
Kei raro i te mana o Te Tiriti o Waitangi Act 1975

Ā

I te take o An Inquiry into Housing Policy and Services (Wai 2750)

Ā

I te take o A claim by Bonnie Jade Kake and Rau Hoskins on behalf of Te Matapihi He Tirohanga Mō Te Iwi Trust (Wai 2716)

Ngā Tāpaetanga Whakakōpani o Te Matapihi

Dated 13 October 2021

**HOCKLY
LEGAL**

Cameron Hockly
Cameron@hockly.co.nz
021 738 542

Hockly.co.nz
PO Box 59211
Mangere Bridge
AUCKLAND 2022

TĒNĀ, E TE RŌPŪ WHAKAMANA I TE TIRITI,

- 1) These are the closing submissions for Te Matapihi He Tirohanga mō te Iwi Trust (Te Matapihi, Wai 2716) a claim by Jade Kake and Rau Hoskins on behalf of the trustees, delegates and representatives of Te Matapihi He Tirohanga mō te Iwi Trust (Te Matapihi) whose claim is registered as Wai 2716.

Te Moemoeā o Te Matapihi: He Mana Kāinga, He Kāinga Ora

- 2) The vision of Te Matapihi is 'he kāinga ora', the thriving whānau home, the base of whānau wellbeing, achievement and success. This vision includes ensuring those whānau have the power to choose, influence and create their own home environment.¹

Te Pūmanawa o Te Matapihi: Kia Para ai te Huarahi ki te Ūkaipō

- 3) Te Matapihi have set their mission as: '*Kia para ai te huarahi ki te Ūkaipō*'.
- 4) As an organisation they are committed to emphasising the cultural and spiritual dimensions as well as the fundamental needs of Māori housing initiatives in order to see Māori truly thrive, be it on their whenua tupuna or in their kāinga rua.
- 5) This is their commitment to the aspirations of the whakatauki; *Ka mate Kāinga tahi, ka ora kāinga rua*.

Te Tono o Te Matapihi

- 6) The original claim lodged by Te Matapihi² set out three causes of action that relate to homelessness;
 - a) The Crown's failure to ensure that Māori have suitable housing (Second Cause of Action);³
 - b) The Crown's failure to consult with Māori in relation to policy and legislation that relates to Māori and housing (Third Cause of Action);⁴ and

¹ <http://www.tematapihi.org.nz/about-us> accessed 11 October 2021

² Wai 2716, #1.1.1 *Statement of Claim for Te Matapihi He Tirohanga Mo Te Iwi Trust*, 16 February 2018.

³ Wai 2716, *Statement of Claim*, 6-7.

⁴ Wai 2716, *Statement of Claim*, 7.

c) The Crown's failure to implement the Māori Housing Strategy (Sixth Cause of Action).⁵

7) The original claim is filed as an appendix to these submissions.⁶

Second Cause of Action: Failure to Provide Suitable Housing

8) Under this cause of action the claim sets out that with the Crown's policy and legislation "priority was given to Pākehā requiring housing, and housing for Māori fell to a low second tier"⁷ that as a "result of the failure to properly provide suitable housing to the urban population of Māori was loss of health, negative impact on relationships and whānau and hapū structures and networks, and subsequent impact on employment and socio-economic hardship."⁸

9) As a result of that legislation and policy, and using the data available at the time of lodging of the claim, it was known that,⁹

a) Over 11,700 Māori were experiencing severe housing deprivation;¹⁰

b) An estimated 1,290 Māori were homeless, 235 were in emergency housing, 1,056 were in commercial accommodation or living on Marae, and 9,149 Māori lived in severely overcrowded homes;¹¹

c) In addition to those numbers, 22,184 other Māori were receiving an income related rent subsidy as Housing New Zealand Corporation clients, (amounting to 34.5% of all recipients);¹²

d) 89,434 Māori were receiving an income and asset tested accommodation Supplement;¹³ and

⁵ Wai 2716, *Statement of Claim*, 9.

⁶ Wai 2750, #2.6.12, [7]"Closing submissions should be focussed on the relevant allegations made in the statements of claim. They should also address matters noted in the statement of issues for the stage one inquiry" and at [8] is the direction that claimant counsel file the claims and highlight those matters that relate to 'homelessness'.

⁷ Wai 2716, *Statement of Claim*, [46]

⁸ Wai 2716, *Statement of Claim*, [48].

⁹ Wai 2716, *Statement of Claim*, [50].

¹⁰ Amore K, Viggers H, Baker, MG, & Howden-Chapman, P (2013). *Severe housing deprivation: good quality housing. The problem and its measurement, Official Statistics Research Series*, p6. ¹¹

¹¹ Ibid.

¹² Ibid

¹³ Ministry of Social Development Data, March 2015.

e) the statistics on home ownership by individuals showed that 28.2% of Māori are living in owner-occupied homes, compared to a national average of 50%.¹⁴

10) The claim summed these issues up in this way:

“In all of these statistics, Māori suffer significant hardship, and greater hardship than non-Māori, and out of proportion to their percentage of the overall population.”¹⁵

11) This cause of action features in the Statement of Issues at 2.1, 4.1 and 5.2.¹⁶

Third Cause of Action: Failure to Consult

12) The claim of Te Matapihi was that “To this day the formation of policy and legislation continues to happen without adequate consultation, resulting in a continuation of poor outcomes and inadequate housing for Māori, and the attendant hardships which accompany poor housing.”¹⁷

13) The issue of consultation is a naturally complex one, and the place of Te Matapihi in the formulation and is one forged by the determination and persistence of its trustees and employees, to attempt to convince the Crown that certain approaches are necessary and more effective to address Māori need. The last four years has seen considerable internal change within these government agencies. An assessment of the Crown’s consultation capacity, and how that consultation influences decisions is addressed at length due to its importance in tailoring legislation, policy and solutions that best address what Māori need and seek from the Kawana, and fundamentally, satisfy that Tiriti duty in a fulsome and meaningful way.

14) This cause of action features in the Statement of Issues at 3.2 and 4.1.¹⁸

¹⁴ *The National Census*, Statistics New Zealand, 2013. Home ownership by household shows that 64.8% of households own their own home or it is in held in a family trust. The percentage of households that owned their own home, excluding private trusts was 49.9%, breakdown of ownership by ethnicity is not available for this statistic.

¹⁵ Wai 2716, *Statement of Claim*, [51].

¹⁶ Wai 2750, #1.4.1 *Tribunal Statement of Issues*.

¹⁷ Wai 2716, *Statement of Claim*, [54].

¹⁸ Wai 2750, #1.4.1 *Tribunal Statement of Issues*.

Sixth Cause of Action: Failure to Implement the Māori Housing Strategy

- 15) Te Matapihi's claim addressed the Māori Housing Strategy "He Whare Āhuru", which had been introduced in 2014, and languished without full implementation, updates or sufficient monitoring.
- 16) He Whare Āhuru should have featured systems and policies that assisted to address the issue of homelessness and severe housing deprivation amongst Māori.
- 17) That policy was replaced in 2019/2020 with the introduction of MAIHI Framework for Action, the accompanying changes made to Housing NZ, HUD and the introduction of the Homelessness Action Plan.¹⁹
- 18) This cause of action features in the Statement of Issues at 5.1.²⁰

Remedies Sought

- 19) The Statement of Claim of Te Matapihi had specifically sought the Tribunal's recommendations that;
 - a) A minister for Māori Housing or a Māori Associate Minister for Housing and Urban Development be created;
 - b) the Crown make a long-term commitment to He Whare Āhuru up to and beyond 2025; and
 - c) the establishment of a Māori Housing Statutory Unit.²¹

The Tribunal Statement of Issues

- 20) Those claim issues stated by Te Matapihi are reflected in the six questions this Tribunal established for the Inquiry.
- 21) The Tribunal statement of issues sets the following questions for Inquiry;²²

Issue 2.1

Do the Crown's current and proposed policies meet the needs of Māori under Te Tiriti o Waitangi?²³

Issue 3.1

¹⁹ Wai 2716, *Statement of Claim*, [64-69].

²⁰ Wai 2750, #1.4.1 *Tribunal Statement of Issues*.

²¹ Wai 2716, *Statement of Claim*, 11, [72(f)(g) and (i)].

²² Wai 2750, #1.4.1 *Tribunal Statement of Issues*.

²³ Wai 2750, #1.4.1 *Tribunal Statement of Issues*, Question 2.1.

Has the Crown acted with “sufficient urgency” in recognising homelessness and “delivered a timely and coherent national response”?

Issue 3.2

In doing so, has the Crown been sufficiently engaged and responsive to its Tiriti relationship with Māori?²⁴

Issue 4.1

“Have the Crown’s national strategies (He Whare Āhuru – He Oranga Tangata) been adequately monitored and responsive to the needs and developments in Māori homelessness? If so, has there been adequate opportunity for Māori decision-making power in the Crown’s design, implementation and monitoring of strategies relating to Māori homelessness?”²⁵

Issue 5.1

Do those national strategies, “He Whare Āhuru he Oranga Tangata” (the Homelessness Action Plan 2014-2025) consistently apply the principles of Te Tiriti and if so, how is that consistency maintained and achieved?²⁶

Issue 5.2

Has the Crown’s response provided adequate and appropriate support for the diverse experiences of Māori, having regard to released prisoners, overcrowding, age, location, and health status?²⁷

Issue 6

What changes to legislation, policy and tools are necessary to adequately address Māori homelessness?²⁸

TE TIRITI O WAITANGI, ME NGĀ MATAPONO I ROTO

- 22) The generic submissions on Te Tiriti and the Crown duties that arise in this area are fully supported.²⁹
- 23) There is complete agreement that the same four key principles are at the heart of this inquiry;
 - a. Partnership;
 - b. Active Protection;
 - c. Equity; and

²⁴ Wai 2750, #1.4.1 *Tribunal Statement of Issues*, Questions 3.1 and 3.2.

²⁵ Wai 2750, #1.4.1 *Tribunal Statement of Issues*, Question 4.1.

²⁶ Wai 2750, #1.4.1 *Tribunal Statement of Issues*, Question 5.1.

²⁷ Wai 2750, #1.4.1 *Tribunal Statement of Issues*, Question 5.2.

²⁸ Wai 2750, #1.4.1 *Tribunal Statement of Issues*, Question 6.

²⁹ Wai 2750, #3.3.35, Generic Closing Submissions on Homelessness, 8-29.

d. Options.

Partnership

- 24) Partnership means a balancing of kawanatanga and tino rangatiratanga, and must be a relationship “where one party is not subordinate to the other but where each must respect the other’s status and authority in all walks of life.”³⁰
- 25) As the Hauora report noted, the “principle of partnership is also of particular importance when assessing the nature and implementation of State Policy” and “requires the Crown to consult and partner with Māori genuinely in the design and provision of social services, including health care.”³¹
- 26) The Crown is required to “partner with Māori in the development and implementation of policy” and this is especially relevant “where Māori are expressly seeking an effective role in this process. Further the requirement for the Crown to partner with Māori is heightened where disparities in outcomes exist.”³²
- 27) The Te Urewera Tribunal found that partnership is critical for pursuing socioeconomic equity for Māori, that the Crown cannot “simply present Māori with its own solutions...at minimum it must consult with Māori, and ideally it will either form a partnership with, or deliver funding and autonomy to, Māori organisations.”³³ The Napier Hospital Tribunal stated that the Crown should be “empowering *Māori to design and provide health services* for Māori.”³⁴
- 28) This issue is raised with that fourth question for this Inquiry, which asks where Māori decision-making sits in the current policy plans to address homelessness.³⁵
- 29) The benefits of this Crown approach, as recommended by these Tribunals are two-fold, they take the form of high level compliance with Te Tiriti and its principles, but also, the outcomes are of a better and more long-lasting nature when those controls, policies and services are within Māori hands.

³⁰ Waitangi Tribunal, *Te Whanau o Waipareira Report* (Wellington GP Publications, 1998), xxvi.

³¹ Waitangi Tribunal, *Hauora*, 28, referencing the Waitangi Tribunal in *Te Whanau o Waipareira Report*, 232, Waitangi Tribunal, *Napier Hospital Report*, 59, Waitangi Tribunal, *Te Urewera Report* Vol 8 3783, *Ko Aotearoa Tenei*, Vol 2, 559.

³² *Hauora*, 28-29, referencing *Tu Mai Te Rangi*, 62-63

³³ Waitangi Tribunal, *Te Urewera*, Vol 8, 3773.

³⁴ *Napier Hospital Report*, xxvi. Italics in original.

³⁵ Wai 2750, #1.4.1 *Tribunal Statement of Issues*, Question 4.1.

Active Protection

- 30) Active protection arises from the Tiriti partnership, through the exchange of kawanatanga and tino rangatiratanga.
- 31) The Tribunal in the Ngāpuhi Mandate Inquiry report set out that “the capacity of Māori to exercise authority over their own affairs as far as practicable within the confines of the modern state is key to the active protections of tino rangatiratanga.”³⁶
- 32) The Hauora report sums it up by saying that the “Treaty guarantee of tino rangatiratanga was a promise of active protection of Māori autonomy.”³⁷
- 33) The Tribunal has also found that the “principle of active protection includes the Crown’s responsibility to protect actively Māori health and wellbeing through the provision of health services”³⁸ and that the Crown must “make available to Māori, as citizens, health services that reasonably and adequately attempt to close inequitable gaps in health outcomes with non-Māori.”³⁹
- 34) Part of active protection was found to be “ensuring that health services are culturally appropriate”⁴⁰ because providing culturally-appropriate services was ‘essential for the delivery of effective health services to Māori’ and as such “the principle of active protection extends to the incorporation and practice of tikanga Māori in mainstream health institutions.”⁴¹
- 35) This is the tenor of the evidence of Mr Fred Astle, that the policy to address homelessness must engage with the concepts that surround the dynamics of kāinga kore, use the appropriate language and see the issue for all that it is, not simply the lack of a roof over your head.
- 36) The Health Inquiry found it was clear that:

“a greater proportion of Māori occupy the most deprived deciles of the population when compared to other ethnic groups” and that inequities may result when Māori are forced by lack of choice into Pākehā styles of professional

³⁶ Waitangi Tribunal, *The Ngāpuhi Mandate Inquiry Report*, 23.

³⁷ *Hauora*, 30.

³⁸ *Hauora*, 31, *Napier Hospital Report*, 53.

³⁹ *He Whiritauonoka the Whanganui Lands report*, vol 3, 1505.

⁴⁰ *Hauora*, 31.

⁴¹ *Napier Hospital Report*, xxvi and 57-58.

health interaction and treatment; in other words, a one-size fits all approach may not be sufficient to provide active protection.”

- 37) That Tribunal echoed the earlier sentiment of the Te Urewera report which recorded that a:

“ ‘one size fits all model’ tends in practice to suit the needs of the majority, who are rarely the group in most need of help. Even when they can access mainstream aid and services, minority groups such as Māori have often found that what is being provided simply does not work for them, or is so alienating that they prefer to disengage.”⁴²

- 38) The menace in the possibilities of that final sentence is a very real aspect of the issue of homelessness; there is a risk that a service is so poorly designed, and in the hands of such a poorly equipped provider, that it forces homeless Māori back to the street, making their path to assistance and recovery so much longer and more difficult.
- 39) The Hauora Tribunal found that the inequity in the health sector and the “existence of significant health disparities requires the Crown to *implement positive steps* to provide for the pursuit of Māori health equity.”⁴³

Equity

- 40) Article Three of Te Tiriti guarantees Māori freedom from discrimination but also obliges the Crown to positively promote equity.⁴⁴
- 41) This principle is closely linked to the principle of active protection and has been explained in this way; “equity of service may differ from equality of outcome. A policy or service that establishes equal standards of treatment or care across the whole population may still result in inequitable outcomes for Māori.”⁴⁵
- 42) The evidence of Mr Knox, and Ms Browne and Mr Lemon suggest that the current settings are in this category, equal treatment of Māori homeless with the broader denomination results in a failure in the

⁴² *Te Urewera*, Vol 8, 3776-3777.

⁴³ *Napier Hospital*, 53-54 and *Tū Mai Te Rangi*, 27. Emphasis added.

⁴⁴ *Hauora*, 33.

⁴⁵ *Napier Hospital*, 62.

outcomes, either not reaching homeless Māori or failing to address the homelessness Māori endure.

Options

- 43) The principle of options says that Māori have the right to choose their own social and cultural path.⁴⁶
- 44) The right of options derives from the guarantees of tino rangatiratanga and the rights and privileges of British citizenship.
- 45) The Hauora report sets out that the modern application of this principle is the requirement that the “Crown must adequately protect the availability and viability of kaupapa Māori solutions in the social sector as well as so-called mainstream services in such a way that Māori are not disadvantaged by their choice.”⁴⁷
- 46) The principle of options connects with the principle of partnership and “obliges the Crown to support adequately, particularly through resourcing, Māori entities and organisations that influence the design and implementation of health care policy or who are involved in health care provision.”⁴⁸
- 47) The last statement on options, is how it connects with equity and “ensures that each of these options – culturally and medically-responsive mainstream health services, and properly-resourced and supported kaupapa Māori health services – are equitably maintained and made available to Māori.”⁴⁹
- 48) The alignment and relevance to the issue of Kāinga Kore – Homelessness is demonstrable and clear. There are a host of Māori organisations striving to address homelessness within their rohe and areas of expertise. The pitfalls are the insufficiency and uncertainty of funding.
- 49) Where there is mainstream provision, there are gaps in the policy which weaken the ability of those organisations to meet the needs of Māori homeless.
- 50) The principle of options most clearly relates to the ability of Māori to organise and address the needs of their own communities. But there is

⁴⁶ *Hauora* 35 and *Napier Hospital*, 65.

⁴⁷ *Hauora*, 35, and *Matua Rautia – Report on the Kohanga Reo Claim*, 68.

⁴⁸ *Napier Hospital*, 170-171.

⁴⁹ *Hauora*, 36.

also a corresponding need for Māori homeless to be able to identify and chose to access assistance through a Māori provider, if they wish, rather than a mainstream provider.

Key Hauora Report Findings

- 51) The recent findings of the Health Inquiry are highly relevant as they show how Te Tiriti demands improved action from the Crown, but also how far the current settings are from meeting those Tiriti standards.
- 52) The Hauora report noted that the Crown had been talking about ‘partnership, participation and protection’, referring to them as “the three P’s” for some 20 years.
- 53) This was a minimisation of the broad extent of obligations of the Crown to the point of being “reductionist”. But this “watering down” of the Treaty principles was also found to be expressed in the “key strategies of the primary healthcare framework.”⁵⁰
- 54) The expression of the first of the “Ps” partnership, in the Ministry’s own statements but also at a practical effect, was defined as, and found to be, “working together with iwi, hapū, whānau and Māori communities to develop strategies for Māori health gain and appropriate health and disability services.”⁵¹
- 55) The Tribunal said this:

“But ‘working together’ does not necessarily constitute a Crown/Māori Treaty ‘partnership’” and that this “partnership would only ‘enable them to influence the planning, purchasing, delivery and monitoring of services to build Māori health...In our view, influencing decisions or participating in making them is not the same as making decisions.”⁵²

- 56) What is needed instead, is tino rangatiratanga, and the Tribunal said this:

“Tino rangatiratanga’ is guaranteed active protection in the Treaty. Tino rangatiratanga means indigenous autonomy, and is an equivalent term to mana Motuhake.

⁵⁰ Hauora, 79.

⁵¹ Hauora, 80.

⁵² Hauora, 80.

Far from being an ‘aspiration for Māori communities, tino rangatiratanga is the basis of Māori political and social organisation and the foundation of Māori decision-making. Tino rangatiratanga is the fullest expression of the Māori right to exercise authority over their own communities with ‘minimal Crown interference’; however this expression is balanced against Māori obligations to act in good faith and what is reasonably practicable for the Crown in the circumstances”⁵³

- 57) The Hauora report went on to note that only one of the major health strategies and policies even mentioned tino rangatiratanga, and it was in the final line of a foreword by a Minister to He Korowai Oranga from 2002.⁵⁴
- 58) The Ministry’s articulation and explanation of the Treaty, and its application to the health sector was not Treaty-compliant.⁵⁵
- 59) As those findings indicate, tino rangatiratanga, active protection and partnership are all bound up together, and ideally should provide a broad base for the autonomy of Māori to address their own needs, through their own means, through their own decision-making.
- 60) The Crown is attendant to that process as the Tiriti partner ensuring active protection of those mechanisms and structures, and in most if not all cases, providing suitable funding.

Key Themes

- 61) There are number of key themes that have emerged during this Inquiry, much of it forming significant aspects of the Crown’s evidence, and deserve comment at the outset.
- 62) Some of those most prominent themes include;
 - a. the restructuring of government departments;
 - b. the churn of departmental policy;
 - c. the adoption of te reo Māori for naming departments and policies;

⁵³ *Hauora*, 81.

⁵⁴ *Hauora*, 82-83.

⁵⁵ *Hauora*, 83.

- d. the upskilling of Crown employees in the area of te reo, tikanga Te Tiriti o Waitangi and matauranga Māori;

Restructuring

- 63) The Crown evidence sets out how a number of the agencies and departments have been dramatically changed and re-structured during the past decade.
- 64) The Housing NZ Corporation has been replaced by Kāinga Ora with new legislation and directives.
- 65) The Ministry of Business, Innovation and Employment was established in 2012, bringing together the Ministry of Economic Development, the Ministry of Science and Innovation, Department of Labour and Department of Building and Housing.
- 66) This re-structuring was the best explanation given for why the draft Māori engagement strategy was not progressed between November 2011 and January 2021.⁵⁶
- 67) The re-structuring also moved work from the disestablished DBH to MBIE, but that work and funding has changed or come to an end later during the decade as noted by Wayne Knox evidence and pointed out to Ministers in Incoming Briefings provided by Te Matapihi.⁵⁷
- 68) Six years later there was the creation of HUD in October 2018.
- 69) Each of these changes has a profound impact both on the policies in place, the funding available, and the bureaucratic networks that Māori organisations and representatives have to engage with, a new set of people to meet and establish relationships with. A new set of forms to fill in. Fresh hurdles to re-establish the funding that was in place, again one clear example given by Wayne Knox in relation to Māori Community Housing Providers and Māori organisations aspiring to that status.⁵⁸
- 70) Each change of Ministry scope, re-structuring or move from one agency to another destabilises those Māori organisations working to maintain their role serving the communities and to address Māori housing issues, most notable homelessness.

⁵⁶ Wai 2705, #D1(f), 21, *Response of Jeremy Steele to questions in writing.*

⁵⁷ Wai 2750, #B54(a) 69-70.

⁵⁸ Wai 2750, #B54(a) 69-70.

The Churn of Departmental Policy

- 71) Continuing with the theme of upheaval and changes on the Crown and Governmental side, is the constant change of policy.
- 72) The claim by Te Matapihi set out concerns that He Whare Āhuru was not being delivered, at the time of filing of that claim, it was apparent to the staff and trustees of Te Matapihi, that despite containing policies and proposed settings that would address housing and homelessness He Whare Āhuru was being left on the shelf, and was not being implemented.⁵⁹
- 73) He Whare Āhuru was a National Māori Housing Strategy launched with much fanfare and was supposed to be a comprehensive, reviewable, monitored system with opportunities for Māori to have input, feedback and influence changes.
- 74) The failings of that strategy to even get underway is of great concern, the time it languished, without review, upgrade or developed is also of great concern.
- 75) It is in that light that the new MAIHI Ka Ora is viewed, and these submissions return to that later.
- 76) What the Crown evidence shows is that there has been a recent re-branding, re-building, re-decorating of the policies relating to housing and homelessness from those Ministries and agencies.
- 77) We are yet to see the effectiveness of those policies also, but again, there is concern about how often changes are made, not small changes, not modifications, but large-scale changes, all of which require a repositioning of Māori organisations to navigate and become familiar with.

The Importance of Names and the use of Te Reo Māori

- 78) Each of the government departments that engaged in this Inquiry have recently seen fit to change their names.
- 79) Housing NZ is now Kāinga Ora. The Ministry for Housing and Urban Development is now Te Tūāpapa Kura Kāinga. The Ministry of Social Development is now Te Manatū Whakahiato Ora.

⁵⁹ Wai 2716, Statement of Claim, [64-69].

- 80) It is immediately apparent that these are not translations of the departments names. For example the Ministry of Social Development could be translated as 'Te Manatū Whakawhanake Hāpori' or 'Te Manatū o te Whakaahu Hāpori'.
- 81) The approach to naming of government departments is not the adoption of a translation of the name in English but seems instead to emulate the naming of a whare, with of those names expressing significant sentiment and aspiration. In some cases there seems also to be the intention that the previous English name be removed rather than the English name, rather than a bi-lingual approach.
- 82) At the most generous these new names are aspirational, seeming to spur and inspire those within the organisation to move it to achieving those lofty goals.
- 83) But at their worst, these are empty grandiose sentiments giving a name to an organisation that does not deserve them, a form of re-branding that provides a new façade to an organisation that has not yet changed internally.
- 84) A more straight-forward approach in the form of a commitment to bilingual naming of the organisations might not be subject to the same criticism and critique. Firstly, because the name itself would provide the content needed to understand what is being referred, and secondly because the aspirational sentiments would be absent.
- 85) Ali Hamlin-Paenga, current deputy Chair of Te Matapihi, addressed this when she said:

“Government departments have, over the last ten years, increasingly used te reo Māori to name and describe themselves, their programs and their funding priorities. This has led a market of cheapening te reo Māori and the tikanga that are reflected in kupu including manaakitanga, rangatiratanga, kotahitanga and whanaungatanga. The government needs to protect our reo and our tikanga by putting the care of Māori back in Māori hands, so that there is no need for non-Māori organisations to use our tikanga in these ways. This will clear the way for much clearer understandings of these tikanga and kupu for all.”⁶⁰

⁶⁰ Wai 2750, #B8, [43-44]

- 86) For those organisations like Ngāti Kahungunu ki Pōneke Community Services whose experience Ms Hamlin-Paenga was addressing as the CEO, and Te Matapihi, organisations actively working in Māori communities to house Māori, to get Māori off the street, to extend kaupapa Māori approaches and matauranga Māori to these practices, these sentiments ring hollow.
- 87) The use of te reo Māori and the referencing of significant concepts like manaakitanga and kotahitanga in policy development also appears to be an exercise in decorating the veneer.
- 88) The questioning of several witnesses from government departments, from the highest levels of those organisations, showed a clear lack of ability to understand the depth of the concepts invoked or the importance of the concepts in te ao Māori. That is a highly troubling situation and does not reflect well on the ability of those organisations and individuals to give effect to and adopt the right approach as an organisation.
- 89) The generic claimant submissions suggest strongly that the testing of the evidence of those agencies that established the HAP scheme, notably with Mr Jeremy Steele.⁶¹

The upskilling of officials in te reo Māori, tikanga, Matauranga Māori

- 90) There was considerable emphasis across all the departments on the efforts being made to upskill departmental staff on te reo Māori, tikanga, matauranga Māori.
- 91) The evidence of the witnesses for Te Matapihi demonstrated that there are still profound systemic and racist divisions in the area of housing and the delivery of assistance to address issues of housing and homelessness.⁶²
- 92) The importance of upskilling those officials and staff is important at the fundamental level where there is direct human engagement, it potentially removes barriers that may exist when Māori engage with the likes of MSD or HUD. For example, the ability of an MSD Navigator to engage with Māori, to be familiar with at least basic tikanga, to know

⁶¹ Wai 2750, #3.3.35, Generic Closing Submissions on Homelessness, 141, [78], see also Wai 2750, #4.1.7, 98-134, specifically 124-129 for the questions by Ms Thomas to Mr Steele.

⁶² See the summary below, especially Dr Howden-Chapman et al, and Ms Paul in particular.

some of the history of local hapū and iwi, will make that engagement less alienating.

- 93) However, it is important that this does not become a focal point of the inquiry, as those changes do little to address the policy settings which dictate who gets assistance and funding and the form that it may take.
- 94) In the case of Māori organisations engaging with the government to obtain contracts and funding, the nature of this upskilling has to be very sophisticated and high level in order to be meaningful. It needs to reach into how the policy is shaped, so that it recognises the distinctly different approach a kaupapa Māori project run by a Māori organisation will be to a charity or church.

MAIHI Ka Ora and GPS-HUD

- 95) At the end of last month, on the 29th of September 2021 the Crown filed MAIHI Ka Ora (the National Māori Housing Strategy) and the Government Policy Statement on Housing and Urban Development (GPS-HUD).⁶³ These were released by the government on the 28th of September.⁶⁴
- 96) Te Matapihi were involved in the drafting of these documents and they did have the opportunity to make suggestions on how these should be designed to best serve Māori.
- 97) That involvement has been undertaken on the basis that the Crown is still learning to understand what best serves Māori in the area of housing, and homelessness, still learning how to design policies that reach Māori and enable Māori organisations to address those needs.
- 98) It is too soon to say if these new schemes can or will improve on previous policies but this is another example of a large scale change to the policies in place. With these new systems there has been considerable effort from Te Matapihi and a host of Māori organisations to engage, make sense of, and bring to fruition what may be, but are not guaranteed to be, improved outcomes for Māori homelessness.
- 99) Te Matapihi has been here before; they were involved in the drafting and production of He Whare Āhuru.⁶⁵ The failure to progress with key

⁶³ Record of Inquiry number yet to be assigned.

⁶⁴ As noted in the Memorandum of Counsel for the Crown dated 29 September 2021, [2].

⁶⁵ Wai 2750, A4, He Whare Āhuru He Oranga Tāngata – Māori Housing Strategy 2014 – 2020, 14 September 2020, (45).

objectives of that set of policies was a fundamental reason why the claim for Te Matapihi was filed and those concerns were detailed as the 6th cause of action in the claim.⁶⁶

- 100) The memory of that experience, and what happened to those aspirations is still present in the organisation even as they attempt again to improve housing for Māori by being involved in the development of this latest initiative.
- 101) Those results will come down to whether the Crown remains committed to the objectives they have established and remains responsive to Māori (and not just Te Matapihi) where improvements and changes need to be made, as inevitably they will.
- 102) Needless to say, neither MAIHI Ka Ora, nor GPS-HUD can feature in the Tribunal's assessment of homelessness in this Inquiry, as the material has only now been released, has not been tested as evidence, and is not yet in place.

Te Matapihi Engagement with Māori homelessness

- 103) Te Matapihi have been engaged in the full spectrum of kāinga issues since their beginning as part of a call to action in 2010.
- 104) Te Matapihi engage with papa kāinga and urban housing, social housing and policy settings, the importance of meaningful and effective design, and of course homelessness, the sharpest point in the range of housing issues, where someone does not have a place they can call home.
- 105) Because of this engagement, Te Matapihi brought together a collection of kaikōrero been able to articulate the scale and nature of the issues of homelessness for Māori. Those witnesses detailed the true shape and nature of the current (and evolving) policy settings, and the gaps that continue to mean Māori living in homelessness are not yet on the pathway to kāinga ora.

Ngā Kaikōrero

- 106) These submissions rely primarily on the evidence of Te Matapihi, the Crown discovery documents, the Crown witnesses and the evidence of witnesses given through cross-examination.

⁶⁶ Wai 2716, Statement of Claim, [64-69].

- 107) The evidence for Te Matapihi was produced by;
- e. Wayne Knox;⁶⁷
 - f. Barbara Browne and Tipene Lemon;⁶⁸
 - g. Fred Astle;⁶⁹
 - h. David Kenkel;⁷⁰
 - i. Bianca Johanson;⁷¹
 - j. Jacqueline Paul;⁷² and
 - k. Dr Philippa Howden-Chapman, Dr Kate Amore and Helen Viggers.⁷³
- 108) Ali Hamlin-Paenga evidence is also relied on in these submissions. Ms Hamlin-Paenga produced evidence about her experience as CEO of Ngāti Kahungunu ki Pōneke Community Services,⁷⁴ by the time she came to present that evidence she had become a trustee and been appointed Deputy Chairperson of Te Matapihi.
- 109) During the first hearing week held from 22 to 26 March 2021 at Te Puea Marae, evidence was presented by Mr Knox, Ms Browne and Mr Lemon, Mr Kenkel and Mr Astle.
- 110) The evidence of Ms Johanson and Ms Paul, and Dr Howden-Chapman, Dr Amore and Ms Viggers was presented in the second hearing week held from 17 to 21 May 2021.
- 111) The evidence from Te Matapihi witnesses that addressed the provision of housing support to rangatahi are addressed in the generic submissions on rangatahi homelessness.⁷⁵
- 112) The evidence from these witnesses is summed up below as forming three categories;

⁶⁷ Wai 2750, #B54 *Signed Statement of Evidence of Wayne Knox*, dated 19 February 2021, accompanied by Appendices A-C, Wai 2750, #B54(a) and (b).

⁶⁸ Wai 2750, #B55, *Signed Joint Statement of Evidence of Barbara Browne and Tipene Lemon*, dated 19 February 2021.

⁶⁹ Wai 2750, #B90, *Signed Statement of Evidence of Fred Astle*, dated and filed on the 12th of February 2021, reference yet to be assigned.

⁷⁰ Wai 2750, #C5, *Signed Statement of Evidence of David Kenkel*, dated 9 February 2021, accompanied by Appendix A "R's Story" Wai 2750, #C5(a).

⁷¹ *Signed Statement of Evidence of Bianca Johanson* dated the 10th of February 2021.

⁷² Wai 2750, #C4, *Signed Statement of Evidence of Jacqueline Paul*, dated 7 February 2021, Summary Statement Wai 2750, #C4(a) dated 15 February 2021.

⁷³ Wai 2750, #C14, *Joint Expert Statement of Evidence of Dr Philippa Howden-Chapman, Dr Kare Amore and Helen Viggers*, dated 19 February 2021.

⁷⁴ Wai 2750, #B8.

⁷⁵ *Generic Submissions on Rangatahi Homelessness*, filed by counsel on the 21st of September 2021.

- a) Lack of Suitable housing, expert evidence which shows systemic issues (Second Cause of Action);
 - b) Consultation (Third Cause of Action) First-hand evidence of the experience of Māori organisations working to address Māori homelessness; and
 - c) Failure to Implement He Whare Āhuru (Sixth Cause of Action).
- 113) As the evidence showed, He Whare Āhuru has now been replaced by a new strategy. According to Crown witnesses, it sits in behind the new policies and strategies established as a kind of retired but present system. The distinction does not seem important in the context of this Inquiry; He Whare Āhuru was established, neglected and is no longer the strategy being used to address housing and homelessness issues.

SECOND CAUSE OF ACTION

Expert Evidence of Lack of Suitable Housing and Systemic Issues⁷⁶

- 114) The evidence of Jacqueline Paul,⁷⁷ and Dr Philippa Howden-Chapman, Dr Kate Amore and Helen Viggers⁷⁸ showed an expert critique of the housing system and its failures to address Māori homelessness.
- 115) Ms Paul's expertise focussed on homelessness of rangatahi, and that evidence is already summed up and presented as part of the generic submissions on the issue of rangatahi homelessness.⁷⁹
- 116) Dr Philippa Howden-Chapman, Dr Kate Amore, and Helen Viggers, were joined by Jenny Ombler in presenting their evidence as members of He Kāinga Ora/Housing and Health Research Programme based in the Department of Public Health, University of Otago, Wellington.⁸⁰
- 117) The opening lines of this evidence sets the tone for the assessment made of the government's policies to date:

“Homelessness is the most acute, and most visible, symptom of inadequate housing and social service systems. In Aotearoa, homelessness is a product of

⁷⁶ Wai 2716, *Statement of Claim*, [46-48] Second Cause of Action, and Wai 2750 #1.4.1, *Statement of Issues*, Issue 5.2.

⁷⁷ Wai 2750, #C4, *Signed Statement of Evidence of Jacqueline Paul*, dated 7 February 2021, Summary Statement Wai 2750, #C4(a) dated 15 February 2021.

⁷⁸ Wai 2750, #C14, *Joint Expert Statement of Evidence of Dr Philippa Howden-Chapman, Dr Kare Amore and Helen Viggers*, dated 19 February 2021.

⁷⁹ *Generic Closing Submissions on Rangatahi Homelessness*, filed Tuesday the 21st of September 2021.

⁸⁰ Wai 2750, #C14, *Joint Expert Statement of Evidence of Dr Philippa Howden-Chapman, Dr Kare Amore and Helen Viggers*, dated 19 February 2021, and answers to questions post-hearing #C14(c) and (d).

discriminatory colonial practice, such as the alienation of land through Raupatu and the differential access to government housing subsidies, which have privileged Pākehā norms and aspirations.”⁸¹

- 118) These witnesses relied on a significant amount of academic research and reports and also government data and statistics.⁸²

The Definition & Classification

- 119) These witnesses set out and explained how He Kāinga Ora have approached the use of the Government definition of homelessness.
- 120) That definition, used by Statistics NZ is “living situations where people with no other options to acquire safe and secure housing: are without shelter, in temporary accommodation, sharing accommodation with a household or living in uninhabitable housing.”⁸³
- 121) That definition shows that in two areas at least the number remains significant and unimproved. Firstly, the use of temporary accommodation, which must be read to include the emergency housing provided by the government, and certainly the use of motels for that assistance.
- 122) Secondly, what is referred to by these witnesses as uninhabitable housing. The report released by these authors in May 2021 speaks directly to the latter category and shows that across all the regions that the estimate number of houses, and people living in those houses, that do not in fact provide necessary basic amenities remains stubbornly high, and shows demonstrable prejudice.⁸⁴
- 123) There are the four broad categories within the definition;
- a) without shelter;
 - b) temporary accommodation;
 - c) sharing accommodation; or
 - d) uninhabitable housing.

⁸¹ Wai 2750, #C14, 3.

⁸² Wai 2750, #C14, Endnotes referring to those documents on pages 14-16, and also references as footnotes, plus Appendix A to the evidence #C14(a), plus #C14(b) Housing that Lacks Basic Amenities in Aotearoa New Zealand dated May 2021, which is a supplement to the 2018 Census Estimate of Severe Housing Deprivation.

⁸³ Wai 2750, #C14, 3.

⁸⁴ Wai 2750, #C14(b) Housing that Lacks Basic Amenities in Aotearoa New Zealand dated May 2021, which is a supplement to the 2018 Census Estimate of Severe Housing Deprivation

124) As part of improving the ability to record the data, these witnesses were involved in ensuring the definition was “operationalised” to allow for measurement.

125) This meant those four categories were interpreted in this way:

“Without shelter includes those sleeping rough, in an improvised dwelling or mobile dwelling.

Temporary accommodation includes those living in night shelters, women’s refuges, camping grounds/motor camps, boarding houses, hotels, motels, and marae.

Sharing accommodation includes people living as ‘extras’ in severely crowded, permanent private dwellings.

Uninhabitable housing includes rented or owned housing that lacks one or more basic amenities: tap water that is safe to drink; kitchen sink; toilet; bath or shower; cooking facilities; electricity.

Across these categories, people were counted as homeless, only if their income was below the poverty line, which serves as a proxy for lacking access to minimally adequate housing.”⁸⁵

126) He Kāinga Ora further defined severe housing deprivation as “people living in severely inadequate housing due to a lack of access to minimally adequate housing.”⁸⁶

127) Dr Amore pointed out during presentation of the evidence, the importance of the use of the term “severe housing deprivation” the use of those categories as a way identifying those that are lacking, and also the alienating impact of defining someone as “homeless”.⁸⁷

Control of the Definition

128) The submissions above set out the approach to the definition used by Statistics NZ and the government, and the utilisation of that definition in gathering the data.

⁸⁵ Wai 2750, #C14, 4.

⁸⁶ Wai 2750, #C14, 3.

⁸⁷

- 129) The generic submissions on this issue rightly set out the argument that a te ao Māori approach needs to be taken when considering Māori homelessness.⁸⁸ That argument is supported.
- 130) Those generic submissions and the view of Te Matapihi is that the provision of a Māori definition needs to be in the hands of Māori.
- 131) For Te Matapihi the place where the use and benefit of a te Ao Māori definition can be seen will be in the hands of those Māori organisations and communities addressing Māori homelessness.
- 132) At that connection point between those in need and those addressing the need, the use of a Māori definition can be brought to life and be relied on.

The Scale of the Problem of Homelessness

- 133) These witnesses also set out their view of the best numbers they had to show the extent of the problem of homelessness generally but also how Māori are represented in those numbers.
- 134) These witnesses relied, to the best of their ability and analysis, on the 2018 census, a record which is acknowledged now to come with a considerable number of asterisks due to the issues with the way the census was carried out.
- 135) As their evidence showed, approximately 41,600 were identified as homeless in the 2018 census using categories 1-3, and another 59,800 from category 4. This reflected 2% of the population.⁸⁹
- 136) That census showed that Māori experience a disproportionately greater level of homelessness than non-Māori
- 137) The generic submissions provide a good summary of the deteriorating statistics, showing that homelessness issues, severe housing deprivation is still increasing.⁹⁰
- 138) Crown witnesses for HUD were asked if they accepted the OECD estimate that we have about 50,000 or 1% of the population homeless?

⁸⁸ Wai 2750, #3.3.35, Generic Closing Submissions on Homelessness, 30-47.

⁸⁹ Wai 2750, #C14, 4.

⁹⁰ Wai 2750, #3.3.35, Generic Closing Submissions on Homelessness, 137-138.

The response given was that the revised number of homeless is estimated to be 102,000 people or 2% of the population.⁹¹

- 139) Post hearing filing from HUD set out that while in 2018 Māori made up 44% of those on the public housing register and 53% of those receiving Emergency Housing Special Needs Grants, by March 2021 those numbers were 49% and 57% respectively.⁹²

Insufficient Amenities

- 140) The evidence of these witnesses went on to outline how in their view, the use of the severe housing deprivation definition and approach, allows for the inclusion of those that may be in housing, but that the quality of that housing is so lacking as to be unsuitable.
- 141) Again, Māori are disproportionately impacted and over-represented in almost all of these statistics.⁹³

The Lack of Support Available

- 142) These witnesses pointed to data collected by emergency housing providers that there was a “turnaway rate” of between 82-91%, which meant only 1-2 people of every 10 requesting assistance could in fact be accommodated.⁹⁴

Systemic Issues

- 143) These witnesses were of the view that is well established that the current systems and organisations addressing homelessness, both governmental and non-governmental, “have tended to favour Pākehā norms such as individualised treatment over whānau-oriented approaches.”⁹⁵

⁹¹ Wai 2705, #D1(f), Answers to questions in writing from Crisp, Calcott-Cribb and Steele, 34. The response notes that the number was revised following the release of the University of Otago’s work on Housing Lacking Basic Amenities, which updated the 2018 Census estimate for Severe Housing Deprivation. (That report is filed post hearing with the evidence of Dr Amore and Dr Howden-Chapman et al. The Crown answer notes that the revised estimate includes the OECD estimate of people “living without shelter, in temporary accommodation or sharing accommodation, as well as approximately 60,000 people living in uninhabitable housing (that was lacking one of six basic amenities: tap water that is safe to drink; electricity; cooking facilities; a kitchen sink; a bath or shower; a toilet).”

⁹² Wai 2705, #D1(f), Post Hearing filings from Te Tūāpapa Kura Kainga. 25-26.

⁹³ Wai 2750, #C14, 5-6. The notable exception is shown in Table 1, only in Auckland are Māori not worse off than the general population.

⁹⁴ Wai 2750, #C14, 7, and see endnote 25, which refers to the report ‘*Stocktake of New Zealand’s Housing*’ released February 2018, Dr Howden-Chapman was one of the authors of that report.

⁹⁵ Wai 2750, #C14, 7.

144) They point to the report “A Principles Framework for Taking Action on Māori/Indigenous Homelessness in Aotearoa/New Zealand” and the PhD research by Claire Aspinall.⁹⁶

145) The assessment they make is summed up in this way:⁹⁷

“Government funding for homelessness services has been skewed towards larger existing providers, that tend to be predominantly Pākehā-driven. Competitive funding rounds encourage self-interested behaviours by existing organisations, undermining efforts to enable cross-sector and cross-governmental cooperation. Partnership with mana whenua and/or other Māori-led organisations such as non-iwi urban authorities has not always been prioritised, particularly when funding opportunities have been driven by existing Pākehā-led organisations. Māori-led organisations have been disadvantaged by pre-existing inequities in resourcing, as they have not had the resources and infrastructure necessary to secure ongoing and new funding. This has led to entrenchment of inequitable funding for larger Pākehā-led organisations that are more likely to have stemmed from the mental health, faith-based, charitable, or community housing sectors. Decision-making around homelessness interventions can often lie with local government and District Health Boards, that can have varying relationships with mana whenua and Māori-led organisations.”

146) An aspect of that systemic issue, is that Māori needing housing and facing homelessness do engage with the government and various agencies, but fail to receive the assistance that they are seeking and need, these witnesses pointed to research from the People’s Project that provides support for this assessment.⁹⁸ That research did also show that without wider systemic change the improvements, even as the result of a housing first initiative, can be limited.⁹⁹

⁹⁶ Wai 2750, #C14, 7, referring to these reports at endnotes 24 and 26 respectively.

⁹⁷ Wai 2750, #C14, 7.

⁹⁸ Wai 2750, #C14, 7, referring to endnote 27, “Service usage by a New Zealand Housing First cohort prior to being housed”, *SSM-Population Health*, 8(August), 2019,

⁹⁹ Wai 2750, #C14, 7-8, endnote 28; Pierse, N., Ombler, J., Chun, S., White, M., et al., Interim outcomes analysis (unpublished), 2021.

147) This evidence was supported by the Ms Hamlin-Paenga,¹⁰⁰ and Mr Wayne Knox,¹⁰¹ both of whom spoke to first-hand experience of the challenges that Māori and Māori providers have engaging in the funding systems and policy settings.

Te Matapihi - Wayne Knox

148) The evidence of Mr Knox provided the scope of the work of Te Matapihi engages with in the housing sector and, the kāinga kore aspect of that work.

149) Mr Knox highlighted the experience and view that Te Matapihi has in relation to this kaupapa as an organisation, and as an advocate on housing issues, and identifies through the briefing provided to the incoming Ministers of Housing and Urban Development, the failings of the current Homelessness Action plan.¹⁰²

150) Recommendations for changes to legislation and policy were set out by Te Matapihi given in their briefings to Incoming Ministers after each election, done in 2017¹⁰³ and 2020.¹⁰⁴ These briefings have been a regular feature of the recommendations to the government by Te Matapihi and provide a clear concise summary of the areas which they see need to be addressed.

151) The 2020 briefing listed five key recommendations that were not yet a feature of the MAIHI, or required improvement in order to achieve the desired outcomes;¹⁰⁵

Recommendations

1. Implement the MAIHI 'review and reset' of housing policy beginning with homelessness as a priority.
2. Increase HAP funding delivered via MAIHI, and ensure this funding is as adaptable as possible to the needs of Māori communities and providers.
3. Recognise that home ownership is the ideal state, even for those experiencing homelessness, and enable homelessness interventions to provide such pathways.
4. Actively work towards more cost-effective alternatives to transitional housing and support Māori providers to embed new solutions.
5. Implement a comprehensive and tailored youth homelessness initiative that builds regional and national infrastructure, offering youth-oriented housing with options to respond to diverse needs.

¹⁰⁰ Wai 2750, #B8, [23].

¹⁰¹ Wai 2750, #B54, 3-4.

¹⁰² Wai 2750, #B54(a) *Appendix B to the Statement of Evidence of Wayne Knox*, 67-69.

¹⁰³ Wai 2750, #B54(e) Briefing to the Incoming Ministers, 2020.

¹⁰⁴ Wai 2750, #B54(e) Briefing to the Incoming Ministers, 2017.

¹⁰⁵ Wai 2750, #B54(a) *Appendix B to the Statement of Evidence of Wayne Knox*, 69.

- 152) That briefing shows that despite the installation of MAIHI, the HAP and progress with those schemes, the push is for better systems and improved delivery of assistance to Māori.

Māori Community Housing Providers

- 153) Mr Knox addressed the issue of the challenges that Māori Community Housing Providers face and set out the requests that Te Matapihi had made in the January 2021 briefing to incoming ministers.¹⁰⁶ This evidence shows the prominence of this mechanism to addressing housing and homelessness issues amongst Māori and how it reflects a system that can be owned and operated by Māori for Māori. This is a key area and Te Matapihi shares the view of others in this inquiry that there needs to be a significant increase in the number of Māori CHPs and houses managed by them. The numbers continue to languish, with 19 Kaupapa Māori CHPs providing 3% of the funded housing placements.¹⁰⁷
- 154) Given the dominance of the numbers on the Public Housing Waiting list¹⁰⁸ and in homelessness statistics,¹⁰⁹ CHPs remains a key tool to address existing and growing need, and Māori CHPs are even more vital and appropriate because of the additional layers of support, tikanga and whakapapa which only they can provide.
- 155) Mr Knox pointed to the Te Matapihi briefing which said that most of those 19 Māori CHPs had been established using a Social Housing Unit Fund, based in MBIE, which no longer existed. That fund had assisted by providing contributions for capital development and growing the housing stock for those Māori providers.¹¹⁰ With continued inquiries from Māori organisations seeking to become CHPs that funding gap is problematic, and it was Te Matapihi's suggestion that "existing and emerging Māori CHPs should have dedicated investment to address the differences in the scale between Māori and mainstream providers, particularly given that Māori make up a significant proportion of community housing tenants."¹¹¹

¹⁰⁶ Wai 2750, #B54(a) 69-71.

¹⁰⁷ Wai 2750, #B54(a) 69.

¹⁰⁸ Wai 2750, #C14, 10.

¹⁰⁹ Wai 2750, #C14, 4-5.

¹¹⁰ Wai 2750, #B54(a) 69-70.

¹¹¹ Wai 2750, #B54(a) 70.

- 156) That briefing also set out issues Kaupapa Māori organisations faced in having to artificially separate their CHP landlord role and wrap-around service provider and called for greater flexibility:¹¹²

We also often hear from existing Māori CHPs about the added burden of being required to separate their role as landlord from their role as wrap-around service provider, which, though a requirement of registration, can be at odds to a Kaupapa Māori approach. They also question whether the same stringency of compliance with performance standards is necessary for those Māori CHPs who do not aspire to have large portfolios, but are focussed on smaller, localised solutions for their communities (e.g., Marae or papakāinga based CHPs). A specific class of Māori CHP or more flexibility within the current regulatory regime for smaller providers has been suggested to accommodate these issues.

- 157) Ms Browne and Mr Lemon also addressed the issue of support for Māori CHPs in their roles at Kahui Tu Kaha, and specifically the lack of provision of houses needed to accommodate those homeless adults and rangatahi they have arriving on their doorstep.¹¹³
- 158) These witnesses had a particular issue with the intrusiveness of the Community Housing Regulatory Authority.¹¹⁴

The Community Housing Regulatory Authority and CHPs

- 159) Cross examination of Andrew Crisp, Kararaina Calcott-Cribb and Jeremy Steele McKenzie considered the operation of the Community Housing Regulatory Authority.¹¹⁵
- 160) During cross-examination it was confirmed that the regulations guiding CHPs and the Regulatory Authority is the Public and Community Housing Management Act 1992, and that there was no specific design for Māori CHPs, that it was a “one size fits all” approach.¹¹⁶
- 161) It was acknowledged that legislation and the regulations contain no Treaty clause.¹¹⁷
- 162) It was also confirmed that Māori CHPs made up 18 of the 60 CHPs.¹¹⁸ Post hearing filings updated that number to 19,¹¹⁹ 30% of the total number of CHPs, a number those witnesses were very proud of.¹²⁰
- 163) Those witnesses were also asked if there were more Māori organisations in the process of getting registered, and there was an

¹¹² Wai 2750, #B54(a) 70.

¹¹³ Wai 2750, #B55, 1,3.

¹¹⁴ Wai 2750, #B55, 3.

¹¹⁵ Wai 2750, #4.1.7. Transcript of Hearing Week Three, 77-97.

¹¹⁶ Wai 2750, #4.1.7, 77.

¹¹⁷ Wai 2750, #4.1.7, 7.

¹¹⁸ Wai 2750, #4.1.7, 79-80.

¹¹⁹ Wai 2705, #D1(f), Post Hearing filings from Te Tūāpapa Kura Kainga. 7.

¹²⁰ Wai 2750, #4.1.7, 79-80.

indication that there are three more coming, it does not appear that all of those are operational yet.¹²¹

- 164) Answers in writing indicated that MAIHI would have funding to fill the gap from the funding that previous DBH had filled to assist Māori organisations become structurally ready to operate as a CHP.¹²²
- 165) However, those witnesses were asked about any form of financial support for the compliance requirements at the hearing and at that time they indicated that there was not.¹²³ The discussion also considered what was needed for that compliance with the regulator, this was later clarified in post hearing filings also.¹²⁴
- 166) The operation of the CHRA was last year reviewed by KPMG, and the report became available this year, however it doesn't appear that review considered any of the Treaty obligations on the organisation.¹²⁵
- 167) That report suggested that CHRA was operating at capacity and not coping with the workload they had.¹²⁶
- 168) The Crown filed a Public Housing Report dated April 2020.¹²⁷
- 169) This report was issued when there were 15 Māori CHPs of 53 CHPs in total, but confirmed that Māori housing providers in April last year were providing just 3.53% of the Housing stock and 3.65% of the IRRS Tenancies.¹²⁸
- 170) This shows the disparity the extent to which these housing issues impact Māori and the extent to which that assistance sits in Māori organisational control.

¹²¹ Wai 2750, #4.1.7, 79.

¹²² Wai 2705, #D1(f), Post Hearing filings from Te Tūāpapa Kura Kainga. 7.

¹²³ Wai 2750, #4.1.7, 198.

¹²⁴ Wai 2750, Appendix A- Clarification of Answer from Fiona Fitzgerald, CHRA Manager, filed by Crown Memorandum dated 13 August 2021.

¹²⁵ Wai 2750, #4.1.7, 82, the report can be found at #3.2.98(c) 22-52.

¹²⁶ Wai 2750, #4.1.7, 83.

¹²⁷ Wai 2750, #3.1.224(a), Appendix A, *Public Housing Snapshot*, dated April 2020.

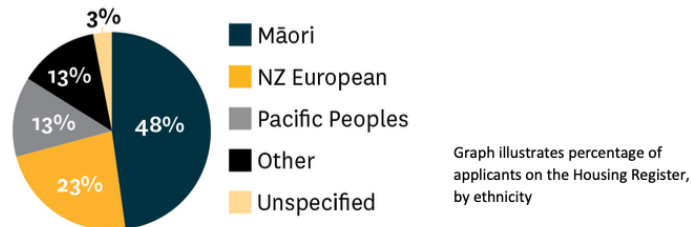
¹²⁸ Wai 2750, #3.1.224(a), Appendix A, *Public Housing Snapshot*, dated April 2020, 4.

171) Just a few pages down the disparity is presented plainly:¹²⁹

Whānau Māori waiting on the Housing Register

As at December 2019, 48% of applicants on the Housing Register identified as Māori.

Applicants on the Housing Register, by ethnicity



Transfer Register

The Transfer Register is prioritised by need and consists of applicants who are already in public housing but have requested and are eligible for a transfer to another public housing property.

Whānau Māori waiting on the Transfer Register

As at December 2019, 44% of applicants on the Transfer Register identified as Māori.

Applicants on the Transfer Register, by ethnicity



172) The statistics on the use of emergency housing special needs grants also demonstrates the disparity;¹³⁰

Emergency Housing Special Needs Grant

The purpose of the Emergency Housing Special Needs Grant (EH SNG) is to help individuals and families with the cost of staying in short-term accommodation (usually a motel) if they are temporarily unable to access a contracted transitional housing place or private rental. The EH SNG pays for short-term accommodation for up to seven days at a time.

Emergency Housing Special Needs Grant for whānau Māori

Between September 2016 and January 2020, one or more EH SNGs were received by 23,403 Māori households. Māori households represented 55% of households receiving EH SNGs.

A client can have more than one grant. The number of EH SNGs received by Māori households during this time period was 122,993. This is an average of just over five grants per Māori household.

Emergency Housing Special Needs Grants

	Māori households	Non-Māori households
Number of households receiving Emergency Housing Grants	23,403	18,817
Number of grants approved	122,993	85,117

¹²⁹ Wai 2750, #3.1.224(a), Appendix A, Public Housing Snapshot, dated April 2020, 9.

¹³⁰ Wai 2750, #3.1.224(a), Appendix A, Public Housing Snapshot, dated April 2020, 7.

Kahui Tu Kaha – Barbara Browne and Tipene Lemon

- 173) Ms Browne and Mr Lemon provided an account of the experience of Ngāti Whatua through the organisation Kahui Tu Kaha which provides social housing and mental health services.¹³¹
- 174) The evidence confirmed that Kahui Tu Kaha was a registered Community Housing Provider, detailed the scope of the assistance that they provide, for the benefit of Ngāti Whatua but also for many other homeless people in Tāmaki Makaurau.¹³² For three years now the organisation has been providing the full range of supported housing to address homelessness and housing challenges in their community.¹³³
- 175) These witnesses highlighted issues with emergency housing and the unsuitability of the current solutions being provided by the government.
- 176) Their evidence worked through the different government agencies they have had to engage with, the lack of solutions they have found there amongst those agencies for themselves and the work they are doing. The evidence showed a prominent theme of a lack of responsiveness from HUD, MSD and Kāinga Ora to provide more funding or resource to address the need which Kahui Tu Kaha were seeing in their community.

Vision West – Fred Astle

- 177) The evidence of Mr Astle detailed an academic approach to how homelessness/Kāinga Kore can be conceptualised in te ao Māori.
- 178) Mr Astle provided a detailed account of the concepts that are vital to an understanding of He Kāinga Kore, and which are similarly vital to structuring the support and policies which properly and holistically address those issues to bring Māori out of homelessness.

Third Cause of Action: Consultation¹³⁴

- 179) Te Matapihi was formed in response to a call to action, an organised grassroots initiative to address the host of issues relating to housing for Māori.

¹³¹ Wai 2750, #B55.

¹³² Wai 2750, #B55, 1

¹³³ Wai 2750, #1.4.5, 239.

¹³⁴ Wai 2716, *Statement of Claim*, Third Cause of Action [54], Wai 2750, #1.4.1, *Tribunal Statement of Issues*, Issue 4.1.

- 180) As an organisation they are constituted from those that are active within their own Māori communities and organisations in the area of housing that want to be a part of Te Matapihi. They are both Māori facing and Crown facing.
- 181) That advocacy also takes the shape of assisting Māori organisations and communities in their housing projects, to navigate the complexities of government policy and structures.
- 182) They also sit down with officials and Ministers to advise and provide their input on what changes need to be made to policy, to funding, to the systems that continue to result in a systemic failure to address the needs of Māori.
- 183) The lack of sufficient consultation was apparent to Te Matapihi in 201 and this is reflected in the claim filed.
- 184) Since that claim was filed and this Inquiry has progressed, there has been some notable change, one of those changes is the implementation of MAIHI, which Crown witnesses have detailed at length, but which Te Matapihi also addressed.¹³⁵
- 185) It is apparent that MAIHI was built and is designed to operate with significant Te Matapihi input.
- 186) It is apparent that the Te Matapihi has been, and continues to make itself available, for consultation on changes and improvements to policy.
- 187) However, Te Matapihi does not hold itself out to be a mandated organisation to speak on behalf of all Māori.
- 188) The evidence from Wayne Knox confirms that despite that relationship with the Crown, and the status that Te Matapihi have as an organisation in the consultation they certainly do not always see their suggestions being adopted, be it in the form of policies, funding or results.¹³⁶
- 189) Te Matapihi see its role as being a conduit and facilitator of the views of a significant number of Māori organisations and groups, but it is plainly apparent from a significant number of claimants that there is

¹³⁵ Wai 2750, #B54(b) 84-111 *The Māori Housing Crisis*, an independent record of the first MAIHI wananga released January 2021, referred to in Wayne Knox's evidence as Appendix C.

¹³⁶ Wai 2750, #B54(a) See the 2021 briefing to incoming Ministers, and the 2017 briefing to incoming Ministers, Wai 2750, #B54(e).

dissatisfaction with the consultation conducted by the Crown, and that improvements need to be made.

- 190) At its core the role of Te Matapihi is advocacy, providing to the Crown the critique, analysis and suggestions that they consider are necessary to improve housing for Māori. However, Te Matapihi has never sought, or held itself out to hold, a mandate to represent or speak for all Māori. There is no appetite within Te Matapihi for that to become its role or for that to be a part of its role.
- 191) The evidence of the Crown needs to be closely assessed where the documentation or references might suggest that the Crown has consulted with Māori by engaging with Te Matapihi, or that the involvement and contribution of Te Matapihi amounts to a kind of consultation.
- 192) The view of Te Matapihi having engaged in the evidence from claimants and the Crown is that there does need to be improvements to how the Crown engage with Māori, seek their views and take on board their input. Te Matapihi are already a part of that, but their involvement and input is not sufficient to be Treaty compliant, the tino rangatiratanga whānau, hapū and iwi entitles them to engage in a partnership with the Crown and that requires the Crown to seek and take on board all those views provided.

The Crown's Position

- 193) The Crown set out its position earlier this year in opening submissions.¹³⁷ While there are many statements of various forms of acknowledgement and recognition, there are some prominent details which deserve to be addressed at this stage of the proceedings.
- 194) It is notable that the Crown points to a Tribunal statement that:¹³⁸
- The Tribunal has said that “economic and social outcomes are by no means wholly within the control of the State”.⁴ The Crown agrees.
- 195) There are some acknowledgements also:

¹³⁷ Wai 2750, #3.3.32

¹³⁸ Wai 2750, #3.3.32, 4 [9.5], quoting the Hauraki Report, 2006, vol 111 [26.5].

The Crown accepts that the Treaty of Waitangi requires the Crown, when it provides housing services, to act fairly, reasonably, honourably and in good faith towards Māori.

The Crown also accepts that the Tribunal has developed a Treaty principle of equity that is relevant to evaluating claims concerning housing, including the stage one claims concerning homelessness.⁵

- 196) These two sentences show a subtle but important distinction between what the Crown accepts the Treaty of Waitangi requires from the Crown, and the Crown accepting that the Tribunal has developed a Treaty principle of equity (but does not accept that it has that duty).
- 197) The latter statement refers to the Napier Hospital report from 2001 and is quoted in the footnotes;¹³⁹

“The principle of equity.

We consider that it is the conferring of citizenship rights upon Maori that supplies the underlying principle of equity. These rights were, like all others, placed under Crown protection. The principle applies to Maori as citizens rather than as members of groups exercising rangatiratanga.

Applying the principle of equity to health standards and outcomes for Maori means, in our view:

that Maori are assured of the right to *equal standards of healthcare*;
that beneficial health outcomes *cannot be assured for individual Maori*;
that a *general equality of health outcomes* for Maori as a whole is one of the expected benefits of the citizenship granted by the Treaty; and
that health services can deliver *only part of the package* leading to equal health outcomes.”

(Emphasis in original.)

The Tribunal repeated the incident of citizenship analysis in its more recent report on Whanganui land claims (*He Whiritanoka The Whanganui Land Report*, vol 3, (Wai 903, 2015) at [21.1]).

- 198) It becomes apparent that the Crown favours Tribunal reports that have not been released in the last 5 or 10 years, which have demonstrated further progress of the Tribunal’s views on equity and emphasised that where there is systemic failure to address Māori fundamental needs, the Crown must do more.
- 199) The Crown goes on to submit that it “has been since at least 2014, taking steps to address the disparities that exist for Māori in relation to housing, in particular homelessness” and that this “includes He Whare Āhuru He Oranga Tangata – The Māori Housing Strategy 2014.”¹⁴⁰
- 200) The Crown does go on to concede that while He Whare Āhuru “was an important step in addressing disparities, it was not implemented with sufficient prioritisation, pace or resource to address the disparities that

¹³⁹ Wai 2750, #3.3.32, 5, Quoting the Napier Hospital Report, 2001, at xxvii.

¹⁴⁰ Wai 2750, #3.3.32, [9.12].

existed for Māori in housing, despite the best efforts of Te Puni Kokiri, the Māori Housing Network.”¹⁴¹

- 201) The Crown then notes the findings of the Tribunal in the Oranga Tamariki Inquiry, specifically those comments about the kāinga and that the guarantee “is nothing less than a guarantee of the right to continue to organise and live as Māori”¹⁴² observing that “this analysis will be relevant to this particular inquiry” and that the “Crown will develop its thinking and position on this as this inquiry progresses.”¹⁴³
- 202) We also note the Crown’s willingness to quote Mr Knox in their submissions, where he said, “Māori do not want handouts and are prepared to invest time, energy and resources in advancing Māori-led housing solutions.”¹⁴⁴
- 203) Unfortunately, that isolated statement does not reflect that witness’s views on the Crown’s duty to Māori, namely, to commit to ensuring Māori enjoy the fundamental benefits of Te Tiriti o Waitangi, the enjoyment of their whenua and kāinga, and all the benefits of citizenship of British Subjects, a category of citizen which in this country have never been in the holders of the worst statistics in any socio-economic category.
- 204) The Crown doing what it committed to is not a hand-out, the restoration of the quality of Māori housing in their own communities and in all of Aotearoa is not a hand-out, it would be a reflection of the honour of the Crown, a commitment to the partnership, for the Crown to be actively working to improve the lot of all Māori and Māori communities affected by housing deprivation.

Crown Evidence

- 205) The generic claimant closing submissions have considered the Crown’s evidence and these submissions adopt the analysis of that Crown evidence and the submissions made.
- 206) Specifically we adopt the submissions in relation to;
- a. MAIHI;¹⁴⁵

¹⁴¹ Wai 2750, #3.3.32, [9.13.1].

¹⁴² Waitangi Tribunal, *He Pāharakeke, He Rito Whakakīkinga Whāruarua* (Wai 2915, 2021), 12.

¹⁴³ Wai 2750, #3.3.32, [9.14].

¹⁴⁴ Wai 2750, #3.3.32, [17], quoting Wayne Knox Wai 2750 #B54, [14].

¹⁴⁵ Wai 2750, #3.3.35, *Generic Closing Submissions on Homelessness*, 122-134.

- b. the HAP;¹⁴⁶
- c. Te Pae Tata/Te Pae Tawhiti;¹⁴⁷
- d. Kaupapa Māori Service Delivery Models;¹⁴⁸
- e. Social Housing Supply;¹⁴⁹
- f. Transitional and Emergency Housing;¹⁵⁰
- g. Māori Community Housing Providers;¹⁵¹
- h. Māori Service Providers;¹⁵²
- i. Social Allocation System and Public Housing Register.¹⁵³

Findings Sought

- 207) Te Matapihi adopt the findings sought set out in the generic claimant closing submissions.¹⁵⁴
- 208) Te Matapihi seek findings that the three aspects of this claim relating to homelessness are well-founded, namely that the Crown has;
- a. failed to ensure suitable Housing is available for Māori;
 - b. failed to consult with Māori on issues relating to housing in a matter befitting the Crown as Treaty partner;
 - c. failed to deliver He Whare Āhuru - He Oranga Tangata, failed to update or replace that policy, in effect neglecting it and that Māori have suffered considerable prejudice as a result.
- 209) Te Matapihi also seek findings that as a result of the acts and omissions of the Crown;
- a. the Crown's policies and services designed to address housing issues and homelessness systemically fail Māori;

¹⁴⁶ Wai 2750, #3.3.35, *Generic Closing Submissions on Homelessness*, 135-157.

¹⁴⁷ Wai 2750, #3.3.35, *Generic Closing Submissions on Homelessness*, 158-182.

¹⁴⁸ Wai 2750, #3.3.35, *Generic Closing Submissions on Homelessness*, 183-190.

¹⁴⁹ Wai 2750, #3.3.35, *Generic Closing Submissions on Homelessness*, 191-212.

¹⁵⁰ Wai 2750, #3.3.35, *Generic Closing Submissions on Homelessness*, 213-229.

¹⁵¹ Wai 2750, #3.3.35, *Generic Closing Submissions on Homelessness*, 230-235.

¹⁵² Wai 2750, #3.3.35, *Generic Closing Submissions on Homelessness*, 236-242.

¹⁵³ Wai 2750, #3.3.35, *Generic Closing Submissions on Homelessness*, 243-249.

¹⁵⁴ Wai 2750, #3.3.35, *Generic Closing Submissions on Homelessness*, 250-251.

- b. Māori continue to be most affected by severe housing deprivation, homelessness and lack basic housing amenities; and
- c. Māori organisations are under-represented in delivering housing assistance.

Recommendations

210) The Te Matapihi Statement of Claim sought the following forms of recommendations that relate to these issues in Stage One;¹⁵⁵

- a. Confirmation of an ongoing commitment to He Whare Āhuru He Oranga Tangata – the Māori Housing Strategy, as begun in 2014, with commitments to 2018-2020 priority actions and the long-term commitment to the strategy beyond 2025;
- b. The appointment of a Minister for Māori Housing or a Māori Associate Minister for Housing and Urban Development;
- c. Increasing the appropriations for Māori Housing administered by the Māori Housing Network – Te Puni Kokiri;
- d. Regarding He Whare Āhuru;
 - i. The leadership of the strategy should be moved to the ministerial level
 - ii. The leadership of the strategy should be assigned to an agency; and
 - iii. An implementation plan should be developed, which includes monitoring and evaluation.
- e. Establishment of a Māori Housing Statutory Unit to provide better structure for current and future investments for Māori Housing outcomes, which will assist with administering the funds in a coordinated manner and lead strategic implementation of He Whare Āhuru He Oranga Tangata – the Māori Housing Strategy.

211) Te Matapihi now seek the following recommendations:

- a. That the Crown improve the legislation and policies relating to

¹⁵⁵ Wāi 2716, *Statement of Claim*, 9-11. As if the point needs to be made again, but the change in policy and structure between 2018, when the claim was filed and now, renders many of these redundant, but not because they have been satisfied or the Crown has met its duties, but rather because these policies have been set aside for a fresh set. The exception being (b) there is now an Associate Māori Housing Minister.

Community Housing Providers to include so that Māori organisations can more easily acquire that status and deliver community housing to their communities;

- b. That the Kāinga Ora legislation be amended to better reflect the Crown's obligations to Māori in relation to housing;
- c. That the funding for Community Housing be re-assessed to better allocate an increased and more suitable amount of funding to Māori CHPs, ;
- d. That the Crown must explore an improved system for consultation with Māori on housing issues;
- e. That the Crown commit to regularly reviewing and evaluating MAIHI with Māori, but also commit to modifying and improving those systems needed as for better engagement by Māori and Māori organisations;
- f. That the Crown commit to regularly reviewing and evaluating MAIHI Ka Ora with Māori, to assess the policies and funding, and improving and modifying those according to input and consultation with Māori; and
- g. Any other recommendations the Tribunal sees fit to make.

Dated at Māngere this Wednesday the 13th of October 2021



Cameron Hockly
Counsel for Te Matapihi He Tirohanga Mō Te Iwi Trust