Transformation Management Office**  
**Ministry of Health**  
Date: 14 December 2023

# Advice about the Crown's response to Wai 3307 Te Aka Whai Ora (Māori Health Authority) Claim and application for an urgent hearing

## Context

8. On Friday 8 December 2023, the Waitangi Tribunal received a claim from two claimants of the Wai 2575 Stage One Health Services and Outcomes Kaupapa Inquiry. The claim seeks an urgent hearing so that a report can be issued by the Waitangi Tribunal and recommendations made before the Coalition Government's 100-day plan deadline of 8 March 2024.
9. On 11 December 2023, the same Presiding Officer for Wai 2575 Health Services and Outcomes Kaupapa Inquiry was appointed to this claim and has assessed and registered the claim as Wai 3307. The Tribunal Panel is the same panel that recommended investigating the establishment of a Māori Health Authority in the Wai 2575 Stage One Report *Hauora*.
10. On 13 December 2023, the Ministry and interested parties received notification of the claim and a memorandum-direction was issued by the Presiding Officer. The Presiding Officer has directed the Crown to respond to the application for an urgent hearing.
11. The Crown's response is due no later than 4pm 18 December 2023. Claimants and other interested parties can make submissions on the Crown's response no later than 4pm 20 December 2023. Failing to meet this deadline means that the Waitangi Tribunal will proceed on the basis that the Crown abides or agrees with the application for an urgent hearing.

## Matters alleged by the claimants in the statement of claim

12. The statement of claim, memorandum regarding urgency, and summary of affidavits lodged with the Waitangi Tribunal are attached as **Appendix 1**.
13. Claimants have alleged that the disestablishment of the Māori Health Authority will prejudicially affect the Māori population, Māori health providers and Māori Primary Health Organisations. In addition, if the Māori Health Authority is disestablished:
  - a. there will no longer be a Māori body with the express objectives to:
    - i. ensure that planning and service delivery respond to the aspirations and needs of Māori
    - ii. design, deliver and arrange services to achieve the best possible health outcomes for Māori
    - iii. promote Māori health.
  - b. there will no longer be a body to:

- i. undertake the functions set out in section 19 of the Pae Ora (Healthy Futures) Act 2022
    - ii. engage with Māori to find out their aspirations and needs and report back to them, support iwi-Māori partnership boards or jointly prepare the Hauora Māori Strategy.
  - c. Māori will continue to:
    - i. be particularly impacted by racism and stereotyping in primary health care
    - ii. experience a significantly lower standard of health, including significantly shorter lives than non-Māori.
14. The statement of claim also alleges that the disestablishment of the Māori Health Authority is inconsistent with the Treaty principles of tino rangatiratanga, partnership, equity, options, and active protection.

### **Relief sought by claimants**

15. Claimants seek the following relief, which may be further particularised through the presentation of evidence.
  - a. A finding that disestablishing the Māori Health Authority is likely to prejudicially affect Māori and is inconsistent with the principles of the Treaty.
  - b. A recommendation that the Crown does not disestablish the Māori Health Authority.
  - c. Such other relief as the Waitangi Tribunal considers appropriate.
  - d. Costs.

### **Jurisdiction of the Waitangi Tribunal**

16. The Waitangi Tribunal is a permanent commission of inquiry set up to investigate Māori claims relating to the Treaty. The Waitangi Tribunal may inquire only into certain matters as set out in section 6 of the Treaty of Waitangi Act 1975.
17. Section 6 of the Treaty of Waitangi Act 1975 sets out the grounds for making a claim.
  - a. First, a claim must relate to one or more of the following matters:
    - i. an Act of Parliament, an ordinance, a regulation, or another statutory instrument; or
    - ii. a practice or policy adopted or proposed by or on behalf of the Crown; or
    - iii. an action or omission of or on behalf of, or proposed by or on behalf of, the Crown.
  - b. Secondly, the claimants must establish how the law, practice, policy, action, or omission of the Crown:
    - i. is or was inconsistent with the principles of the Treaty; and
    - ii. has prejudicially affected the claimants, or the group on whose behalf the claim was made.
18. Under section 8 of the Treaty of Waitangi Act 1975, the Tribunal also has the power to examine any proposed legislation referred to it by resolution of Parliament for whether,

in the Tribunal's opinion, the provisions of the proposed legislation or any part of them are contrary to the principles of Treaty. Such a resolution would need to be supported by a majority of Members of Parliament.

### **The Waitangi Tribunal may grant an urgent hearing**

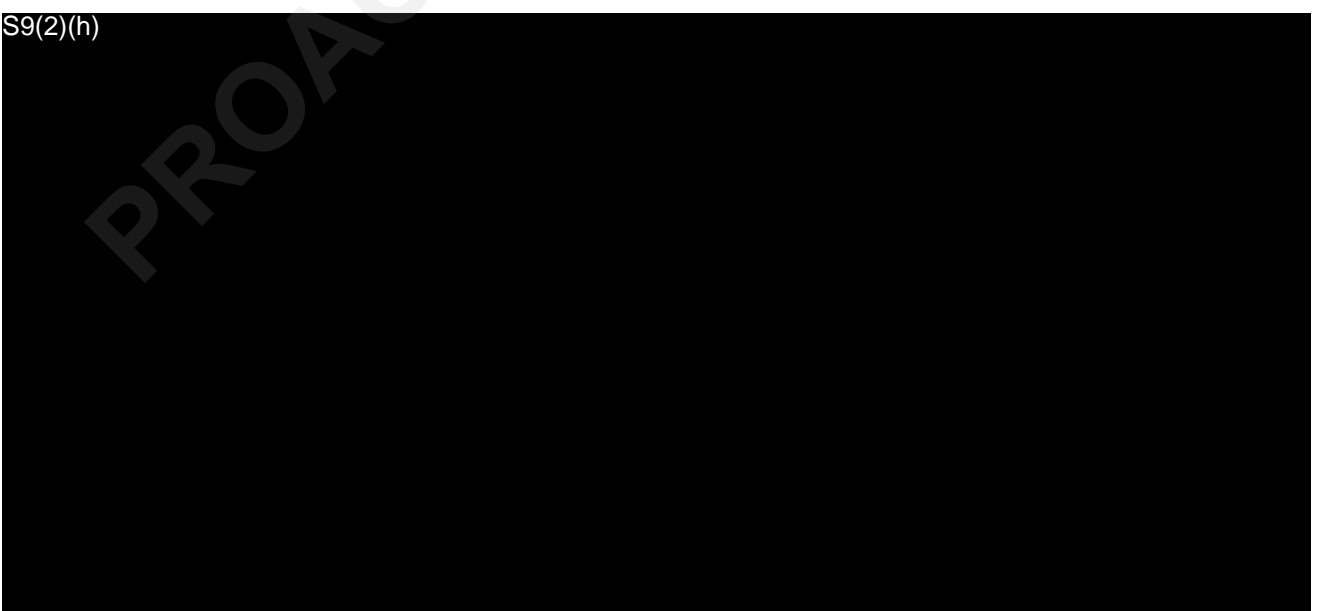
19. In certain circumstances, the Tribunal may decide to urgently inquire into a claim, or a part of a claim. In considering an application for an urgent hearing, the Waitangi Tribunal will look at a number of factors set out in the Guide to the Practice and Procedure of the Waitangi Tribunal, including whether:
- a. the claimants can demonstrate that they are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions or policies
  - b. the claim challenges an important, current, or pending Crown action or policy
  - c. an injunction has been issued by the courts on the basis that the claim for which urgency has been sought has been submitted to the Tribunal
  - d. there is an alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise (such as action in the general courts)
  - e. the claimants are ready to proceed urgently to a hearing.
20. The Waitangi Tribunal considers applications for an urgent hearing very carefully and, before making a decision, will hear submissions from the claimants and from those affected by the application, including the Crown.

21. S9(2)(g)(i)



### **Options for the Crown's response to the application for an urgent hearing for Wai 3307**

S9(2)(h)



## Further advice on the potential risks of breaching the principles of the Treaty of Waitangi and mitigations of these risks

26. As identified by the claimants, there are several matters that may breach the principles of the Treaty. It is important to note that the nature and degree of risk for breaching the principles of the Treaty will depend on the final scope of legislative change that is pursued.

27. S9(2)(g)(i)

28.

29.

30. There are various mechanisms available to mitigate these risks, including:

- a. proposed structure for the future of the health system (transfer of functions and retaining Iwi-Māori Partnership Boards and the Hauora Māori Advisory Committee)
- b. sections 6 and 7 of the Pae Ora (Healthy Futures) Act 2022 – the Treaty of Waitangi and the health sector principles
- c. the Hauora Māori Strategy
- d. the Government Policy Statement on Health
- e. the New Zealand Health Plan
- f. Letters of Expectations, Statement of Intent and Statement of Performance Expectation

31. It is important to note that although the risks associated with disestablishing the Māori Health Authority can be mitigated through these statutory and non-statutory

mechanisms, if the Tribunal hears the claim, it is likely to report adverse findings against the Crown.

### **Proposed structure for the future health system**

32. As previously decided by you [H2023032885 refers], the proposed transfer of functions and retention of Iwi-Māori Partnership Boards and the Hauora Māori Advisory Committee could mitigate these identified risks.
33. The transfer of the support function of Iwi-Māori Partnership Boards to Health New Zealand would mitigate the risk posed of disestablishing the supporting infrastructure provided by the Māori Health Authority.
34. The business continuity of Māori health providers and kaupapa Māori services is important and will require the transfer of the commissioning, contracting and investment functions to Health New Zealand. The transfer of commissioning and contracting functions will ensure that current contracts for kaupapa Māori services are not interrupted and the Māori health workforce continues to be strengthened.
35. The retention of Iwi-Māori Partnership Boards enables the continued engagement with Māori to identify Māori aspirations and needs. This will ensure that planning and service design and delivery respond to the aspirations and needs of Māori to achieve the best possible health outcomes for Māori.
36. The retention of the Hauora Māori Advisory Committee with the refocused function as an independent advisor to you on the performance of Health New Zealand and wider system level outcomes for Māori will ensure the health system is monitored, evaluated, and responds appropriately to deliver better health outcomes for Māori.

### **Intention of the Crown to give effect to the principles of the Treaty of Waitangi**

37. Section 6 of the Pae Ora (Healthy Futures) Act 2022 (the Act) provides for the Crown's intention to give effect to the principles of the Treaty and requires the Minister of Health (the Minister), the Ministry, and all health entities to be guided by the health sector principles for the purpose of improving the health sector for Māori and improving hauora Māori outcomes. This supports the health-system-wide duty to give effect to the principles of the Treaty.
38. Section 7 of the Act provides guiding principles for the health sector that are based on the principles of the Treaty as articulated by the Tribunal in the Wai 2575 Health Services and Outcomes Kaupapa Inquiry Stage One report *Hauora*. Additionally, the health sector principles have been developed to be relevant for all populations in New Zealand.

### **Hauora Māori Strategy**

39. Under sections 41 to 49 of the Act and as part of the health system transformation, a range of strategies have been developed to help guide the health system to achieving healthy futures for all New Zealanders. One of those strategies is a Hauora Māori Strategy.
40. Pae Tū is the current Hauora Māori Strategy, intended to ensure the reformed health system has strategic guidance in giving effect to the principles of the Treaty of Waitangi, improving Māori health equity, and enhancing long-term health outcomes for Māori. Pae Tū is an interim step ahead of a full review and refresh of He Korowai Oranga (2014),



which will take place when Whakamaua: Māori Health Action Plan 2020-2025 is fully implemented.

### **The Government Policy Statement on Health**

41. The purpose of the Government Policy Statement on Health (GPS) is to set the priorities for the publicly funded health sector for a three-year period and clear parameters for the development of the three-year New Zealand Health Plan.
42. According to section 36 (1)(c) of the Act, the GPS must include the Government's priorities for engaging with and improving health outcomes for Māori.

### **New Zealand Health Plan**

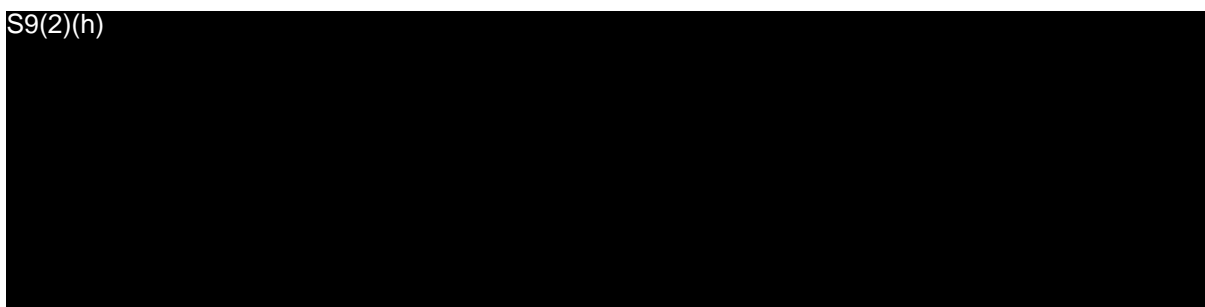
43. The purpose of the New Zealand Health Plan (the Plan) is to give effect to the GPS provide a three-year costed plan for the delivery of publicly funded services by Health New Zealand and the Māori Health Authority.
44. Section 51 (h) ensures the Plan sets out how Health New Zealand and the Māori Health Authority will achieve the purpose of the Act, engage with Māori, protect Māori interests and aspirations, empower Māori to improve their health, and be guided by the health sector principles in the development and content of the Plan. The Plan provides an important and practical mode of delivering on the principles of the Treaty.

### **Letters of Expectations, Statements of Intent and Statement of Performance Expectations**

45. Letters of Expectations (LoE) are a mechanism for Ministers to outline their priorities and expectations of a statutory entity. LoE are intended to help the board of the statutory entity as it develops its strategic plan. It is also a reference document that a board can consult regularly as it considers its plan and activities to ensure they align with the Minister's expectations. LoE are reflected in the statutory entity's Statement of Intent (Sol) and Statement of Performance Expectations (SPE).
46. The Sol provides insight into the strategic direction of a statutory entity and how it will deliver services to New Zealanders.
47. The SPE sets out the statutory entity's performance expectations, providing a baseline for its performance assessment, and communicates its accountability to the New Zealand public. It also sets out its output classes, prospective financial statements and how it will assess its performance for the period the SPE is issued for.
48. This system of accountability could be used by you to ensure health statutory entities give effect to the principles of the Treaty.

### **Other Court action**

49. S9(2)(h)



S9(2)(h)

50.

### **Next steps**

51. The Ministry will await your decision on your preferred approach to responding to the application of an urgent hearing for Wai 3307, which is due to the Waitangi Tribunal no later than 4pm 18 December 2023.
52. The Ministry will provide you with any further advice you may request, and updates on the progress of the claim Wai 3307.

**ENDS.**

PROACTIVELY RELEASED

## Minister's Notes

PROACTIVELY RELEASED

**IN THE WAITANGI TRIBUNAL**

**WAI 2575**

**WAI**

**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 the proposed disestablishment of Te Aka Whai Ora the Māori Health Authority

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**MEMORANDUM REGARDING URGENCY**

**DATED 7 DECEMBER 2023**

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**MAY IT PLEASE THE TRIBUNAL:****Introduction and Summary**

1. This claim relates to the Crown proposal to adopt a policy to introduce legislation to disestablish Te Aka Whai Ora the Maaori Health Authority.
2. As set out in the Statement of Claim and affidavits filed in support, the claim is that Janice Kuka and Tureiti Moxon (**the claimants**), the governors, managers, staff and Maaori cared for by the Maaori organisations they represent, Maaori owned Primary Health Organisations (**PHOs**) and Maaori Providers (refers to Maaori Providers with GP clinics) and generally are likely to be prejudicially affected by the policy proposed to be adopted by the Crown to introduce legislation to disestablish Te Aka Whai Ora the Maaori Health Authority, which is inconsistent with the principles of the Treaty.

**Urgency**

3. The criteria for urgent inquiries are set out in paragraph 2.5 of the Guide to Practice and Procedure of the Waitangi Tribunal. Those criteria are:
  - 3.1 That the claimants will suffer significant and irreversible prejudice as a result of current or pending Crown actions or policies;
  - 3.2 That there is no alternative remedy that, in the circumstances it would be reasonable for the claimants to exercise; and
  - 3.3 That the claimants are ready to proceed urgently to a hearing.

*Claimants will suffer significant and irreversible prejudice as a result of current or pending Crown actions or policies*

4. If the Crown passes legislation to disestablish Te Aka Whai Ora the Maaori Health Authority, the potential to significantly improve standards of health for Maaori and significantly lengthen Maaori lives will be lost.

5. The situation will revert back to that which the Tribunal found was unacceptable in the *Hauora* report, where Maaori are particularly impacted by racism and stereotyping in primary health care and experience a significantly lower standard of health including significantly shorter lives than non-Maaori.

*There is no alternative remedy available to the claimants*

6. Te Aka Whai Ora the Maaori Health Authority was established through legislation.
7. It can only be disestablished through legislation.
8. On 29 November 2023 the Prime Minister announced a 100-day plan. One of the items on the 100-day plan is to introduce legislation to disestablish Te Aka Whai Ora the Maaori Health Authority. A copy of this is annexed and marked **A**.
9. The preliminary step for the introduction of legislation is for Cabinet to approve policy for the drafting of a Bill. A diagram showing this, along with the text description of the content is annexed and marked **B**.
10. Therefore, the Crown has proposed to adopt a policy to introduce legislation to disestablish Te Aka Whai Ora the Maaori Health Authority.
11. Pursuant to section 6(1)(c) of the Treaty of Waitangi Act 1975, the Waitangi Tribunal has jurisdiction to inquire into any policy or proposed to be adopted by or on behalf of the Crown;
12. There is no other forum that the claimants can apply to that will review this proposed policy.
13. There is no alternative remedy available to the claimants.

*The claimants are ready to proceed urgently to a hearing*

14. The claimants are ready to proceed urgently to a hearing.
15. There is no research required in order for this claim to be heard.
16. No findings or recommendations are sought in relation to the “Background” section of the Statement of Claim (paragraphs 3 to 30) as these are submitted to be trite/non-contentious or specifically already the subject of findings in the *Hauora* Report 2023 or Crown evidence in that inquiry. A table setting this out is annexed and marked **C**.
17. The remaining paragraphs of the Statement of Claim are addressed in the affidavits of Ms Kuka and Lady Moxon.
18. In our submission, the most important evidence will be Crown evidence from the Ministry of Health officials and Te Aka Whai Ora the Maaori Health Authority showing why they consider disestablishing Te Aka Whai Ora the Maaori Health Authority will not prejudice Maaori. If necessary, the Tribunal has the power to summons witnesses including Crown witnesses.
19. Ms Kuka and Lady Moxon would only need a few days to file reply evidence in response to the Crown evidence and could present their reply evidence at the same time as their main affidavits.
20. It is likely that only one day of hearing time would be required for the Tribunal to hear all of the Claimants’ and Crown’s evidence and submissions. In counsel’s experience Tribunal panels tend to read all evidence before hearings, so any or all documents could be taken as read, with hearing time used for panel questions and cross examination.
21. As an urgent inquiry is likely to be of interest to other claimants in the Wai 2575 Health Inquiry, the Tribunal could allow any other claimants to file briefs of evidence from their witnesses at the same time as the Crown, should they wish to participate, and be included as interested parties without the requirement to file a statement of claim. All parties

could then be allowed the same few days to file reply evidence if necessary.

22. Up to one further day could be added to the hearing to accommodate interested party evidence and submissions.
23. The Tribunal could set the timetable for the hearing. All witnesses and counsel filing evidence or submissions would need to do so with the clear expectation that they will be available for the duration of the one or two day hearing as the Tribunal may schedule them at any time during the hearing. This is the expectation in Court in any case. Tribunal staff could advise counsel and witnesses how much time they have to present based on who the Tribunal wants to hear from or based on an equal allocation of time and if necessary, any or all documents could be taken as read, with hearing time used for panel questions and cross examination. In counsel's experience, Tribunal staff are able to ensure strict adherence to time limits during hearings.

#### **Other matters**

24. The Crown has indicated that it intends to introduce legislation within 100 days of the announcement, at which point the Tribunal will cease to have jurisdiction. The only exception is if the introduced legislation is referred to the Tribunal by Parliament, which counsel understands has never happened.
25. There is a very short window within which the Tribunal can offer its guidance. 100 days from 29 November 2023 is Friday 8 March 2023. Sometime between now and 8 March, the Crown intends to introduce legislation disestablishing Te Aka Whai Ora the Maaori Health Authority.
26. This application has been filed on the Wai 2575 Inquiry. In our submission that this is the most appropriate panel to proceed with an urgent inquiry. The Wai 2575 panel already understands the health issues for Maaori that led to the creation of Te Aka Whai Ora the Maaori Health Authority. While this panel, albeit with a different presiding



officer, recommended that a Maaori Health Authority be established, it had no part in its design or establishment, so in our submission there is no issue of conflict.

27. In December 2021 this panel chose to use the first week already set down for the disability phase of the Wai 2575 Inquiry to undertake a priority hearing into the Crown's response to COVID-19. We do not propose the same for this urgent inquiry. First, the next week set down is more than 100 days away. Also, the disability phase is too important to delay again.
28. Instead, a hearing on this discrete issue could proceed at the same time as preparations for the next week of the disability phase. For example deadlines to an urgent hearing might look like the following:

13 December 2023	Crown submissions in response to urgency application
14 December 2023	Judicial conference regarding urgency application including claimants' reply to Crown submissions (oral)
15 December 2023	Tribunal determination on urgency application
If urgent hearing granted:	
15 January 2024	Crown and interested party evidence
18 January 2024	Tribunal releases hearing timetable
19 January 2024	Reply evidence from any party Opening submissions
22-23 January 2024	Evidence and all submissions hearing Closing submissions presented during hearing including oral replies
Late Jan-Early February 2024	Tribunal Report

29. While these timeframes look short, there is only one issue to consider: the proposed disestablishment of Te Aka Whai Ora the Maaori Health Authority. It was only formally created in July 2022, less than one and

a half years ago, so there is not a long history of evidence required. The Tribunal already understands the health issues, and the main evidence required is from the Crown explaining why it considers the disestablishment of Te Aka Whai Ora the Maaori Health Authority will not prejudice Maaori.

30. The claimants stress that the need for tight timeframes has been created by the Crown through its announcement of the 100 day plan. The claimants have had no choice but to propose these timeframes in response.
31. In our submission, the Tribunal's guidance is required, and note the Tribunal's comments in the report on the Crown's Foreshore and Seabed Policy:<sup>1</sup>

As a quasi-judicial body standing outside the political process, we proceed in the expectation that governments in New Zealand want to be good governments, whose actions although carried by power are mitigated by fairness. Fairness is the value that underlies the norms of conduct with which good governments conform – legal norms, international human rights norms, and, in the New Zealand context, Treaty norms. We think that even though governments are driven by the need to make decisions that (ultimately) are popular, New Zealand governments certainly want their decisions to be coloured by fairness. In fact, we think that New Zealanders generally have an instinct for fairness, and that a policy that is intrinsically fair will, when properly explained, ultimately find favour.

We see it as part of our role in the present situation to ensure that the Government has before it all the matters it needs to know in order that its decision-making is fair.

32. In our submission, the Tribunal ought to proceed on the basis that:
  - 32.1 the Crown wants to act fairly which includes acting in accordance with the Treaty;
  - 32.2 the Tribunal is the body best placed to provide guidance on the Treaty;

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<sup>1</sup> Waitangi Tribunal *Report on the Crown's Foreshore and Seabed Policy* (2004), page xiii.

32.3 the Wai 2575 panel is the Tribunal panel best placed to provide guidance on health and the Treaty; and

32.4 because of the Crown's 100 day timeframe the Tribunal's inquiry must proceed urgently.

Date: 7 December 2023



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**R N Smail/S L Cassidy**  
Counsel for the claimants

PROACTIVELY RELEASED

**IN THE WAITANGI TRIBUNAL**

**WAI**

**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 the proposed disestablishment of the Maori Health Authority

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**AFFIDAVIT OF JANICE KUKA**

**SWORN/AFFIRMED**

**2023**

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**ROIMATA SMAIL Ltd**



I, **JANICE KUKA**, Managing Director, of Tauranga, solemnly and sincerely affirm / swear:

### **PERSONAL BACKGROUND**

1. I am of Ngaai Te Rangi and Ngaati Ranginui descent. They are two of the principal Iwi of Tauranga Moana.
2. My professional background is in Social Work and Community development. I gained a Masters in Social Policy in later years through Massey University.
3. I am the Managing Director of Ngaa Mataapuna Oranga, a Kaupapa Maaori Primary Health Organisation (PHO) located in the Western Bay of Plenty. I am also the Chair of Te Manu Toroa Trust and Piriraakau Hauora, which are both Tauranga based Provider members of Ngaa Mataapuna Oranga. I am also the Chair of Turuki Health Care, a Kaupapa Maaori Provider, and Te Kaha o Te Rangatahi, a Maaori Community based Rangatahi provider delivering sexual health and teenage pregnancy services, and I am a board member on Kotahitanga Limited, a Whaanau Ora Collective. These organisations are all in South Auckland. Finally, I sit on the National Board of the Asthma and Respiratory Foundation in Wellington.

### **HEALTH INQUIRIES**

4. I was one of the six lead claimants in Stage One of the health inquiry that led to the watershed *Hauora* Report.
5. *Hauora* records the well established, and Crown agreed, dire Maaori health statistics, which are that we lead shorter, sicker lives and face racism in trying to access primary health care.
6. *Hauora* records the Crown's and Tribunal's recognition that Maaori PHOs and Maaori Providers are the benchmark for the entire primary health sector.

7. One of the recommendations in *Hauora* was for the Crown to work with the lead claimants on the establishment of a Maaori Health Authority, which we subsequently spent a lot of time and energy advocating for with the Crown. The Maaori Health Authority was formally established in July 2022 by the Pae Ora Act 2022 (**the Act**).
8. *Hauora* also included a recommendation that the Crown work with us to quantify how much Maaori PHOs and Maaori Providers had been underfunded over the previous two decades, and then compensate us fully. The Crown refused to engage with us on this. As set out in chapter 10 of *Hauora* the experts we instructed estimated that for a test population, the underfunding since 2003 was \$394-\$531 million.

#### **IMPACT ON THE GROUND**

9. The Act says the Maaori Health Authority is to jointly write health plans and strategies that will guide decision making. So far, I believe it has jointly prepared the interim New Zealand Health Plan 2022 and the Hauora Maaori Strategy, both of which are annexed. It must monitor how the system works for Maaori. It must find out what from Maaori what Maaori need and advocate for Maaori health. It has released an annual report, and already been audited in that time. I annex both of these reports as 'Exhibit A'.
10. It is hard for me to give evidence about the effect all this has had on the health system because the Maaori Health Authority has only just been set up. However, I can say just from what is in the Act that it seems to give Maaori a voice and it carries a lot of responsibility for engagement with Maaori, monitoring the system and reporting to Maaori. These were things that *Hauora* said the health system was failing at, so obviously they are important.
11. What I know about is what is happening on the ground. Direct interaction of Maaori PHOs and Maaori Providers with the Maaori Health Authority has the potential to make significant impact, immediately.

12. The Maaori health Authority can commission kaupapa Maori health services. As part of this, I understand that it has taken over responsibility for the contracts between the Ministry of Health and Maaori PHOs and Maaori Providers.
13. 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. We expect to no longer be audited far more than our non-Maaori counterparts, as was covered in *Hauora*.
14. Less unnecessary auditing will free up our staff time and resources for our core work. It also gives us breathing room to focus on growing to reach more Maaori.
15. We don't have statistics because we are focussed on caring for our communities, and the Crown didn't seem to keep statistics, but information in the Stage One Inquiry seemed to indicate that less than 2% of all Maaori get their primary health care from a Maaori PHO or Maaori Provider. We provide excellent, non-racist care, so it is important that we grow to reach more Maaori.
16. The Maaori Health Authority has also started commissioning new services from Māori PHOs and Maaori Providers. Again, we expect the Maaori Health Authority will understand what we have to offer and what Maaori people need. So, we expect that new contracts to be better targeted to improve Maaori health, better targeted for what we offer and again, we expect to not be burdened by extra auditing. We also expect that the Maaori Health Authority will not choose non-Maaori PHOs and Provider over us, as we told the Tribunal about in *Hauora*.
17. So far, the new services are only a start. We would expect the Maaori Health Authority to commission more and more services from Maaori PHOs and Maaori Providers over time. As this happens, we expect to be able to grow so reach much more than 2% of all Maaori. The more Maaori we reach, the more we can improve health and lifespan statistics for our people.

18. We are operating from a deficit of hundreds of millions of dollars and growing, as the Crown has not addressed compensation for our underfunding to date, nor has it worked with us to fix the funding formulas that are broken for Maaori. This makes Maaori Health Authority investment in our services even more important for Maaori, but also for our survival.
19. I made submissions on the Pae Ora Act 2022. In many places I felt that the parts of the Act about the Maaori Health Authority didn't go far enough for Maaori. But it is significantly better than the future if it is disestablished. That would be devastating for Maaori PHOs and Māori Providers but more importantly it will be a devastating loss for Maaori health.

#### **URGENCY**

20. I am seeking an urgent hearing because the Prime Minister has said that legislation to disestablish the Maaori Health Authority will be introduced within the next 100 days. I understand once the legislation is introduced, the Tribunal can no longer inquire. This claim will have to be heard urgently or not at all.
21. If the Tribunal grants an urgent hearing, we are ready. We have filed our affidavits with our application. The Tribunal already has *Hauora* and *Haumaru*. The main evidence required is from the Crown explaining how disestablishing the Maaori Health Authority is consistent with the Treaty. It has created the urgency by saying this will happen in 100 days, so it should be prepared to justify it to the Tribunal without delay.



**IN THE WAITANGI TRIBUNAL**

**WAI**

**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 the proposed disestablishment of the Te Aka Whai Ora

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**AFFIDAVIT OF LADY TUREITI HAROMI MOXON**

**SWORN/AFFIRMED**

**2023**

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Email S9(2)(a)

**ROIMATA SMAIL Ltd**



I, **LADY TUREITI HAROMI MOXON**, Managing Director of Te Koohao Health Ltd, solemnly and sincerely affirm / swear:

1. I was one of the six lead claimants in Stage One of the health inquiry that led to the watershed *Hauora* Report.
2. I won't repeat the terrible evidence that the Tribunal heard about Maaori health statistics and shortened lives, and the racism that Maaori are at risk of facing when going to a non-Maaori GP clinic. That is all recorded in *Hauora*. It was largely agreed by all parties, including the Crown.
3. The Crown also agreed that Maaori PHOs and Maaori Providers are the benchmark for the entire primary health sector, which was recorded in *Hauora*. During the Covid-19 Priority Inquiry in 2019, the Director-General of Health agreed that we are the gold standard at what we do.<sup>1</sup>
4. One of the recommendations in *Hauora* was for the Crown to work with the lead claimants on the establishment of a Te Aka Whai Ora.
5. Following *Hauora*, the lead claimants advocated for the establishment of the Te Aka Whai Ora (Te Aka Whai Ora). Ultimately the Te Aka Whai Ora was formally established in July 2022. I was on the interim board as it worked to establish. This was an outward and visible sign that the Crown was prepared to recognise Te Aka Whai Ora as a partner under Te Tiriti o Waitangi. Furthermore, it was established to bring about transformational change and create a more equitable health system for Maaori.

#### **IMPACT ON THE GROUND**

6. The disestablishment of Te Aka Whai Ora would be a tragic loss to tangata whenua, Maaori service providers and Maaori PHOs. In its short tenure it set up its governance, appointed its CEO and executive team, recruited its central and regional staff. It administered and managed the transfer of all Maaori contracts from the Ministry of Health

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<sup>1</sup> Cross examination of Director-General of Health, Dr Ashley Bloomfield, transcript of priority hearing into the Crown's Covid-19 protection framework, 6-10 December 2021, Wai 2575, #4.1.10, page 436-437.

and the District Health Boards nationally. It consulted with the Iwi Maaori Providers and stakeholders as to what the health reforms would mean and how they could be involved. They set up and are responsible for the Maaori Partnership Boards which are attached to every hospital in the country.

7. 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 works 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. Our tino rangatiratanga in terms of by Maaori for Maaori solutions will once again be taken over by the Crown. Iwi Maaori have always fought for control over our own health and well-being.
8. What I want to focus on in my evidence is direct interaction of Maaori PHOs and Maaori Providers on the frontline with the Te Aka Whai Ora to illustrate the impact it can have on the health and lives of actual Maaori people in our communities.
9. The Te Aka Whai Ora can commission kaupapa Maaori health services. As part of this, it has taken over responsibility for the contracts between the Ministry of Health and Maaori PHOs and Maaori Providers.
10. This is huge for Maaori PHOs and Maaori Providers. Te Aka Whai Ora was established to meet the health needs of Maaori people. For the first time in all of 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. Over-auditing of our contracts compared to our non-Maaori counterparts will stop because we are trusted to utilise our funding for the purpose it was given and report accordingly. This was not a practice of the Crown. Over-auditing of Maaori PHOs and Maaori Providers was covered in *Hauora*.
11. Not having to worry about being audited all the time, and not having to waste resources on extra audits will free up our staff time and resources for what we do best – looking after our people. It means that rather than

being pulled down all the time by unfair audits., we may be able to look forward to how we can accelerate our growth to reach more Maaori.

12. In the Stage One inquiry we couldn't work out for sure how many Maaori actually get their primary health care from a Maaori PHO or Maaori Provider, but it seemed like it might be less than 2% of all Maaori. If we can grow and reach more Maaori, we can improve Maaori health and lengthen Maaori lives.
13. Te Aka Whai Ora has also started commissioning new services from Maaori PHOs and Maaori Providers. I am not sure how much new money there is. There have been a lot of big announcements that sound like a lot, but for submissions and evidence in the Health Stage 2 Disability inquiry the only new money we could clearly identify was \$95 million.<sup>2</sup> The Crown may be able to explain better for the Tribunal.
14. Still, the benefit for Maaori PHOs and Maaori Providers is that the Te Aka Whai Ora is Maaori people. We expect that they will not view Maaori PHOs and Maaori Providers through a racist lens and they better understand what we have to offer and what Maaori people need. So we expect that new contracts to be better targeted to improve Maaori health, better targeted for what we offer and again, we expect they will not over-audit us. We also expect that the Te Aka Whai Ora will not choose non-Maaori PHOs and Provider over us, as we told the Tribunal about in *Hauora*.
15. \$95 million is a very small amount, but it is a start. We would expect this amount to grow and grow as we continue to demonstrate our benchmark setting, gold standard care. If this investment grows, it means Maaori PHOs and Providers can grow so we are not just caring for less than 2% of all Maaori. The more Maaori we reach, the more we can improve the health and lifespan statistics for our people.
16. This investment in the excellence demonstrated every day by Maaori PHOs and Maaori Providers is vital, particularly in the context of the

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<sup>2</sup> Wai 2575, #3.2.840.

complete lack of progress on compensation. We are operating from a deficit of hundreds of millions of dollars and growing.

17. If the Te Aka Whai Ora is disestablished it will be devastating for Maaori PHOs and Maaori Providers but more importantly it will be a devastating loss for Maaori. I made submissions on the Pae Ora Act 2022. In many places I felt that the parts of the Act about the Te Aka Whai Ora didn't go far enough for Maaori. But Te Aka Whai Ora is what we got, and because of that it is very important. For example, over half of the items listed in the Tiriti section of the Pae Ora Act about how the Crown says it will give effect to Te Tiriti are about Te Aka Whai Ora.
18. If Te Aka Whai Ora goes, most of the Crown's commitment to Te Tiriti in the Act is removed. The Te Aka Whai Ora seems to carry the responsibility of the entire health system for engagement with Maaori, monitoring the system and reporting to Maaori. If it goes, the Crown seems no longer to be accountable to Maaori and all that is left of a Maaori voice to advocate for ourselves is locally through iwi-Maaori partnership boards, and as an advisory to the Minister through the Hauora Maaori Advisory Committee.

#### **URGENCY**

19. I am seeking an urgent hearing because the Prime Minister has said that legislation to disestablish the Te Aka Whai Ora will be introduced within the next 100 days. I understand once the legislation is introduced, the Tribunal can no longer inquire. This claim will have to be heard urgently or not at all.
20. If the Tribunal grants an urgent hearing, we are ready. We have filed our affidavits with our application. The Tribunal already has *Hauora* and *Haumaru*. The main evidence required is from the Crown explaining how disestablishing the Te Aka Whai Ora is consistent with the Treaty. It has created the urgency by saying this will happen in 100 days, so it should be prepared to justify it to the Tribunal without delay.

**IN THE WAITANGI TRIBUNAL**

**WAI 2575**

**WAI**

**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 the proposed disestablishment of Te Aka Whai Ora the Maaori Health Authority

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**STATEMENT OF CLAIM  
DATED 7 DECEMBER 2023**

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**ROIMATA SMAIL Ltd**



**THE CLAIMANT SAYS:**

1. This claim is brought by Janice Kuka and Tureiti Moxon (**the claimants**) on behalf of all Maaori including themselves and on behalf of the governors, managers, staff and Maaori cared for by Maaori owned Primary Health Organisations (**Maaori PHOs**) and Maaori Providers with GP clinics (**Maaori Providers**) including the Maaori PHOs and Maaori Providers they represent.
2. The claimants say they, Maaori PHOs and Maaori Providers, the Maaori cared for by those organisations and Maaori generally are likely to be prejudicially affected by the policy proposed to be adopted by the Crown to introduce legislation to disestablish Te Aka Whai Ora the Maaori Health Authority, which is inconsistent with the principles of the Treaty.

**BACKGROUND***Maaori impoverished by Crown Treaty breaches*

3. Maaori owned almost 66 million acres of land in 1840.
4. 97% was lost from collective Maaori ownership.
5. Crown breaches of the Treaty were a significant factor in the land loss.
6. The loss of millions of acres of land was a significant impoverishing event for Maaori.
7. Poverty is a determinant of poor health.
8. Poverty reduces the ability to access health care.

*Primary health care*

9. Primary health care is care provided in the community by general practitioners, nurses, pharmacists, counsellors, dentists, and others, with the core aim of treating and preventing health issues before they

become serious enough to need care at a higher level, such as in hospital.

#### *Maaori population*

10. The population of Maaori is estimated at 875,300 or 17.1 percent of the total population of Aotearoa.

#### *Maaori face racism in primary health care*

11. Maaori are particularly impacted by racism and stereotyping in primary health care.
12. The racism faced by Maaori in the health system is a determinant of poor health for Maaori.
13. Maaori as a population experience a significantly lower standard of health including significantly shorter lives than non-Maaori.

#### *PHOs and Providers*

14. PHOs receive Crown funding to provide primary health care services to their enrolled populations.
15. PHOs mostly provide primary healthcare through GP owned, for profit practices.

#### *Maaori PHOs and Maaori Providers*

16. Maaori PHOs and Maaori Providers are recognised as the benchmark for the primary health sector.
17. During Covid-19, Maaori PHOs and Maaori Providers were recognised by the Crown as the gold standard in community-based care for Maaori and reaching whanau that the rest of the health system fails to reach.



18. A high proportion of the people Maaori PHOs and Maaori Providers care for have multiple high health needs and reduced ability to pay.
19. Maaori PHOs and Maaori Providers have been underfunded:
  - 19.1 Maaori PHOs were underfunded to establish;
  - 19.2 The primary health funding formulas for PHOs and Providers are based on:
    - 19.2.1 PHOs and Providers caring for mostly healthy people; and
    - 19.2.2 Patients being able to cover half of the cost of GP appointments through co-payments.
20. The Crown has been aware of the underfunding for well over a decade but has failed to adequately amend or replace the current funding arrangements.
21. The Waitangi Tribunal recommended that the Crown compensate Maaori PHOs and Maaori Providers for the underfunding since 2000. The Crown has not done this.
22. An estimate by Sapere of the underfunding to a test population of Maaori PHOs and some but not all Maori Providers was that they had been underfunded by \$394-\$531 million since 2003.
23. The Waitangi Tribunal recommended that the Crown work with Maaori to change the funding formulas. The Crown has not done this.
24. Sapere also estimated that funding primary health care in a Treaty-compliant way for the whole Maaori population, would cost between \$891 million and \$1.06 billion a year and the cost of not providing an equitable health service to Maaori is estimated to be \$5 billion a year.

25. Because of the underfunding, many Maaori PHOs and Maaori Providers have been forced to close.
26. Because of the underfunding, Maaori PHOs and Maaori Providers have not been able to grow in order to care for more than a very small percentage of Maaori, based on funding, perhaps less than 2% of all Maaori.
27. Maaori PHOs and Maaori Providers diversify to cover the shortfall in running GP clinics, including through other contracts with the Ministry of Health.
28. Maaori PHOs and Maaori Providers have carried a disproportionate burden of auditing by the Crown when compared to their non-Maaori counterparts.
29. Maaori PHOs and Maaori Providers have been punished for practices which were accepted when practiced by their non-Maaori counterparts.
30. Over-auditing has also led to some Maaori PHOs and Maaori Providers being forced to close.

## **POLICY PROPOSED TO BE ADOPTED BY CROWN**

### *The Maaori Health Authority*

31. The Maaori Health Authority was established on 1 July 2022 by section 17 of the Pae Ora Act 2022 (**the Act**).
32. Section 18 of the Act sets out the objectives of the Maaori Health Authority:

#### **18 Objectives of Maaori Health Authority**

The objectives of the Maaori Health Authority are to—

- (a) ensure that planning and service delivery respond to the aspirations and needs of whaanau, hapū, iwi, and Maaori in general; and
- (b) design, deliver, and arrange services—
  - (i) to achieve the purpose of this Act in accordance with the health sector principles; and

- (ii) to achieve the best possible health outcomes for whaanau, hapū, iwi, and Maaori in general; and
- (c) promote Maaori health and prevent, reduce, and delay the onset of ill-health for Maaori, including by collaborating with other agencies, organisations, and individuals to address the determinants of Maaori health.

33. Section 19 of the Act sets out the functions of the Maaori Health Authority through which it is expected to meet its objectives:

#### **19 Functions of Maaori Health Authority**

- (1) The functions of the Maaori Health Authority are to—
  - (a) jointly develop and implement a New Zealand Health Plan with Health New Zealand; and
  - (b) own and operate services; and
  - (c) improve service delivery and outcomes for Maaori at all levels of the health sector; and
  - (d) collaborate with other agencies, organisations, and individuals to improve health and wellbeing outcomes for Maaori and to address the wider determinants of health for Maaori; and
  - (e) provide accessible and understandable information to Maaori on the performance of the publicly funded health sector; and
  - (f) commission kaupapa Maaori services and other services developed for Maaori in accordance with the New Zealand Health Plan; and
  - (g) review locality plans developed by Health New Zealand and participate in the processes set out in sections 54 and 55; and
  - (h) undertake and promote public health measures, including commissioning services to deliver public health programmes; and
  - (i) provide policy and strategy advice to the Minister on matters relevant to hauora Maaori; and
  - (j) work with Health New Zealand when Health New Zealand performs any function in section 14(1)(c) to (k); and
  - (k) contribute to key health documents in subpart 6; and
  - (l) monitor the delivery of hauora Maaori services by Health New Zealand and provide public reports on the results of that monitoring; and
  - (m) monitor, in co-operation with the Ministry and Te Puni Kōkiri, the performance of the publicly funded health sector in relation to hauora Maaori; and
  - (n) support and engage with iwi-Maaori partnership boards in accordance with section 21; and
  - (o) design and deliver programmes for the purpose of improving the capability and capacity of Maaori health providers and the Maaori health workforce; and
  - (p) collaborate with relevant entities for the purpose of improving the capability and capacity of the health workforce in relation to hauora Maaori; and
  - (q) undertake and support research relating to health; and
  - (r) evaluate the delivery and performance of services provided or funded by the Maaori Health Authority; and
  - (s) provide, or arrange for the provision of, services on behalf of the Crown or any Crown entity within the meaning of the Crown Entities Act 2004; and

- (t) perform or exercise the functions, duties, and powers conferred or imposed on it by this Act or any other enactment; and
  - (u) perform any other functions relevant to its objectives that the responsible Minister directs in accordance with section 112 of the Crown Entities Act 2004.
- (2) The Maaori Health Authority must give effect to the GPS and the New Zealand Health Plan when performing its functions.

34. The Maaori Health Authority must also:

- 34.1 engage with Maaori to find out their aspirations and needs for hauora Maaori and report back on how this engagement has influenced what it does (section 20 of the Act);
- 34.2 support iwi-Māori partnership boards (section 21 of the Act);
- 34.3 jointly prepare the Hauora Māori Strategy with the Ministry (section 42 of the Act).

35. The Maaori Health Authority has taken the name Te Aka Whai Ora.

36. In the one year and five months since Te Aka Whai Ora the Maaori Health Authority was formally established it has begun to perform some of its functions, including jointly preparing the interim New Zealand Health Plan 2022 and the Hauora Māori Strategy.

*Specific interactions with Maaori PHOs and Maaori Providers*

37. Specifically in relation to its interactions with Maaori PHOs and Maaori Providers, Te Aka Whai Ora the Maaori Health Authority has taken over the Crown's responsibility for existing contracts and begun to offer new contracts for primary health outcomes and services.

*Taking over existing contracts*

38. Te Aka Whai Ora the Maaori Health Authority has taken over the Crown's responsibility for existing contracts with Maaori PHOs and Maaori Providers for primary health services.

39. This has the potential to reduce the disproportionate burden of auditing carried by Maaori PHOs and Maaori Providers.
40. Reducing the disproportionate burden of auditing carried by Maaori PHOs and Maaori Providers has the potential to free up their capacity to:
  - 40.1 improve upon the benchmark setting, gold standard care they already provide; and
  - 40.2 reach more Maaori including by growing their organisations.
41. This has the potential to improve standards of health and lengthen lives for more Maaori.

*New contracts*

42. Te Aka Whai Ora the Maaori Health Authority has begun to offer new contracts for primary health outcomes and services to Maaori PHOs and Maaori Providers.
43. This is a small amount of new investment in Maaori PHOs and Maaori Providers.
44. In comparison to previous and existing contracts created by the Crown, new contracts created by Te Aka Whai Ora the Maaori Health Authority for Maaori PHOs and Maaori Providers have the potential to be:
  - 44.1 better targeted to improve Māori health;
  - 44.2 better targeted for what Maaori PHOs and Maaori Providers offer that is different to non-Māori organisations;
  - 44.3 less burdensome for Maaori PHOs and Maaori Providers in terms of auditing.

45. New investment in Maaori PHOs and Maaori Providers through contracts that are better targeted to Maori and to Maori PHOs and Maaori Providers and with less burden of auditing has the potential to allow Maaori PHOs and Maaori Providers to:
- 45.1 improve upon the benchmark setting, gold standard care they already provide; and
- 45.2 reach more Maaori including by growing their organisations.
46. The small new investment has the potential to increase over time to significant new investment in Maaori PHOs and Maaori Providers.
47. Significant new investment has the potential to allow Maaori PHOs and Maaori Providers to significantly grow their organisations and reach many more Maaori.
48. This has the potential to significantly improve standards of health for Maaori and significantly lengthen Maaori lives.

*Crown proposes to adopt a policy to disestablish Te Aka Whai Ora the Maaori Health Authority*

49. On 29 November 2023 the Prime Minister announced a 100-day plan.
50. One of the items on the 100-day plan is to introduce legislation to disestablish Te Aka Whai Ora the Maaori Health Authority.
51. The first step to introduce legislation is for Cabinet to approve policy for that legislation.
52. Therefore, the Crown has proposed to adopt a policy to introduce legislation to disestablish Te Aka Whai Ora the Maaori Health Authority.
53. The Waitangi Tribunal has jurisdiction to inquire pursuant to section 6(1)(c) of the Treaty of Waitangi Act 1975.

**MAAORI ARE LIKELY TO BE PREJUDICIALLY AFFECTED**

54. Specifically in relation to the interactions of Te Aka Whai Ora the Maaori Health Authority with Maaori PHOs and Maaori Providers, Maaori are likely to be prejudicially affected by the disestablishment of Te Aka Whai Ora the Maaori Health Authority specifically in relation to its interactions with Maaori PHOs and Maaori Providers:

54.1 Contracts will no longer be monitored by Te Aka Whai Ora the Maaori Health Authority so the potential to reduce the disproportionate burden of auditing carried by Maaori PHOs and Maaori Providers will be lost, therefore:

54.1.1 The potential to free up capacity to improve care and grow to reach more Maaori will be lost:

- (i) The potential to improve standards of health and lengthen lives for more Maaori will be lost.

54.2 The potential for further increased investment in Maaori PHOs and Maaori Providers through contracts that are better targeted to Maori and to Maori PHOs and Maaori Providers and with less burden of auditing will be lost, therefore:

54.2.1 The potential to improve care and to grow significantly to reach many more Maaori will be lost:

- (i) The potential to significantly improve standards of health for Maaori and significantly lengthen Maaori lives will be lost.

55. More generally, if Te Aka Whai Ora the Maaori Health Authority is disestablished:

55.1 there will no longer be a Māori body with the express objectives to:

55.1.1 ensure that planning and service delivery respond to their aspirations and needs,

55.1.2 design, deliver and arrange services to achieve the best possible health outcomes for them; and

55.1.3 promote Maaori health (section 18 of the Act); and

55.2 there will no longer be a body to:

55.2.1 undertake the functions set out in section 19 of the Act;

55.2.2 engage with Maaori to find out their aspirations and needs and report back to them, support iwi-Māori partnership boards or jointly prepare the Hauora Māori Strategy (sections 20,21 and 42 of the Act), therefore

55.3 Maaori will continue to:

55.3.1 be particularly impacted by racism and stereotyping in primary health care;

55.3.2 experience a significantly lower standard of health including significantly shorter lives than non-Maaori.

#### **INCONSISTENCY WITH THE PRINCIPLES OF THE TREATY OF WAITANGI**

56. Disestablishment of Te Aka Whai Ora the Maaori Health Authority would be inconsistent with the Treaty principles of tino rangatiratanga, partnership, equity, options and active protection.

#### **RELIEF SOUGHT**

57. The claimants seek the following relief, which may be further particularised following the presentation of evidence:

A. A finding that disestablishing Te Aka Whai Ora the Maaori Health Authority is likely to prejudicially affect Maaori and is inconsistent with the principles of the Treaty of Waitangi;



- B. A recommendation that the Crown not disestablish Te Aka Whai Ora the Maaori Health Authority;
- C. Such other relief as the Tribunal considers appropriate; and
- D. Costs.

This Statement of Claim is filed by **ROIMATA SMAIL** counsel for the abovenamed claimants.

The address for service on the abovenamed claimant is Te Kōhao Health Limited, 951 Wairere Drive, Hamilton East, HAMILTON 3216.

Documents for service on the abovenamed claimant may be left at the address for service or may be:-

- (a) Posted to Roimata Smail, PO Box 89160 Torbay AUCKLAND 0742; or
- (b) Emailed to Roimata Smail at S9(2)(a) [REDACTED]