



## **Summary of Chapter 11: Accountability Mechanisms**

### **About the Hauwhaikaha report**

The Waitangi Tribunal is a permanent commission of inquiry. It makes recommendations on claims brought by Māori 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](http://www.waitangitribunal.govt.nz/en/publications/tribunal-reports/by-wai-number/wai2575hauwhaikaha) or [www.bit.ly/Hauwhaikaha](http://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 11 on accountability mechanisms. Chapter 11 examines whether the Crown has adequate accountability mechanisms in place to make sure the disability system meets its obligations to taangata whaikaha Maaori.

## **What are the accountability mechanisms for implementing the disability system?**

Accountability mechanisms include planning, measuring and reporting. Planning documents set out what organisations are to deliver, and their performance against this is measured, and the results are then reported to the public. This allows the public to assess how organisations are performing and hold them accountable. Accountability mechanisms can be used to improve the disability system as they help to identify problems with the system and ensure the Crown meets its obligations.

Claimants said that accountability is key to improve the system's performance, but that existing legislation, strategies and plans, created by the Crown, do not have adequate accountability mechanisms. Claimants pointed to gaps in data collection, which means the Crown cannot monitor the system or how it is meeting the needs of taangata whaikaha Maaori. This missing data results in little to no accountability.

The Crown did not provide detail about any process in place to ensure it meets its obligations. However, the Crown outlined how certain plans and frameworks help them to be accountable, such as Pae Tuu: Hauora Maaori Strategy and the Pae Ora (Healthy Futures) Act 2020. The Crown also noted Aotearoa New Zealand is part of the United Nations Convention on the Rights of Persons with Disabilities, which includes monitoring and reporting requirements.

We confirmed that the Crown uses documents and frameworks to hold itself accountable, but these plans are often aspirational and are not supported by actions to evaluate progress. To improve health outcomes, accountability mechanisms must identify and set out actions and measures specific to taangata whaikaha Maaori. The

Crown, in doing so, must distinguish between taangata whaikaha Maaori and non-Maaori disabled people, so any disparities can be identified and addressed.

### **How are disability service providers audited?**

Claimants alleged that a western worldview is used when service providers are audited, including against their service contracts. They noted that this conflicts with te ao Maaori and does not accurately measure the work of service providers.

According to them, measures should be based on tikanga. The Crown explained that providers are evaluated and audited to monitor their services, though this does not happen every year. The Crown did not respond to the claimants' allegation, nor did the Crown comment on the possibility of developing an approach consistent with te ao Maaori. We do not have enough information to determine whether auditing standards were appropriate for kaupapa Maaori providers. However, we recognise the need for culturally appropriate accountability mechanisms to accurately measure the work of service providers.

### **Are accountability mechanisms Tiriti/Treaty compliant?**

Accountability mechanisms are important to ensure the disability system complies with te Tiriti/the Treaty and to improve how the system performs for taangata whaikaha Maaori. It is critical that Maaori as Tiriti/Treaty partners can hold the Crown to account regarding the Crown's responsibilities and obligations under te Tiriti/the Treaty.

Claimants alleged the Crown has not established accountability mechanisms to make sure it is complying with te Tiriti/the Treaty and that te Tiriti/the Treaty and its principles are not sufficiently included in Crown documents or frameworks. They said where policies did incorporate te Tiriti/the Treaty, there were not accompanying accountability mechanisms. The Crown did not directly respond to these allegations, but Crown witnesses said that te Tiriti/the Treaty is embedded in all key documents for the health and disability system. However, they did not explain how and if taangata whaikaha Maaori are identified in these documents, whether they include accountability mechanisms, or how the Crown evaluates progress.

We confirmed that the Crown primarily uses documents and frameworks to ensure it complies with te Tiriti/ the Treaty, but they do not include clear accountability

mechanisms or measures to monitor Tiriti/Treaty compliance. Therefore, we concluded the Crown does not have sufficient processes in place to hold itself accountable to te Tiriti/the Treaty for the benefit of taangata whaikaha Maaori.

## **Tribunal findings**

We considered the principles of equity, active protection and good governance were relevant to the issues raised about accountability in the disability system.

The principle of active protection requires the Crown to be well informed about Maaori health outcomes and efforts to achieve equitable health outcomes for Maaori. It also requires the Crown to ensure the health system is accountable to Maaori as a Tiriti/Treaty partner. This means that the Crown cannot alone audit its performance and Maaori must equally be able to evaluate and hold the health system to account. We confirmed that the Crown relies on documents and legislation to ensure the disability system is accountable, generally, and that it is meeting its obligations to taangata whaikaha Maaori under the Tiriti/Treaty principle of active protection. However, for this approach to work in practice, documents need to clearly outline obligations for the Crown to meet and be supported by clear actions, regular monitoring and reporting. The Crown should also partner with taangata whaikaha Maaori in these processes, so the Crown is not solely auditing itself. We found that while there are processes to raise complaints, these are for individual situations and are not enough to show that taangata whaikaha Maaori are able to hold the Crown accountable for issues across the system or be involved in accountability processes.

The principle of equity requires the Crown to work towards equity in health outcomes for Maaori and be accountable to Maaori for its performance. However, no one Crown entity can be responsible for this, so there is a joint responsibility across Crown agencies. Strong accountability mechanisms are needed to achieve equity in Maaori health outcomes. We found that the documents and processes used by the Crown to hold itself accountable do not include specific actions or measures for the Crown or related reporting requirements. It is concerning disability-related strategies and plans did not have meaningful commitments to taangata whaikaha Maaori or adequately incorporate te Tiriti/the Treaty. We found that when documents do not properly include te Tiriti/the Treaty, they create a lower standard for the Crown to

meet, a standard that does not accurately reflect or comply with its Tiriti/Treaty obligations.

The principle of good governance means that the Crown is to be accountable for its actions relating to Maaori and can be independently scrutinised. We found that the Crown does not have clear or strong accountability mechanisms in place, and it does not collect sufficient data to allow the public or entities outside of the Crown to hold the Crown accountable. We also confirmed that there are not established or transparent processes for taangata whaikaha Maaori to give feedback on the disability system, outside of individual complaints processes.

Therefore, we found that the disability system cannot be independently and formally scrutinised, and neither is the Crown's compliance with te Tiriti/the Treaty measurable. These shortcomings mean the Crown is in breach of the principles of active protection, equity and good governance.