

**BEFORE THE WAITANGI TRIBUNAL
TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI**

WAI 3307

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER of Te Aka Whai Ora (the Māori Health Authority) Urgent claim

**BRIEF OF EVIDENCE OF DR CHRISTOPHER WIREMU ROY
TOOLEY ON BEHALF OF TE PUNA ORA O MATAATUA**

20 February 2024



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I, Christopher Wiremu Roy Tooley of Whakataane will say:

KO WAI AHAU

1. He uri ahau noo Ngaati Kahungunu (Ngaai te Kikiri o te Rangi hapuu).
2. I am the Manawhakahaere (Chief Executive) at Te Puna Ora o Mataatua (**Te Puna Ora**), a position I have held for almost eight years. As Manawhakahaere, I have also held roles as a member of the Ministry of Health’s COVID-19 Maaori Expert Group, the Ministry of Business, Innovation and Employment’s Healthier Lives Vision Maatauranga Review Panel, and the Eastern Bay of Plenty Whaanau Ora Collective.
3. I was a Board Member on the Interim Maaori Health Authority from September 2021 to June 2022.
4. I have a PhD in Political Philosophy from the University of Cambridge and a Master of Arts (majoring in Philosophy, Politics and Public Policy) from the University of Auckland.

5. In 2022, I was the recipient of the Ngaa Tohu o Matariki o te Tau Waitii Health and Science award.

PURPOSE OF MY EVIDENCE

6. The purpose of my evidence is to:
 - (a) confirm Te Puna Ora's opposition to the disestablishment of Te Aka Whai Ora;
 - (b) explain to the Waitangi Tribunal (and the Crown) who Te Puna Ora is, in the context of the proposed disestablishment of Te Aka Whai Ora;
 - (c) offer my insights into the reform of the Health Sector that led to Te Aka Whai Ora (and Te Whatu Ora) and explain the importance of that reform; and
 - (d) confirm that no consultation has taken place with Te Puna Ora about the Government's current plans to dis-establish Te Aka Whai Ora.

MY VIEW ON THE PROPOSED DISESTABLISHMENT OF TE AKA WHAI ORA

7. In short, Te Puna Ora's view is that if the Government goes ahead with its current proposal, it is in breach of Te Tiriti, and disregards the unified expression of rangatiratanga exercised by Maaori across the health system.
8. Te Puna Ora seeks for Te Aka Whai Ora to be retained.
9. In my time in the health sector, what Maaori have been asking for is a specialised entity that is solely focused on outcomes for Maaori through an operating model that devolves both funding and authority to iwi and Maaori health providers. Rangatiratanga requires form and function to improve Maaori health outcomes and address systematic bias and inequalities. Te Aka Whai Ora represented this model. Disestablishing form,

while retaining function, is unacceptable. Function alone has historically failed Maaori.

10. It is also unclear what the Government intends to replace Te Aka Whai Ora with. We have received no policy, no model, no new blueprint. There has been no transparency nor is there any dialogue about options. The contents of Crown's legislation to be tabled prior to 8 March 2024, that will have a significant impact on Maaori, are completely unknown.

TE PUNA ORA O MATAATUA

11. Te Puna Ora is a Charitable Trust which was established in 1991. It is the regional Maaori Health Provider for the Eastern Bay of Plenty.
12. Te Puna Ora was established by Te Whaanau Poutirirangiora a Papa, whose representatives included Tuuhourangi, Whakatooha, Ngaati Awa, Ngaati Pikia, Ngaati Ranginui, Ngaati Rangiteaorere, Tapuika, Tuuhoe ki Waimana, Ruuaatoki, Ruataahuna, Ngaati Rangiwehewehi, Waitaha, Ngaati Rangitahi, Ngaati Manawa, Ngaai Te Rangi and Ngaati Puukenga.
13. The name Te Puna Ora o Mataatua (Iwi Hauora Trust) was given by Waiohau kaumaatua Hieke Tupe. It means 'the spring of life'.
14. We are the largest regional health provider across the Bay of Plenty. We have a total of 112 staff, over 400+ support workers, over 1,500 direct clients and over 3500+ patients registered with our Rehua Medical General Practitioner (**GP**) Practice.
15. We have Health and Disability Sector, Cornerstone, ISO and MSD accreditation.
16. We also have a number of relationships across the Bay of Plenty with iwi and the Crown. We currently have over 40

different contracts with more than 30 different relationship managers, spread across about six core Crown agencies. Te Puna Ora is also a member of the Eastern Bay of Plenty Whaanau Ora Collective; Te Whakareia and Te Tuuaapapa Auaha Joint Ventures; the Poutiri Trust network; and the Eastern Bay of Plenty Primary Health Alliance.

17. Te Puna Ora provides a broad range of integrated health and well-being services using a kaupapa Maaori framework across the rohe of Mataatua. Our aim at Te Puna Ora is to be a one-stop shop for whaanau and people living within the Eastern Bay of Plenty to access health services and support.
18. Te Poutokomanawa o Te Puna Ora is our kaupapa Maaori model of Maaori health and wellbeing, and the organisation's way of working. It is represented visually at the appendix annexed as "**CWRT-1**".
19. The horizontal axis represents those things that do not change over time – the values or uuara of the organisation – and become Ngaa Pou o te Ora (manaakitanga, whanaungatanga, kanohi kitea, wairuatanga, mahi tahi, pono ki te kaupapa). The vertical axis emerges from a kaupapa Maaori methodological approach to working with Maaori whaanau and forms Ngaa Puna o te Waiora (rangatiratanga, puna, Te Reo, manaakitanga, wairua, tino rangatiratanga).
20. The framework is utilised and applied at both the operational level (i.e. on a service-by-service basis) and the strategic level (i.e. management and governance). As a tool, the framework recognises and supports a whaanau ora approach to healthcare and overall wellbeing, taking an integrated and collaborative approach to healthcare.
21. Consistent with Te Poutokomanawa o Te Puna Ora, our business-as-usual services extend across all stages of life, reflecting a whaanau ora approach. Our services include

Whaanau Ora, Social Housing and first homebuyers' workshops (including the biggest housing repair service in the Eastern Bay of Plenty), Maamaa and Peepi, Whaanau Health Promotion, Oranga Tamariki, Med Central GP Practice, Rangatahi Hub, Driving Academy, Kuia and Koroua, Healthy Lifestyles, Medical academy, Counselling, kai programmes, and mobile vaccination contracts, alongside Home-Based Support Services (including ACC services, Te Puna Ora being the biggest Maaori provider for ACC). This wraparound approach to service delivery is an inherent part of who we are and how we do things.

Te Rohe o Mataatua – service provision delivery areas

22. Te Puna Ora services the rohe of Mataatua, which covers all of the Eastern Bay of Plenty area and some parts of Western Bay of Plenty.
23. The Whakataane, Kawerau and Oopootiki Districts make up the Eastern Bay of Plenty region. The region has a population of approximately 52,000, and around 50% of the population is Maaori. According to the 2018 census data:
 - (a) **Whakataane District:**¹ has a total population of 35,700 people, 16,722 of those people identifying as Maaori (46.8%). The median age for the district is 39.8 years, while the median age for Maaori is 27.3 years. It has an approximate land area of 4,450 km².
 - (b) **Kawerau District:**² has a total population of 7,146 people, 4,407 of those people identifying as Maaori (61.7%). The median age for the district is 38.2 years and the median age for Maaori is 26.3 years. It has an approximate land area of 24 km².

¹ <https://www.stats.govt.nz/tools/2018-census-place-summaries/whakatane-district>.

² <https://www.stats.govt.nz/tools/2018-census-place-summaries/kawerau-district>.

- (c) **Oopootiki District:**³ has a total population of 9,276, 4,713 of those people identifying as Maaori (50.8%). The median age for the district is 40.6 years and the median age for Maaori is 30 years. It has an approximate land area of 3,090 km².
24. The majority of the communities we serve are rural, small communities with greater deprivation than those in urban settings.
25. By contrast, the Western Bay of Plenty, made up of the Tauranga District and the Western Bay of Plenty District, has a population of approximately 187,000 people and around 19% of the population is Maaori. According to the 2018 census data:
- (a) **Western Bay of Plenty District:**⁴ has a total population of 51,000 people, 9,876 of those people identifying as Maaori (19.2%). The median age for the district is 45.2 years and the median age for Maaori is 28 years. It has an approximate land area of 1,944 km².
- (b) **Tauranga City:**⁵ has a total population of 136,713 people, 24,912 of those people identifying as Maaori (18.2%). The median age for the district is 40.4 years and the median age for Maaori is 24.9 years. It has an approximate land area of 142 km².
26. It is notable from these statistics that the Eastern Bay of Plenty has more than three times the land area of the Western Bay of Plenty but less than a third of the population. However, the percentage of the population identifying as Maaori in the Eastern Bay of Plenty is more than twice that of the Western Bay of Plenty.

³ <https://www.stats.govt.nz/tools/2018-census-place-summaries/opotiki-district>.

⁴ <https://www.stats.govt.nz/tools/2018-census-place-summaries/western-bay-of-plenty-district>.

⁵ <https://www.stats.govt.nz/tools/2018-census-place-summaries/tauranga-city>.

HEALTH SYSTEM AND SECTOR REFORM

27. On 1 July 2022, the Pae Ora (Healthy Futures) Act 2022 (the **Act**) came into effect. Under that Act, District Health Boards were disestablished and replaced with Health New Zealand (**Te Whatu Ora**) as a national organisation delivering health services and the Maaori Health Authority (**Te Aka Whai Ora**) to lead on Maaori health improvements.
28. I have been involved in the reform of the Health Sector that led directly to Te Whatu Ora and Te Aka Whai Ora.

Whakapapa of a Maaori Health Authority

29. Like all things, the idea of a Maaori Health Authority has a whakapapa. I want to acknowledge the claimants and those who participated in Stage One of the Health Inquiry that ultimately led to the Waitangi Tribunal's Stage One report and the establishment of the Maaori Health Authority.
30. However, a standalone Maaori Health Authority (or agency) has been discussed for a number of years. In 1984, the Hui Whakaoranga was held at Hoani Waititi Marae. Like a number of seminal hui and kaupapa that came together in the 1980s (for example, the reform of the State Care system and Pu-ao-te-ata-Tu and the Koohanga Reo movement), Hui Whakaoranga brought together leaders in the sector to discuss important issues and put together a way forward. Maaori health equity was a primary focus. It was at this hui discussions around a standalone Maaori Health Authority began to be floated because of the systematic inequities experienced by Maaori. Taa Mason Durie shared this koorero during the workshops held in the consultation roadshow that took place prior to the Maaori Health Authority being established. The

concept of a Maaori Health Authority has been a kaupapa that has been discussed for a number of years.

31. It is also clear from the matters discussed and the recommendations that followed the Hui Whakaoranga, that Maaori authority over Maaori health outcomes was essential. The conclusions arising from that waananga, although 40 years old now, are strikingly similar to the current aims of Maaori:
 - (a) Maaori want to be able to define what health means for them and to design their own solutions to meet those needs (mana motuhake);
 - (b) health services should be community and marae centred;
 - (c) resourcing must be equitably allocated and flexibly provided to allow for response to locally defined needs; and
 - (d) health and education institutions must recognise tikanga Maaori and Maaori views of health.
32. The conference proceedings of the 1984 Hui Whakaoranga are annexed to my evidence as "**CWRT-2**".
33. Part of what the current debate about the Maaori Health Authority is missing is a recognition of the whakapapa of the ideas that lead to its establishment. The Maaori Health Authority was not a Labour-led idea; nor was it a Labour party political initiative. It was the culmination of decades of thought leadership and advocacy by Maaori. That whakapapa needs to be recognised in the Tribunal's consideration of whether its disestablishment is in breach of the principles of Te Tiriti o Waitangi; Te Puna Ora says that whakapapa is essential to the consideration of that question.

The impact of Te Aka Whai Ora

34. While Te Aka Whai Ora has been in operation, Maaori and Te Puna Ora have had access to things we never had before.
35. For example, during my time with the Interim Maaori Health Authority:
 - (a) We received data and statistics about Maaori health that had never been provided outside of the Ministry of Health before. This enabled us, as the Interim Authority, to better understand how critical some of the issues were and tailor our initial work to those (as well as understanding how best to set up appropriate levels in Te Aka Whai Ora to operate moving forward).
 - (b) During my time on Te Aka Whai Ora, I co-chaired the Performance and Accountability Sub-Committee through which all legislative and policy mechanisms and levers across the sector flowed. That mechanism embodied real partnership between Maaori and the Crown by joint membership and shared delegations on the sub-committee between Te Whatu Ora and Te Aka Whai Ora. The mechanism provided a tangible lever for Te Tiriti and equity as it was one of the major assessment lenses that was applied to matters before the sub-committee.
36. Maaori service providers have a long history of knowing what is needed to make a tangible difference for the whaanau we serve but being unable to get the traction needed from higher decision makers. With the advent of Te Aka Whai Ora, we are now able to pass those ideas over for the Authority to take charge of. In effect, Te Aka Whai Ora has taken what worked so well in Whaanau Ora and is putting it directly into the health system and health funding.
37. Te Aka Whai Ora crystallises all of the small gains achieved by Maaori service providers in a single place, thereby increasing

their impact and reach and reducing administrative burden. Maaori service providers know which models are successful and work for our whaanau. We have been able to hand over those successful models to Te Aka Whai Ora, which took all the best parts and became the new lead on form and function. Put simply, operating well, this model can be transformational.

The Pae Ora (Healthy Futures) Act 2022

38. When the Pae Ora (Healthy Futures) Act 2022 (the **Act**) was being drafted, I was part of an advisory process that provided policy advice in the context of the legislative drafting process. I am therefore familiar with the levers build into the Act.
39. Section 6 of the Act sets out how it gives effect to the principles of Te Tiriti. Section 6(a) requires the Ministry of Health, the Minister, and health entities be guided by the Health Sector principles. The inclusion of the Minister in this subsection was a late addition in the final stages before the Bill was introduced to the House (as I understand it, this inclusion was partly as a result of further advice provided by Maaori providers and iwi). Ensuring the Minister was guided by principles which include improving the health sector for Maaori and improving hauora Maaori outcomes provided a layer of security that equitable outcomes would be factored into every layer of decision making.
40. Section 7 of the Act sets out the Health Sector Principles. Where matters did not fit squarely under the Tiriti clause, some became health sector principles. To that end, the principles cover a number of matters related to Maaori health equity specifically and health equity more generally, such as access to services, development and delivery, and opportunity to engage. I particularly note section 7(c), that “the health sector should provide opportunities for Maaori to exercise decision-making authority on matters of importance to Maaori”. I

further note section 7(2), which requires the Minister be guided by the health sector principles.

41. The Act also establishes a Hauora Maaori Advisory Committee, the role of which is to advise the Minister role in relation to the operation and administration of Te Aka Whai Ora. A permanent Hauora Maaori Advisory Committee was due to be established in the second half of this year with the members appointed by Iwi Maaori Partnership Boards, Maaori health providers, and others. At the moment, an interim Hauora Maaori Advisory Committee is operating, its members having been appointed by the Minister of Health.

THERE HAS BEEN NO CONSULTATION

42. Te Puna Ora has not been consulted with regarding the disestablishment of Te Aka Whai Ora. Te Puna Ora was also not consulted with by the current Minister Dr Shane Reti during his time in opposition.
43. It is also my understanding that the Hauora Maaori Advisory Committee (referred to at paragraph 41), interim or otherwise, was not consulted on the disestablishment of Te Aka Whai Ora. Nor was there consultation with Maaori service providers, Maaori healthcare experts, Maaori policy experts, or Maaori as Tiriti partners.
44. While there have been expert reports produced on the value of a Maaori Health Authority, it does not appear any reference has been made to those careful studies, in lieu of consultation with Maaori, in the context of the Government's decision to disestablish the Maaori Health Authority. I note in particular the conference proceeding records of the 1984 Hui Whakaoranga, the Tribunal's own *Hauora* Report, the 2020 *Simpson Report* resulting from the health and disability system review, and a myriad of Select Committee reports. Instead, what I understand the new Government (and therefore the

Crown) has been fairly transparent about is that there has been minimal / no policy analysis on this decision. It is a political decision that has been made and reflected in the Government's 100-day plan.

LOOKING TO THE FUTURE

45. Equitable approaches at the highest levels right down to the operational are essential to improve health outcomes for Maaori and enable Maaori providers to deliver the appropriate services to meet needs.
46. Te Aka Whai Ora was the result of long fought for change – an idea that was first posited many decades ago. The journey to its establishment included participation in inquiries and reviews, consultation with stakeholders and experts, policy consideration and weighing of options. Its proposed disestablishment, if achieved, will be the result of a single political decision informed by a single philosophical viewpoint.
47. On 19 March 2024, around the time the Government proposes to introduce its legislation to disestablish Te Aka Whai Ora, it will be the fortieth anniversary of Hui Whakaoranga held in 1984 at Hoani Waititi marae. It cannot be overemphasised that 40 years of discourse from pre-eminent voices on Maaori health led into the establishment of Te Aka Whai Ora. Its proposed disestablishment appears to be being undertaken without consulting even one single Maaori voice.
48. Te Aka Whai Ora has been the most tangible step for mana motuhake in the health sector that I have seen. It is not one of many models to achieving Maaori health goals, but a culmination of all the models imagined by Maaori health pioneers and proposed by Maaori service providers.
49. Te Aka Whai Ora is not only important for what it can achieve for Maaori health. It is also a template for how real impact can be made for Maaori equity in other sectors. At the time of its

establishment, we expected Te Aka Whai Ora to signal a complete system change for health in the way that Koohanga Reo did for whaanau and te reo Maaori. Instead, we are once again finding ourselves fighting to participate in the decisions that impact on our equitable treatment. It is unacceptable.

RECOMMENDATIONS SOUGHT

50. Te Puna Ora seeks recommendations from the Tribunal that:
- (a) The disestablishment of Te Aka Whai Ora is a breach of the principles of Te Tiriti;
 - (b) Failure to consult with Maaori before proposing to disestablish Te Aka Whai Ora was a breach of the principles of Te Tiriti;
 - (c) Failure to consult with Maaori before disestablishing Te Aka Whai Ora is a breach of the principles of Te Tiriti;
 - (d) Failure to undertake a critical review of the operation of Te Aka Whai Ora and instead proposing to disestablish Te Aka Whai Ora as a political decision was a breach of the principles of Te Tiriti; and
 - (e) Failure to propose any substantial alternative to meeting Maaori health equity needs once Te Aka Whai Ora is disestablished is a breach of the principles of Te Tiriti.
 - (f) Because of these breaches, and the high likelihood of further breaches, the Crown should not disestablish Te Aka Whai Ora.
51. In the alternative, if the Tribunal is not minded to recommend that the Crown stop the disestablishment, Te Puna Ora seeks a recommendation from the Tribunal, as an alternative to recommendation (f), above, that the Crown pause its current

work programme to disestablish Te Aka Whai Ora to undertake:

- (a) consultation with Maaori with an open mind (including being open to not disestablishing the Maaori Health Authority); and
- (b) a proper policy process to determine whether disestablishing Te Aka Whai Ora will meet the Government's objectives with respect to Maaori Health outcomes.

Dr Chris Tooley
20 February 2024