The Simpson-led health sector review: a failure to uphold te Tiriti o Waitangi

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ABSTRACT

The Health and Disability System Review (the ‘Simpson Review’) was an opportunity for health sector transformation, particularly in light of the recent damning WAI 2575 Waitangi Tribunal report released during the review process. There appears to have been a concerted effort to engage with the sector, an impressive Māori Expert Advisory Group and an extensive body of available scholarship documenting where improvements could be made.

In this viewpoint, the authors, tangata whenua (Indigenous people of the land) and tangata Tiriti (people of te Tiriti) and health scholars and leaders undertook a high-level review of the Simpson Review report and analysed it against key elements of te Tiriti o Waitangi.

The Simpson Review was an opportunity to share power, commit to Māori health and embed structural mechanisms, such as the proposed Māori health authority, to uphold te Tiriti o Waitangi. It was also an opportunity to recommit to health equity and eliminate institutional racism. We conclude that the Simpson Review did not take up these opportunities, but instead perpetuated further breaches of te Tiriti.

Addressing the United Nations Committee on the Elimination of All Forms of Racial Discrimination in 2017, the New Zealand Government argued that our health service justifiably ranks highly in international comparisons of both health and quality of life outcomes. In stark contrast, the recent WAI 2575 Waitangi Tribunal report raised significant concerns about the longstanding systemic failure of the health system to address population-level health inequities between Māori and non-Māori.

Acknowledging many of these longstanding problems, the new Government initiated a wide-ranging review of health and disability services led by Heather Simpson, the Health and Disability System Review (the ‘Simpson Review’). The Simpson Review was tasked with improving accessibility of the health system and health outcomes with a focus on fairness, equity and effectiveness.

The review team consisted of a seven-person expert panel supported by a secretariat of Crown officials and a Māori Expert Advisory Group (MEAG). The consultation/engagement process included diverse stakeholders, wānanga/workshops and an open online submission process.

The final Simpson Review report noted that, by world standards, we have a very good publicly funded health and disability system. But the review conceded that the health and disability system is under stress and has a history of differential health outcomes across our diverse populations. Four substantive areas for change were proposed:

- Ensuring consumers, whānau and communities are at the heart of the system.
- Promoting culture change and more focussed leadership.
- Developing more effective te Tiriti-based partnerships within health and disability and creating a system that works more effectively for Māori.
- Ensuring the system is integrated around a longer-term focus.
In relation to Māori health, the Simpson Review report acknowledged the failure of the health sector to uphold te Tiriti commitments, as demonstrated by ongoing ethnic health inequities. The review supported the WAI 2575 Waitangi Tribunal recommendation to update health legislation to ensure te Tiriti compliance. But the review panel rejected the idea of an independent, fully funded Māori health body with commissioning functions, although it committed to increased investment in Māori health. It argued for flexibility within the system to allow health providers/practitioners to address unmet needs in Māori communities, with the explicit aim of preventing illness.

Here we critique the Simpson Review's conclusions against elements of te Tiriti o Waitangi: the preamble kāwanatanga, tino rangatiratanga, ōritetanga and wairuatanga.

**Te Tiriti o Waitangi**

The Simpson Review refers to te Tiriti o Waitangi (the Māori text), the Treaty of Waitangi (the English version) and treaty principles. The use of this changeable terminology is confusing misinformation. Under the international legal doctrine of contra proferentem, te Tiriti o Waitangi (the Māori text) is the authoritative text of te Tiriti. Reference to te Tiriti, which reaffirms Māori sovereignty, alongside the Treaty, which is widely viewed as Māori ceding sovereignty, is problematic. These terms are not interchangeable and have different meanings.

In addition, the term ‘principles of te Tiriti’, as articulated by Crown agencies and the judiciary, remain contentious. Māori scholars such as Durie have long argued that Māori find the Māori text of te Tiriti more meaningful than either the English text or the much abbreviated principles that limit Crown accountability. There are 19 references to treaty principles across the final report.

**Preamble**

The preamble of te Tiriti sets out the terms of engagement between Māori and the Crown. Te Tiriti compliance involves the Crown being in respectful relationship with Māori. It requires substantive engagement with Māori as decision-makers and te Tiriti partners across senior management and governance levels of the health sector. It demands the commitment to recognise tino rangatiratanga and the equity responsibilities to protect and promote Māori health. It also involves the normalisation of wairuatanga and te reo me ōna tikanga as central elements of Māori health. These te Tiriti responsibilities fall on the entire health sector.

Māori rangatira (chiefs) negotiated te Tiriti o Waitangi with the Crown to advance their sovereign strategic aspirations. Since 1840, the Crown has consistently breached te Tiriti, as documented in a succession of Waitangi Tribunal reports. Fundamentally, efforts to uphold te Tiriti need to be grounded in respectful relationships between tangata whenua and the Crown.

During the review process, the MEAG was unanimous in their support of a fully resourced independent Māori health authority (MHA), as recommended by WAI 2575. The MEAG felt an MHA could be an expression of both tino rangatiratanga and mana motuhake, thereby addressing te Tiriti commitments. However, in her introduction to the review's report, the review chair stated:

*In the end there was no consensus on the extent to which the Māori Health Authority should control the funding and commissioning of services for Māori.*

Contrary to the advice of the MEAG, a minority of the review team recommended an MHA without funding and commissioning powers to shape policy, infrastructure and agency for Māori health gains. It is disrespectful to the Māori te Tiriti partner and also a further breach of tino rangatiratanga, to ask for advice from Māori experts and then ignore it.

**Kāwanatanga**

Kāwanatanga was granted to the British to govern non-Māori with the expectation that these duties would be honourably addressed. The existence of racism and inequitable practices within the administration of the health sector remains a clear breach of Article One. Racism as a determinant of health is acknowledged across
the document. The review team describes how submitters to the review process advise on the recommended approaches.

Instead, racism is positioned as something that can and should be addressed via cultural safety. This approach has been used unsuccessfully without any appreciable difference to racism, especially in outcomes, in the health sector for more than three decades. Within the Simpson Review report, addressing racism is embedded in the new Māori health plan. Anti-racism scholars such as Freire have long articulated that there are different roles for the descendants of the colonised and the coloniser in addressing racism and decolonisation. For honourable kāwanatanga to be achieved, it is necessary for Pākehā and Tāuiwi (inclusive term for non-Māori) to challenge other Pākehā and Tāuiwi about racism.

The MEAG and the four dissenting panel members recommended addressing racism at a systemic level, noting that a fully empowered Māori commissioning agency would be in a position to do this. In an interview following the release of the review's report, Mrs Simpson said that a “full, separate system all the way through” would undermine the cohesion of the health system. In our view, a health system that embraces te Tiriti o Waitangi partnerships should welcome a Māori health authority, recognising this would enhance rather than diminish other parts of the sector.

Durie emphasised that the health, wellbeing, education and social sectors are intertwined. The current fragmentation of the health system raises concern that Māori world views are not sufficiently represented, meaning it will not allow Māori to deliver the best possible outcomes for Māori. Instead of propping up the current system, Durie argues that a new health and disability system defined by the norms of te ao Māori is needed. Such a system would improve the health, education and socio-economic circumstances of Māori and would include commissioning arrangements rather than short-term contracts. Durie emphasises such a shift should be the responsibility of an independent Māori health and wellbeing authority.

Tino rangatiratanga

Tino rangatiratanga is about absolute authority. Matike Mai Aotearoa define it as “the right for Māori to make decisions for Māori”. Moana Jackson has described it as: ...

entrenched to the living to nurture and hand on to the generations yet to be. As a gift from the ancestors, it was both spiritually incomprehensible and legally impossible to even contemplate giving it away.

The Simpson Review report states that the MHA is to be established as an independent departmental agency with direct accountability to the Minister of Health and a range of responsibilities. The key recommendation of MEAG and the dissenting panelists were:

A comprehensive Indigenous commissioning framework should be developed, which uses every enabler and lever, at every level, to ensure the system successfully delivers improved health and wellbeing outcomes for whānau.

The MEAG and the dissenting panelists saw a fully resourced MHA as essential for upholding tino rangatiratanga as guaranteed by te Tiriti. The decision to dismiss this clear, unanimous recommendation of MEAG and some of the panel appears to be the defining moment of the Simpson-led review. The decision reached wilfully blocked Māori expressions of tino rangatiratanga.

The marginalisation of Māori voice and citizenship is a longstanding practice within the health sector by successive governments. The failure of the Simpson Review to accept Māori-led solutions, in this case a fully resourced, independent tino rangatiratanga body (the MHA), demonstrates a repudiation of te Tiriti, a lack of commitment to power-sharing and an imbedded reluctance to accord equitable resources to Māori. It also sits in sharp contrast to the consistently hopeful narratives from the senior leadership team within the Ministry of Health as they have attempted to reboot the health sector in relation to Māori health.

The MEAG and the dissenting panelists’ recommendations, which sought to enable tino rangatiratanga within the health system, had to be published as an ‘Alter-
native View’ within the review’s report, because they were strongly resisted by a minority of the full review panel. From this we surmise that the chair, whether supported or not by the other committee members, dismissed the idea that consensus could be possible with further debate. This is a highly significant decision since Māori lives, wellbeing and confidence in the Crown depend on the outcomes. A document of such importance and magnitude, particularly in the context of WAI 2575 and deep-seated health disparities, should enact the views of Māori experts and leverage their recommendations into progressive new policy. We understand that four of the seven panel members supported the notion of an MHA with a commissioning role and the Alternative View, meaning that the Simpson Review report is also anti-democratic.

Ōritetanga

Māori health has been positioned in the Simpson Review report as an item that must fall within a population health model, which is the very model that has proven to be so unsatisfactory for Māori health. A part of the report’s recommendations is that ethnicity data collection is strengthened in order to inform the development of policy to address inequities. The central position of such data in efforts to make health services accountable for their delivery and outcomes is not mentioned, but we argue that it is a vital part of any plan for equitable access, treatment and outcomes. If health inequities are to be eliminated in Aotearoa, we need unremitting accountability at all levels of the sector.

Wairuatanga

An unwritten fourth article of te Tiriti protects and guarantees diverse faiths and belief systems but this dimension is ignored in the review’s report.

The use of te reo throughout the document seems a hopeful initial sign that Māori values are woven through it. However, reading closely shows that Māori values are subsumed by conventional colonial approaches. The word ‘wairua’ is used only once, in a summary of interim work addressing governance, to note the need for a holistic perspective in health care. And yet wairuatanga is an imperative value for without it there is no care.

The term ‘tikanga’ could be viewed as a proxy term for ‘wairua’, as a practical application of Māori values that include wairuatanga. It appears mainly within the Māori health section of the review’s report and is used elsewhere only twice. ‘Tikanga’ is a key marker for authentic and ethical leadership, a guideline for expected behaviour, particularly that of leaders, so its effective absence suggests that once again the Crown is deciding Māori futures. By openly diminishing the value of both wairua and tikanga together in one document, the committee have effectively dismissed Māori voices.

If Māori are to be respected as sovereign te Tiriti partners, at a macro level this needs to be enabled through a te Tiriti-based constitution. At a meso level there needs to be structural mechanisms in place that recognise the extant political authority of tino rangatiratanga, and at a micro-relational level it means listening and responding constructively to Māori experts. For equity to be achieved, there needs to be greater emphasis on accountability at all levels of the health system.

The review’s report falls short of anything like the transformative approach required to eliminate health disparities and honour Crown responsibilities under te Tiriti. In our view, the Alternate View provides a framework that would enable a meaningful engagement with te Tiriti o Waitangi and ultimately generate Māori health equity. The Simpson Review breaches te Tiriti in key dimensions (especially kāwanatanga and tino rangatiratanga) and the findings lack courage, vision and, arguably, sufficient knowledge of mātauranga Māori, which has resulted in recommendations that are non-compliant with te Tiriti legislation. This Simpson Review is likely to perpetuate the institutional and interpersonal racism that currently diminishes the mana and effectiveness of the Aotearoa health system.
Competing interests:
Dr Came reports being co-chair of STIR: Stop Institutional Racism.

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