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# Summary of Chapter 16: Summary of Findings and Recommendations

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## About the Hauwhaikaha report

The Waitangi Tribunal is a permanent commission of inquiry. It makes recommendations on claims brought by Maaori relating to legislation, policies, actions or omissions of the government (Crown) that are alleged to breach the promises made in te Tiriti o Waitangi/the Treaty of Waitangi.

The Health Services and Outcomes Inquiry (Wai 2575) (health inquiry) concerns claims relating to health services and outcomes that are important to Aotearoa New Zealand. In December 2017, the health inquiry was organised into three stages. This inquiry is the first part of the second stage and concerns claims relating to the State disability system.

The Hauwhaikaha report summarises what we heard during the disability inquiry and outlines our findings and recommendations.

# Summaries of each chapter of the Hauwhaikaha report

People who want to read the full report, can find it here: www.waitangitribunal.govt.nz/en/publications/tribunal-reports/by-wai-number/wai2575hauwhaikaha or www.bit.ly/Hauwhaikaha

We have also produced summaries of each chapter of the report, for those who do not want to read the whole report.

This document is a summary of chapter 16 that outlines our recommendations to the Crown. This document will not summarise the findings made in our report, we refer the reader to the summaries of each chapter, which include our findings.

Our recommendations are to address prejudice we have established taangata whaikaha Maaori are suffering as a result of the Crown's Tiriti/Treaty breaches and to prevent others from being similarly prejudiced in future. We begin with three key overarching recommendations, which apply to the system settings that make up the disability system. We then include several, further, more detailed recommendations to provide direction to the Crown on how it should fulfil its obligations. In making our recommendations, we were assisted by the recommendations sought by the parties.

# Our overarching recommendations on disability system settings

Throughout this inquiry, we have heard from claimants who have described the prejudice they have suffered due to the Crown's failure to give effect to Tiriti/Treaty partnership. In practical terms, this results in the exclusion of taangata whaikaha Maaori from system-level decision making and taangata whaikaha Maaori effectively being made invisible by the Crown within the system that should enable them to be heard. Moreover, the lack of substantial input from taangata whaikaha Maaori into disability system settings has negatively affected the services available to taangata whaikaha Maaori.

Throughout our inquiry, the Crown has presented evidence of its engagement with taangata whaikaha Maaori to transform the disability system and improve outcomes for taangata whaikaha Maaori. We particularly commend Whaikaha—Ministry of Disabled People on its intention to confirm and strengthen partnership arrangements with taangata whaikaha Maaori, and its willingness to determine the relevant tikanga and method for such engagement. Crown evidence also notes the discussions Whaikaha officials have held with taangata whaikaha Maaori organisations about how best to continue and strengthen their relationship.

Crown witnesses indicated to us some of the limitations of the system, including that the entire system suffers resource constraints, which has greater impacts on Maaori. We do not underestimate the complexity of the State disability system settings and recognise that our recommendations sit within this complex system. We also do not consider it is our place to tell the Crown how to organise under such constraints. Nevertheless, the Crown has a Tiriti/Treaty-based obligation to partner genuinely with taangata whaikaha Maaori in the design and provision of the disability system, including the type of health and disability services delivered to them and their whaanau, and disability-related policy, strategies and plans.

As we have said previously, our expertise lies in the Maaori-Crown Tiriti/Treaty relationship. We encourage a Tiriti/Treaty-based partnership that empowers taangata whaikaha Maaori to be actively involved in policy decision making in matters affecting them. We endorse a partnership, in which robust and sustainable mechanisms ensure taangata whaikaha Maaori input is established and monitored. We therefore enjoin the Crown to support Whaikaha to strengthen its partnership arrangements to further develop both the representation and voice of taangata whaikaha Maaori. This would include formally entrenching taangata whaikaha Maaori representation in decision making.

**Our first overall key recommendation, therefore, is for the establishment of viable partnership models between taangata whaikaha Maaori and the Crown. This process must be co-designed with taangata whaikaha Maaori.**

Our recommendation mentions taangata whaikaha Maaori broadly, however, the Crown and the representatives of the claimants in this inquiry could begin the first steps of designing a Tiriti/Treaty compliant partnership mechanism. Our reasoning mirrors our recommendation in our Hauora report that the process must start with someone, somewhere.

It is also vital that these partnership mechanisms contain provisions for independent monitoring to hold the system to account. In chapter 11, we discussed accountability mechanisms to ensure the Crown complies with its commitments regarding the implementation of the disability system. The evidence confirmed to us that the Crown does not implement adequate accountability mechanisms and does not ensure independent scrutiny by Maaori to ensure compliance with te Tiriti/the Treaty. Strong accountability mechanisms and robust, public measuring and reporting are key to the Tiriti/Treaty-compliance of the disability system framework. We find the lack of these mechanisms and measures to be inconsistent with the principles of active protection, equity and good governance.

Moreover in our Hauora Report, we stated that the relationship between the Crown and Maaori in primary health requires "an enhanced commitment to the Treaty of Waitangi" and recommended that the Crown ensure that the legislative and policy framework of New Zealand's primary health care system recognise and provide for Te Tiriti o Waitangi/the Treaty of Waitangi and its principles. This commitment must also be expressed throughout all levels of disability-related law, policy, strategies and plans.

**Thus, our second overall key recommendation for the Crown is to honour the Tiriti/Treaty principles of partnership and tino rangatiratanga by providing for taangata whaikaha Maaori to participate in the design and delivery of the disability system. We also make a third overall key recommendation to the Crown, that is to ensure appropriate replacements for the monitoring role Te Aka Whai Ora had under the Pae Ora (Healthy Futures) Act 2022 to ensure the health and disability system (including the health services provided through prisons) improves Maaori health outcomes, including for taangata whaikaha Maaori.**

# Specific recommendations

Alongside the menitoned three key recommendations for the overarching system, we make specific recommendations for areas within the current framework. We made the above overarching recommendations based on the assumption that by addressing the wider system,

this will have a flow-on effect and improve many aspects of the disability system. We make specific recommendations below to draw attention to discrete areas of the system that need improvement and may not be captured by the generic recommendations.

## Data

In chapter 6 we found the Crown's collection of data and associated monitoring have significant gaps that undermine its ability to enhance outcomes for taangata whaikaha Maaori.

We observe that there is a strong distrust of the data system, relating to both what data is collected and how it is used by the Crown. It is critical that consistent and reliable data is collected to address this distrust and to ensure the Crown is informed of outcomes for taangata whaikaha Maaori. Data is also critical for evidence-based policy and decision-making. There are opportunities to improve data quality, including by aggregating the data collected by service providers as part of their contractual requirements.

The Crown has not implemented nationally consistent data standards and does not always separately collect data on taangata whaikaha Maaori. There is not enough regular survey data, and discrepancies in the questions posed make comparison across surveys and over time difficult. While Whaikaha is shifting its focus towards administrative data, survey data is still useful and enables taangata

whaikaha Maaori to share their experiences. It is important that improvements to both surveys and administrative data continue, and that these improvements do not happen in isolation from taangata whaikaha Maaori. Data measures should be developed in partnership with taangata whaikaha Maaori, as captured by our first key overarching recommendation.

We made recommendations in previous Tribunal reports, Hauora and Haumaru, on data. Here, we reiterate these recommendations, because they are relevant to taangata whaikaha Maaori. We recommend the Crown:

- collect robust quantitative and qualitative data and information relevant to the health outcomes of taangata whaikaha Maaori. This data and information should be made public and be easily understandable and accessible.
- ensure that measures relevant to taangata whaikaha Maaori health outcomes are reported on separately. These measures and the reporting against them should be made public and be easily understandable and accessible.

We further offer suggestions we consider appropriate to improve data on the disability system. We recommend the Crown:

- develop a regular cycle of surveys to accurately understand health outcomes of taangata whaikaha

Maaori and improve consistency across survey questions to allow for comparisons between taangata whaikaha Maaori and non-Maaori disabled people over time and that these surveys link to administrative data;

- develop a national disability data framework to consistently capture disability status for Maaori and ensure nationally consistent measures for the collection and reporting of disaggregated data;
- progress the Patient Profile National Health Index (PPNHI) project in partnership with taangata whaikaha Maaori to identify all disabled people and their access needs in health datasets and address the significant lack of person-level data on disabled people and taangata whaikaha Maaori across Government agencies;
- augment or supplement the Washington Group Short Set (WGSS) questions so it is validated for taangata whaikaha Maaori experience of disability and reflects how taangata whaikaha Maaori choose to identify;
- commit to funding research into te ao Maaori perspectives of disability and ensure taangata whaikaha Maaori and whaanau are at the centre of research design and interpretation; and
- include in its contracts with service providers a requirement that the service provider supply the Crown with data relating to the effectiveness of the

service generally and particularly for taangata whaikaha Maaori.

## Funding and service availability

In chapter 7 we found that taangata whaikaha Maaori face barriers when seeking funding and that kaupapa Maaori providers are not adequately funded to provide culturally appropriate care, in breach of te Tiriti/the Treaty.

Rurality presents difficulty, particularly for Maaori, with many of the kaupapa Maaori providers reporting that they do not receive adequate funding to deliver culturally appropriate care and services to taangata whaikaha Maaori located rurally. In chapter 8 we found that taangata whaikaha Maaori living in rural areas face disproportionately high barriers to accessing services. A shortfall in the availability of local health and disability providers leads to numerous negative consequences for taangata whaikaha Maaori, which exacerbate already existing inequities. The Crown has not ensured equitable service provision to rural taangata whaikaha Maaori, in breach of equity.

Present funding settings do not adequately account for this rurality, especially travel supports. The funding available impacts the services received by taangata whaikaha Maaori and if these services are not funded adequately, their needs will be unmet, or they will need to seek care elsewhere. As with the overarching recommendations, we

are careful not to be too restrictive or precise in how the Crown undertakes its funding decisions, noting that this often requires striking a careful and challenging balance between competing needs and priorities. Nevertheless, the current funding framework does not adequately take into account key factors that are relevant to the needs of taangata whaikaha Maaori, which negatively impacts the care and services they receive.

Therefore, we recommend the Crown:

- ensures the funding framework takes proper account of factors of deprivation, access, rurality and cultural care needs, with a view of improving the access and availability of disability services, especially in rural areas.

## Accountability mechanisms

In chapter 11, we found that the Crown does not have adequate accountability mechanisms in place to ensure compliance with te Tiriti/the Treaty, nor is te Tiriti/the Treaty adequately included in plans and strategies which facilitate accountability. Maaori are also unable to independently scrutinise the disability system, in breach of te Tiriti/the Treaty.

Moreover, in chapter 10 we found the Crown's delivery of training and professional development has failed to ensure disability staff are appropriately competent, which has resulted in taangata whaikaha Maaori receiving poor

quality and culturally unsafe care, in breach of the principles of active protection and equity.

As we noted above, it is critical that there are mechanisms in place to hold the Crown to account. In addition to our overarching recommendations, we also recommend the Crown:

- commit to reviewing and strengthening the monitoring of Government-delivered and contracted services to ensure equitable access for taangata whaikaha Maaori;
- empower monitoring agencies to publicly report on progress in reducing the health inequities observed;
- include reference to te Tiriti o Waitangi/the Treaty of Waitangi and its principles in contracting documents providing services to taangata whaikaha Maaori, and also include a commitment to achieving equitable health outcomes for taangata whaikaha Maaori; and
- strengthen performance monitoring and accountability of cultural safety in the disability system to ensure services for taangata whaikaha Maaori in the disability system are culturally competent and safe.

## Kaapoo Maaori

In chapters 13 to 15, we discussed claims relating to three specific roopuu: Kaapoo Maaori, Taangata Turi and Fetal Alcohol Spectrum Disorder (FASD). While these roopuu are taangata whaikaha Maaori, their disabilities and

identity present unique challenges, which differ to those faced by taangata whaikaha Maaori generally. We consider that issues facing these roopuu will be predominantly addressed by the overarching recommendations, particularly by hardwiring partnership within the system. We note that this partnership should include partnering with members of these specific roopuu alongside taangata whaikaha Maaori more generally.

For Kaapoo Maaori, we considered the disability system as it relates to Kaapoo Maaori and their needs, alongside the role of Kaapoo Maaori Aotearoa. We found that Kaapoo Maaori Aotearoa, as with other kaupapa Maaori providers, are not adequately funded to provide culturally appropriate services and that the disability system is primarily focused on individualised models of support, preventing Kaapoo Maaori exercising collective decision-making and receiving whaanau-centred care.

A specific recommendation is needed for Kaapoo Maaori. During the inquiry we heard that Kaapoo Maaori continue to be disconnected from their culture and language because of the lack of cultural understanding within Paakehaa services. This is compounded by the individualised model of care designed by the Crown.

Therefore, we recommend the Crown:

- recognise and effectively partner with Kaapoo Maaori Aotearoa to ensure Kaapoo Maaori interests are

recognised at a national level. Furthermore, the Crown must adequately support the infrastructure development of Kaapoo Maaori Aotearoa to ensure sustainable partnership.

## Taangata Turi

For Taangata Turi, we found that Taangata Turi are over-represented in the deaf population and experience inequitable health outcomes compared to their non-Maaori counterparts and that the Crown has not taken adequate steps to address these inequities, such as developing culturally responsive services and Taangata Turi leadership. We also found that the Crown has not taken adequate steps to increase the number of trilingual interpreters, nor did it consult Taangata Turi on the decision to halt NZSL Act reforms. We also found that the Act does not reference their distinct identity.

Specific recommendations are also needed to remedy specific prejudice to Taangata Turi. Accordingly, we recommend the Crown:

- engage with Taangata Turi to explore establishing a nationally accessible trilingual interpreter training programme to enable students to learn te reo Maaori and NZSL simultaneously or, for aakonga already fluent in te reo Maaori, to learn NZSL interpreting in a Maaori environment;

- provide funding to support their effective participation at tangihanga;
- commission research and engage with Taangata Turi to understand the causes of the apparently low uptake of Deaf services by Maaori;
- engage with Taangata Turi to develop and fund more culturally responsive Deaf services; and
- consider amending the NZSL Act to reflect Taangata Turi as a culturally and linguistically distinct group.

## Fetal Alcohol Spectrum Disorder (FASD)

The evidence presented demonstrated that, notwithstanding an overall lack of Aotearoa FASD research, it is generally accepted that Maaori are disproportionately affected by alcohol related harm, including FASD. We found a significant lack of access to disability services for people affected by FASD and we did not receive evidence of any reason for their exclusion.

The claimant witnesses for the Alcohol Healthcare claim gave extensive evidence of the significant and ongoing lack of access to support for people affected by FASD. Therefore, we recommend the Crown:

- support and resource a targeted and coordinated prevalence study to understand the true incidence of FASD among Maaori;

- review its eligibility criteria for DSS to address the inequitable access to DSS for Maaori with FASD; and
- engage with Maaori with FASD to develop FASD-informed, community-led service prevention, diagnosis and support services that incorporate te ao Maaori perspectives and worldviews.

**End of Summary of Chapter 16: Summary of Findings and Recommendations**