

Inquiry into the operation of the COVID-19 Public Health Response Act 2020



Te Kaunihera Māori o Aotearoa
New Zealand Māori Council

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Submission to the Finance and Expenditure Committee

The New Zealand Maori Council and the National Maori Authority

My name is Matthew Tukaki and I am both the Chairman of the National Maori Authority and Executive Director of the New Zealand Maori Council. The National Maori Authority acts under the auspices of the five Registered Maori Organisations and the New Zealand Maori Council acts under the Maori Community Development Act (1962). The latter contains Section 18:

18 General functions of the New Zealand Maori Council

- (1) The general functions of the New Zealand Maori Council, in respect of all Maoris, shall be—
 - (a) to consider and discuss such matters as appear relevant to the social and economic advancement of the Maori race:
 - (b) to consider and, as far as possible, give effect to any measures that will conserve and promote harmonious and friendly relations between members of the Maori race and other members of the community:
 - (c) to promote, encourage, and assist Maoris—
 - (i) to conserve, improve, advance and maintain their physical, economic, industrial, educational, social, moral, and spiritual well-being;
 - (ii) to assume and maintain self-reliance, thrift, pride of race, and such conduct as will be conducive to their general health and economic well-being;
 - (iii) to accept, enjoy, and maintain the full rights, privileges, and responsibilities of New Zealand citizenship;
 - (iv) to apply and maintain the maximum possible efficiency and responsibility in their local self-government and undertakings; and
 - (v) to preserve, revive and maintain the teaching of Maori arts, crafts, language, genealogy, and history in order to perpetuate Maori culture:
 - (d) to collaborate with and assist State departments and other organisations and agencies in—
 - (i) the placement of Maoris in industry and other forms of employment;
 - (ii) the education, vocational guidance, and training of Maoris;
 - (iii) the provision of housing and the improvement of the living conditions of Maoris;
 - (iv) the promotion of health and sanitation amongst the Maori people;
 - (v) the fostering of respect for the law and law-observance amongst the Maori people;
 - (vi) the prevention of excessive drinking and other undesirable forms of conduct amongst the Maori people; and
 - (vii) the assistance of Maoris in the solution of difficulties or personal problems.

The New Zealand Maori Council is made up of sixteen Districts that are home to hundreds of Maori Committees and just over 1,000 people are elected into our structures (with elections held every three years). The Council was heavily involved and engaged during the entire period of the lockdown through health, economic and well-being campaigns, support to our Districts and the establishment of a significant response that included assistance to whanau and communities when it came to a range of social and health related issues. More than 900 people were supported through our intervention when it came to the threats of evictions, threats made for the collection of debts during the lockdown, employers and wage subsidies, referrals to mental health and support services and direct financial support to Districts. On April 30th, during level four and moving into level three, the Council bought forward a survey normally run during November called “what keeps Maori awake at night”. The survey was designed to test the attitudes to Maori as the lockdown began to bite. The results were staggering and concerning with only small windows of positivity. 92% of respondents were worried about their jobs if they had them or concerned, they would not be able to find employment – this was a significant issue in regional areas. 81% of whanau were worried about their housing situation with a high number also concerned about becoming homeless while 89% indicated they just could not keep up with the cost of living and many had sought food assistance. More people are heading down the path of mental health challenges and the risk of increased rates of suicide is growing.

1. **Jobs and employment (92% of whanau agreed that unemployment and retaining their current job was a major concern to them)** – by far our highest result in this survey showing that people are both worried about retaining their existing job (many Maori are part of the low skills and low wage side of the economy) and are equally as fearful of gaining further employment if they do. In the regions the figure was amplified to just over 60%. This is because the Stats NZ data shows that unemployment is higher in the regions and long-term unemployment is likely to be more sustained. Of the people who responded to the survey just over 40% indicated they had already lost their employment or were living off the wage subsidy.
2. **Access to housing (81% of whanau were concerned that they may lose their home)** – either as a renter unable to afford payments, moving deeper into debt, or if they were a homeowner struggling to keep up with mortgage payments. This was prevalent in the middle age group (34-55). Key to this response was the fear of loss of income or access to employment. A good many were concerned about becoming homeless.
3. **Ability to keep up with the cost of living (89% of respondents said they were fearful they could not)** – While many had already broached their concern about keeping up with rental and mortgage costs many highlighted monthly utility bills, many indicated a decision about cutting off things such as the internet or not having enough for credit on mobile phones. A good number indicated that they had delayed paying credit card bills and often were now in overdraft or had “maxed out” what little savings they had. A good number also indicated that they had accepted they would need to accept “kai parcels” or “food parcels” from local community groups – “food had become a luxury item” according to some
4. **Mental Health and Suicide (62% of respondents indicated concern of their or a whanau members mental wellbeing and 41% indicated suicide ideation)** – or had thought about suicide). Many respondents had converted financial stress and deep concern of the future into what appear to be early onset forms of depression and anxiety. Some respondents indicated that they did not know where to turn for help and support as the lines being promoted were busy. Others indicated they would be referred to health line which was also experiencing delays. Those experiencing suicide ideation expressed a deep concern that there was no way back.
5. **The Health System (58%) of those surveyed indicated a deep mistrust of the current health system.** Many were also confused about where to go for help with “too many players” in a

single community. There was confusion about testing and whether or not they should be tested, they were concerned about showing up to the hospital for a regular check-up (more relevant in the higher age group bracket of 55+) and others still were confused about the message about who to call. The opposite of that was the high degree of trust Maori had in sourcing information from a local Hauora or Iwi service (78%) and were confident in the messaging coming from Maori providers. Overall, there was a significant mistrust of District Health Boards.

A series of additional questions were also asked about the Maori response such as Rahui and road closures to “protect communities”. A very high 94% of those who responded to the supplementary questions agreed with the concept of “Rahui” but many were equally concerned (76%) that non-Maori did not understand the concept or the reason why it was important (constant referencing to the impacts on Maori of the Spanish Flu and also the higher prevalence of high risk disease amongst the Maori population compared to non-Maori such as respiratory illnesses). At the same time many people were also struggling with death and how to respond as loved ones passed away and Tangi was unable to be held. Irrespective the Maori response to COVID19 was immense, well organised and planned. Unfortunately the behaviour of some politicians within the National Opposition played “dirty” politics with the community lockdowns and Rahui that had emerged across the country – so as our people went about their work with a single focus on the safety, protection and health of Maori and non-Maori alike, the behaviour set a race related conversation in play that served no more than to drum up discontent. Those politicians should be ashamed of themselves.

In addition to this the failure of the Chairperson of the Epidemic Response Committee to call Maori organisations and experts before the hearings was a disgrace. In order to ensure those voices were heard the National Maori Authority and the New Zealand Maori Council established the “Maori Hearings” which were held online over three weeks and covering everything from the Maori health response, the economic challenges ahead, including employment, the impact to small business and the Maori economy, domestic and whanau violence as well as issues related to mental health and suicide. The hearings reached more than 2 million people with just over a million engaged.

Some of the key findings around improving the response included:

1. Tangi hanga and a better way of dealing with the evolution of tikanga – this included a process of engagement with the Ministry of Health ahead of a crisis to reform pandemic response plans. In addition, was a developed plan within Maoridom to be able to better respond in a consistent approach nationwide.
2. Many Maori organisations were contracted to provide support and services but some cash-flowed the mahi from other contracts because the funds still had not arrived.
3. Maori social, welfare and health services indicated they were heavily underfunded before the crisis and many questions have been asked about the contracting and procurement regime within the District Health Board system – for example, many felt that contracts are let for a service whereby only 80% (or less) of the work being asked is funded. This creates significant liquidity and cash flow issues when it comes to delivery and while many tried to front foot the crisis and still respond the challenge will be seen in the post COVID environment where these same organisations have just about reach their financial capacity

Then, on the 11th of May I received an email from the Attorney General, David Parker, seeking input and comments in relation to a proposed Bill, COVID 19 Public Health Response Bill. At the same time I received a call from the Prime Ministers Office to also encourage a response. After reading the Bill

in detail a decision was made to respond in two parts. The first response was focussed on the inclusion of the word “Marae”. My response to the Attorney General was:

“One amendment I would suggest is the removal of the word “Marae”, Page 7, Clause 20 of the explanatory note. There is no reason why Marae should be inserted in deference to a non-Maori gathering place such as a hotel conference centre or a house birthday party – it could be seen as unfairly targeting Maori and the places where we gather. It also sets Maori against non-Maori in legislation intended for all. It also might infer that Maori are less trustworthy. I just don’t think the word itself or its use is necessary”.

In subsequent correspondence I also sought the following additional assurances:

The assurances I have sought and been granted include the following:

1. The Bill of Rights and its conventions stand
2. That the Bill and any amendments will be open to legal challenge (a long conversation was had about those provisions)
3. That the Bill will have Parliamentary oversight – but also my belief that certain provisions should be made for hearings not just before the Health Select Committee but also the Maori Affairs Select Committee
4. That any offences committed by a young person under these provisions should remain in the jurisdiction of the youth court / and therefore the Bill makes that clear
5. That the Bill will be fairly enforced no matter ethnic background

Over the next 24 hours conversations were had with a range of stakeholders from Maori MP’s, Police and legal experts. On Wednesday morning the Maori Crown Relations Minister entered party and stated that the word “Marae” had been removed but, by that stage, my attention has turned to enforcement and the growing discontent within Maoridom about how things may play out while the deep concern about being targeted was growing at pace. Why is all of this important? Because it provides the full context of the New Zealand Maori Councils and the National Maori Authorities engagement work in respect of COVID19 leading into the Bill being introduced into the Parliament on the 12th and 13th of May, our involvement and our subsequent deliberations.

Our core response to the Bill in its current form:

Firstly, the legislation did not need to be introduced at the pace at was and it should not have been done so without going through the proper consultation and review process. It disturbs me greatly that given New Zealand does not have a second chamber (like the Australian Senate which acts as a house of review) that the current review process through select committees and so on was set aside. There is no reason why this important function of a democracy should have been ignored particularly when the Bill contained controversial elements such as the ability to enter dwellings with no warrant and whereby the Human Rights Commissioner also had significant concerns. Maori more so because of the inherent mistrust of enforcement powers that hark back to the Tuhoe raids and other key events throughout our history. The primary given around the Bill was the move to level 2. By that stage the nation was showing good progress to having the virus under control so the urgency around level 2 to offer additional protective measures was unnecessary. Notwithstanding the drafting of the Bill itself left a lot to be desired. What should have happened is a complete review of all interloping legislation that appeared to be “not fit for purpose” in dealing with current events and a global pandemic. Surely it would have been wiser to review Health legislation and the Policing Act (to name a few) as opposed to bringing into being a new piece of legislation that

appeared disjointed. On that front I have serious questions for the Parliamentary drafting office and Crown Law on these matters.

I want to turn my attention to the Treaty of Waitangi on these matters and refer to Cabinet Office Circular CO (19) where it states:

“The law may sometimes accord a special recognition to Māori rights and interests such as those covered by Article 2 of the Treaty. And in many other cases the law and its processes should be determined by the general recognition in Article 3 of the Treaty that Māori belong, as citizens, to the whole community. In some situations, autonomous Māori institutions have a role within the wider constitutional and political system. In other circumstances, the model provided by the Treaty of Waitangi of two parties negotiating and agreeing with one another is appropriate.”

As I have mentioned earlier I have serious questions for both the Parliamentary drafting office and Crown Law specifically why was this guidance seemingly deferred in the rush to see a Bill come before the house and how was it that they did not understand the use of the word ‘Marae’ would openly target Maori as a group? Thereby ignoring the guidance completely. Certainly this was not present in the explanatory note and we are still yet to understand the meaning of the statement “Maori need to be careful what they wish for...” by the Maori Crown Relations Minister on Wednesday the 13th of May (see Hansard).

The second important issue that needs to be raised is at no time did it appear there was an enforcement framework in place nor has the issue of “Marae” been completely addressed. In the days post the Bill being introduced there appeared to be confusion amongst senior Police and certainly the broader community. On that front I suggested that the New Zealand Maori Wardens might be utilised with special provisions under the Maori Community Development Act (1962) Section 30 and 33:

30 Prevention of riotous behaviour

- (1) Any Maori who—
 - (a) disturbs any congregation assembled for public worship, or any public meeting, or any meeting for any lecture, concert, or entertainment, or any audience at any theatre, whether or not a charge for admission has been made, or interferes with the conduct of any religious service in any church, chapel, burial ground, or other public building or place; or
 - (b) in or in view of any public place as defined by section 40 of the Police Offences Act 1927, or within the hearing of any person therein, behaves in a riotous, offensive, threatening, insulting, or disorderly manner, or uses any threatening, abusive or insulting words, or strikes or fights with any other person— commits an offence against this Act.

33 Disorderly behaviour at Maori gatherings

- (1) Any person, whether a Maori or not, who is under the influence of intoxicating liquor in any Maori meeting house or church or other building or meeting place where Maoris are assembled and who refuses to leave the same when requested so to do commits an offence against this Act.

(2) Every person, whether a Maori or not, who having the control or management of any dance, meeting, tangi, hui, or other gathering of Maoris being held in any meeting place

supplies intoxicating liquor to any person within the bounds of the meeting place or permits any such liquor to be taken into or consumed within the bounds of the meeting place, commits an offence against this Act.

(3) Every person, whether a Maori or not, who, while at a dance, meeting, tangi, hui, or other gathering of Maoris is being held in a meeting place, drinks any intoxicating liquor within the bounds of the meeting place, or has any such liquor in his possession or control within the bounds of the meeting place or in the vicinity of the meeting place or supplies intoxicating liquor to any person in the meeting place commits an offence against this Act.

(4) For the purposes of subsection (2) intoxicating liquor shall be deemed to be in the vicinity of a meeting place where a gathering of Maoris is being held if it is shown that the liquor was in the possession or control of any person attending or proceeding to attend the gathering, or was consumed or intended for consumption by any person so attending.

(5) Any constable or Maori Warden who has reason to suspect that there is any breach by any person of the provisions of this section in or in the vicinity of any meeting place where a gathering of Maoris is taking place may without warrant enter the meeting place or any place in the vicinity thereof, and examine the same and search for intoxicating liquor therein and may seize and remove any such liquor found therein and the vessels containing the liquor. Any intoxicating liquor so seized in respect of which any person is convicted of an offence under this section shall, together with the vessels containing the liquor, be forfeited to the Crown.

The presence of the Maori Community Development and Sections 18, 30 and 33 are a clear indication that those drafting the Bill did not clearly understand the presence of existing and interloping legislation. In fact, it is an indictment that the Bill was rushed with disregard to the existence of this Act and the presence of existing powers that may have been utilised. This, I believe, also put the New Zealand Police at a disadvantage in understanding their own enforcement powers.

What should have happened is Maori, Iwi and Hapu and the New Zealand Police working alongside each other like the community lockdowns and Rahui that were already in place. This again required no new legislation instead provision should have been made to review or amend current Acts. I would also strongly argue that the New Zealand Maori Council may have used its Section 18 powers to intervene (and still may).

Additional recommendations will be discussed at our Hearing before the Committee.

Matthew Tukaki
Chair of the National Maori Authority
Executive Director of the New Zealand Maori Council

June 5th, 2020