WAI 2575: HEALTH SERVICES AND OUTCOMES KAUPAPA INQUIRY

Eve Rongo
Oranganui Legal
30 August 2019

Waitangi Tribunal

- Treaty of Waitangi Act 1975
- Ongoing commission of inquiry to hear Māori grievances against the Crown concerning breaches of Treaty principles
- Facilitate historic claims dating from 1840 right through to today

The Health Services and Outcomes Kaupapa Inquiry

- Stage One: Priority themes that demonstrate system issues:
- Stage Two: Nationally significant system issues and themes that emerge:
    - mental health and suicide, Māori with lived experience of disabilities, alcohol and substance abuse (including tobacco)
- Stage three: Remaining themes of national significance, including eligible historical claims

Who are the parties?

- The Claimants:
  - Maori Primary Health Organisations and providers (Wai 1315)
  - National Hauora Coalition (Wai 2687)
- The Crown
  - Ministry of Health
  - District Health Boards (Crown agents)
  - Te Puni Kokiri – responsible for monitoring Crown agencies
- Interested parties (including Wai 2647 – Teresa Goza)

Treaty Principles

- Treaty principles particularly applicable to Stage One:
  - Partnership
  - Active protection
  - Equity
  - Options

Stage One Issues

- Focus on Treaty compliance of the legislation and policy framework of Primary Health Care, specifically:
  - Is the Public Health and Disability Act 2000 Treaty compliant?
  - Are the funding arrangements for the Primary Health Care system Treaty compliant?
  - Is the way health entities are held to account Treaty compliant?
  - Is Partnership for Maori in the Primary Health Care framework Treaty compliant?

Is the Public Health and Disability Act 2000 Treaty compliant?

- that the New Zealand Public Health and Disability Act 2000 and the primary health care framework fails to consistently state a commitment to achieving equity of health outcomes for Māori;
- that notwithstanding the fact that the Treaty clause in the Act reflected the politics of the time, section 4 does not go far enough in ensuring that the whole health sector complies with the Treaty principles;
- that those provisions outlined in part 3 do not give full or proper effect to the Treaty principles;
- that He Korowai Oranga and its articulation of 'partnership, participation and protection' does not adequately give effect to the Treaty principles; and
- that, both individually and when taken together, these omissions by the Crown constitute breaches of the Treaty principles of partnership, active protection and equity, and the duty of good governance.

Is the Public Health and Disability Act 2000 Treaty compliant?

- The arrangements providing for Māori representation on district health boards in particular do not afford Māori Treaty-consistent control of decision-making in relation to health care design and delivery.
- Similarly, the ways in which district health boards have variously interpreted their obligations under sections 22 and 23 do not work consistently to afford Māori Treaty-compliant control of decision-making in relation to health care design and delivery. In particular, the lack of specific provision for Māori relationship boards and the variable effectiveness and oversight powers of those boards are not Treaty-consistent.
- The removal of specific Treaty references from lower-level documents amounts to a concerning omission in the health sector's Treaty obligations.
- When taken together, these failures by the Crown constitute breaches of the Treaty duty of good faith and the principle of partnership.

Are the funding arrangements for the Primary Health Care system Treaty compliant?

- the Crown broadly allowed variability of establishment funding for primary health organisations, with no consistent recognition of the existing capital they may have had or the needs of the populations they would serve. This disadvantaged many Māori organisations seeking to become a Māori primary health organisation, and as a result, Māori patients with high needs who enrolled with these organisations. The failure to implement a system to allocate equitably establishment funding is a breach of the Treaty principles of partnership, options, active protection and equity.
- both the population-based funding formula for district health boards and the funding arrangements for the primary health care system have not worked to address Māori health needs;
- the funding arrangements for the primary health care system particularly disadvantage primary health organisations and providers that predominantly service high-needs populations, and particularly impact on Māori-led primary health organisations and providers in that category;

Are the funding arrangements for the Primary Health Care system Treaty compliant?

- the funding arrangements for the primary health care system do not adequately provide for kaupapa Māori models of care ; and
- both individually and when taken together, these Crown failures constitute a breach of the Treaty principles of partnership, active protection, equity and options.
- the Crown's failure to amend or replace these funding arrangements for over a decade adequately, in the face of both consistent advice to do so and persisting Māori health inequity, is inconsistent with the duty of good faith, and a breach of the Treaty principles of partnership, options, active protection and equity.

Is the way health entities are held to account Treaty compliant?

- The ways health entities are held to account does not support the pursuit of equitable Māori health outcomes, and that this is a breach of the Treaty principles of active protection and equity.
- The Crown does not collect sufficient qualitative or quantitative data to fully inform itself how the primary health care sector is performing in relation to Māori health and this is a breach of the Treaty principles of active protection and equity.
- The Crown also does not use the data it does collect effectively, including by making it accessible to, and understandable by, the public.This failure, similarly, has acute repercussions for Māori health, which is not systematically separately measured and reported on.The ineffective use of data, particularly the failure to measure and report separately on Māori health outcomes, is a breach of the Treaty principles of active protection, equity and partnership.
- Te Puni Kōkiri's failure to carry out its statutory duty to monitor the health sector through conducting agency reviews, under section 5 of the Ministry of Māori Development Act 1991, is a breach of the Treaty principle of active protection and the duty of good governance.

Is Partnership for Maori in Primary Health Care framework Treaty compliant?

- the Crown did not design the primary health care framework in partnership with Māori ; and
- the disestablishment of Te Kete Hauora, and the failure to replace it at the time, is a breach of the Treaty principles of equity and active protection.
- Māori primary health organisations and providers are central to the development of these models of care.The Crown has failed to properly recognise through its actions that the work of these organisations, and the people that work for them, are intrinsic to pursuing Māori health equity.
- the primary health care framework does not recognise and properly provide for the tino rangatiratanga and mana motuhake of hauora Māori.This is a breach of the Treaty's active protection of tino rangatiratanga, as well as a breach of the principles of partnership, active protection, equity, and options

Recommendations

- Amend section 4 of New Zealand Health and Disability Act 2000 – This Act shall be interpreted and administered so as to give effect to the principles of the Treaty of Waitangi.
- 3 P's to be reformed. The following Treaty principles to be adopted for the primary health care system:
  - Guarantee of tino rangatiratanga
  - Principle of equity
  - Principle of active protection
  - Principle of options
  - Principle of partnership

Recommendations

- Equity
  - Reducing disparity/reducing inequity out. Commitment to achieving equity of health outcomes for Maori in.
  - section 3 (1)(b) of the New Zealand Public Health and Disability Act 2000 be amended to read as follows : ‘to achieve equitable health outcomes for Māori and other population groups’
  - Commitment to achieve equitable outcomes for Maori is expressly stated in all documents that make up the policy framework of the primary health system: strategies, plans, lower level documents etc

Recommendations

- Structural reform
  - Stand alone Maori primary Health Authority
- Within the next seven months, the Crown and representatives of the Wai 1315 and Wai 2687 claimants design a draft term of reference to explore the possibility of a stand-alone Māori health authority. We direct that the Crown and the Wai 1315 and Wai 2687 claimants file a joint memorandum by 20 January 2020 updating the Tribunal on progress. If the parties are unable to agree on filing a joint memorandum they may file separate memoranda.
- The Crown fund the process and provide the necessary secretariat support

Recommendations - funding

- Within the next seven months, the Crown and representatives of the Wai 1315 and Wai 2687 claimants agree upon a methodology for the assessment of the extent of underfunding of Māori primary health organisations and providers. The methodology should include a means of assessing initial establishment and ongoing resource underfunding since the commencement of the New Zealand Primary Health and Disability Act 2000.We direct that the Crown and the Wai 1315 and Wai 2687 claimants file a joint memorandum by 20 January 2020 updating the Tribunal on progress. If the parties are unable to agree on filing a joint memorandum they may file separate memoranda.
- The Crown fund the process and provide the necessary secretariat support.
- the Crown conduct an urgent and thorough review of the funding for primary health care, to better align it with the aim of achieving equitable health outcomes for Māori.

Recommendations - accountability

- The Crown, in conjunction with Māori health experts, including representatives of the Wai 1315 and Wai 2687 claimants, co-design a primary health research agenda.
- The Ministry collect robust quantitative and qualitative primary care data and information relevant to Māori health outcomes. This data and information should be made public and be easily understandable and accessible. To this end, the Crown should, in conjunction with Māori health experts, including representatives of the Wai 1315 and Wai 2687 claimants, co-design measures specific to Māori as a population group.
- The Crown ensure that measures relevant to Māori health outcomes are reported on separately. These measures and the reporting against them should be made public and be easily understandable and accessible.
- District health boards and primary health organisations prepare, and make publicly available, an annual Māori health plan. The nature and content of these plans should have national minimum requirements that are set and monitored by the Ministry, but should also be co-designed with Māori who are associated with the particular organisation.

Recommendations - accountability

- All health sector contracting documents should have a reference to the Treaty of Waitangi and its principles, as we have outlined in our overarching recommendations. Health sector contracts should also include a commitment to achieving equitable health outcomes for Māori.
- The Crown review, with a view to redesigning, the current arrangements for the monitoring of the Ministry by external agencies, which are intended to ensure the sufficiency of the design and delivery of health services to Māori. Further, that any agency/agencies tasked with these monitoring responsibilities should have particular regard to those matters we mention at section 7.4.4 of this report.

Recommendations - framework

- After considering our findings in chapters 5 and 8, the Crown review, with a view to redesign, its current partnership arrangements across all levels of the primary health care sector.

Kōrero

- Kaupapa - Claim, objective and the purpose
- Hanganga – methodology for the claim
- Take matua - Mortality and incidence rates
- What drives inequities
- Structures that are racist by design – 1 example
- Where is rongoa?
- Other areas of interest
- Summary

The claim

Objective – to map the sites of racism across the cancer continuum

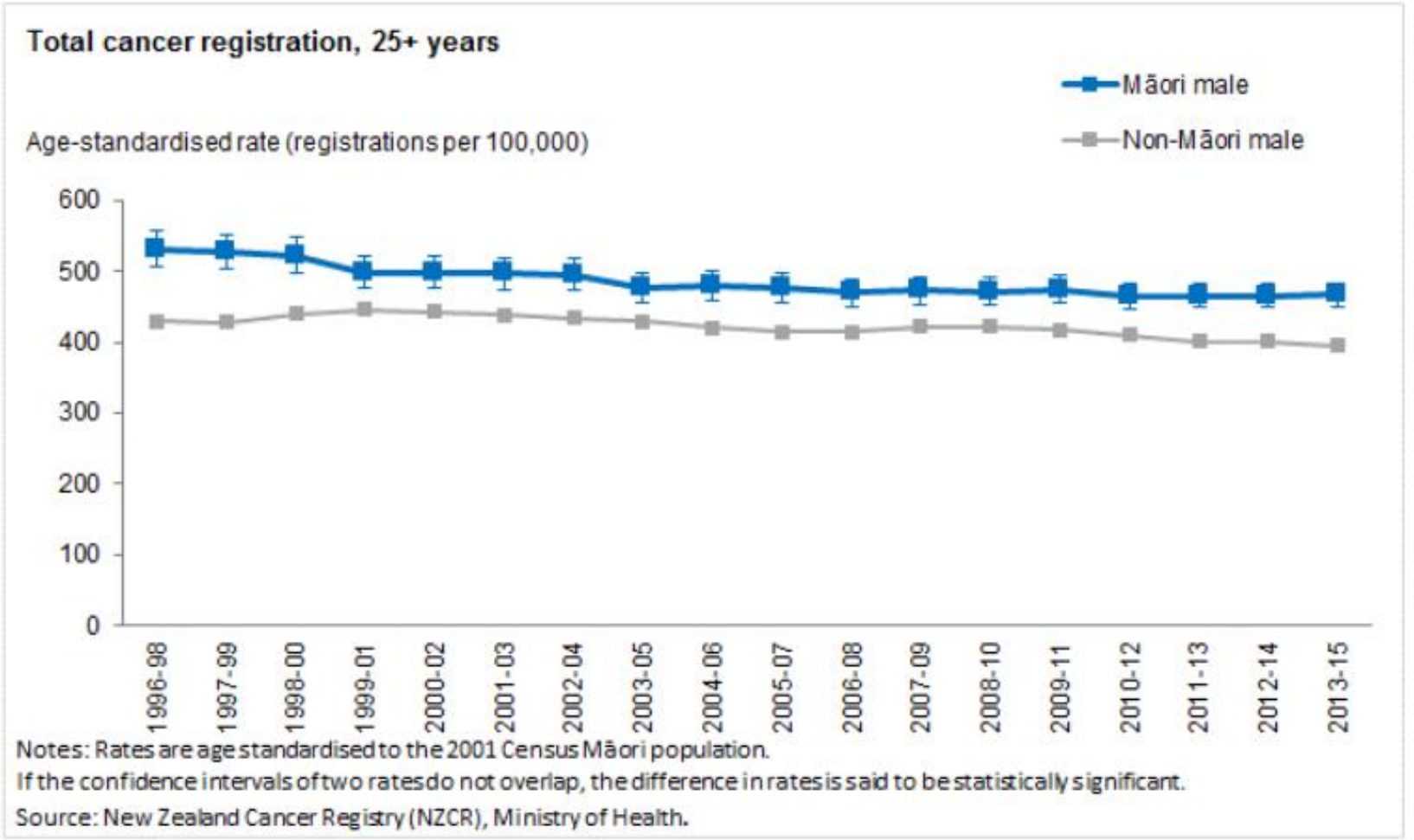
Purpose – deconstruct power and privilege across the cancer continuum

Mātauranga Māori

Matepukupuku; kei roto I ngā kete mātauranga he kura

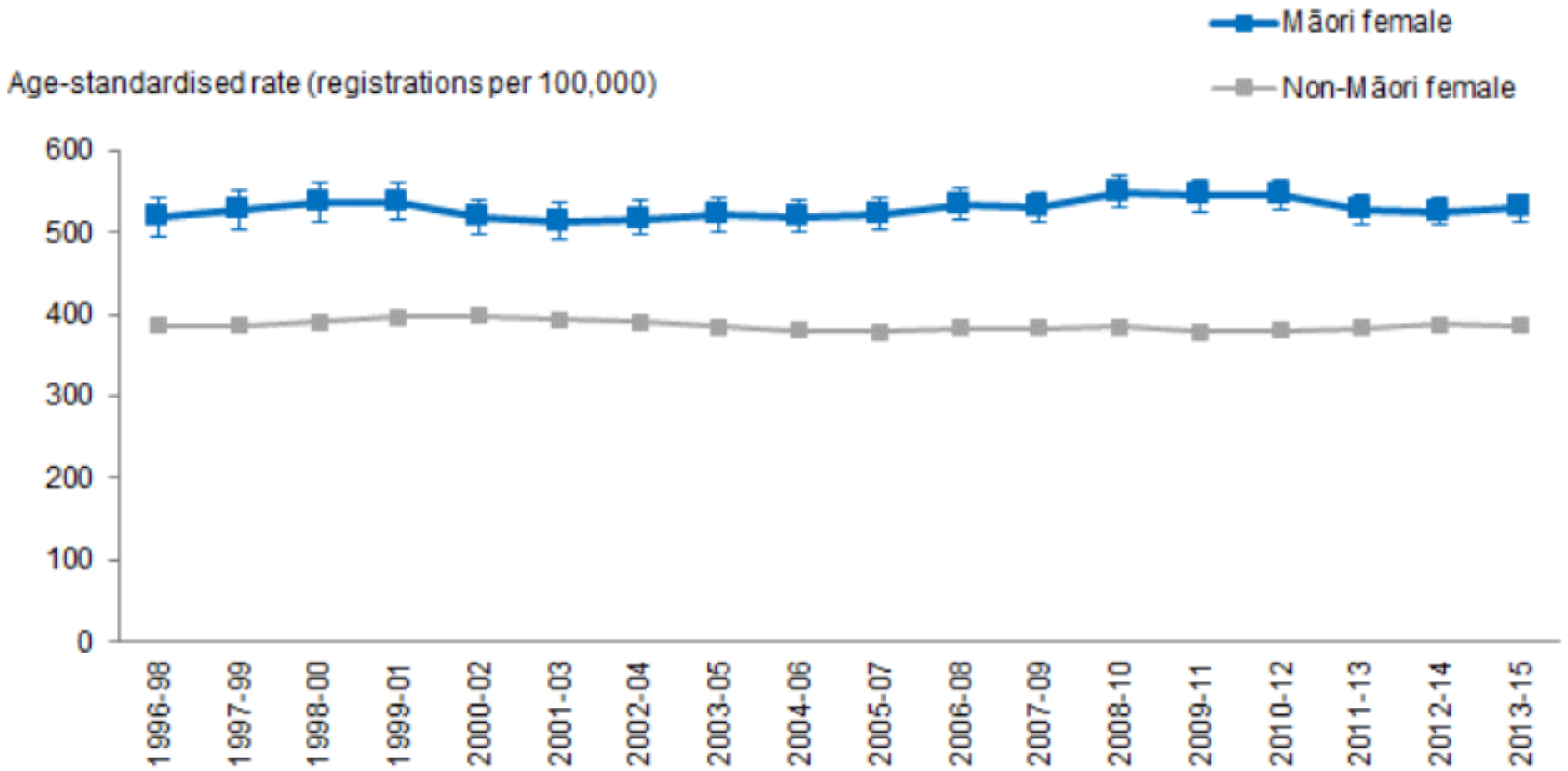
Kia mataara/please be aware: the following pages will provide further information of cancer inequities for Māori in detail.

Figure 1: Total cancer registration rate, Māori and non-Māori males aged 25 years and over, from 1996–98 to 2013–15



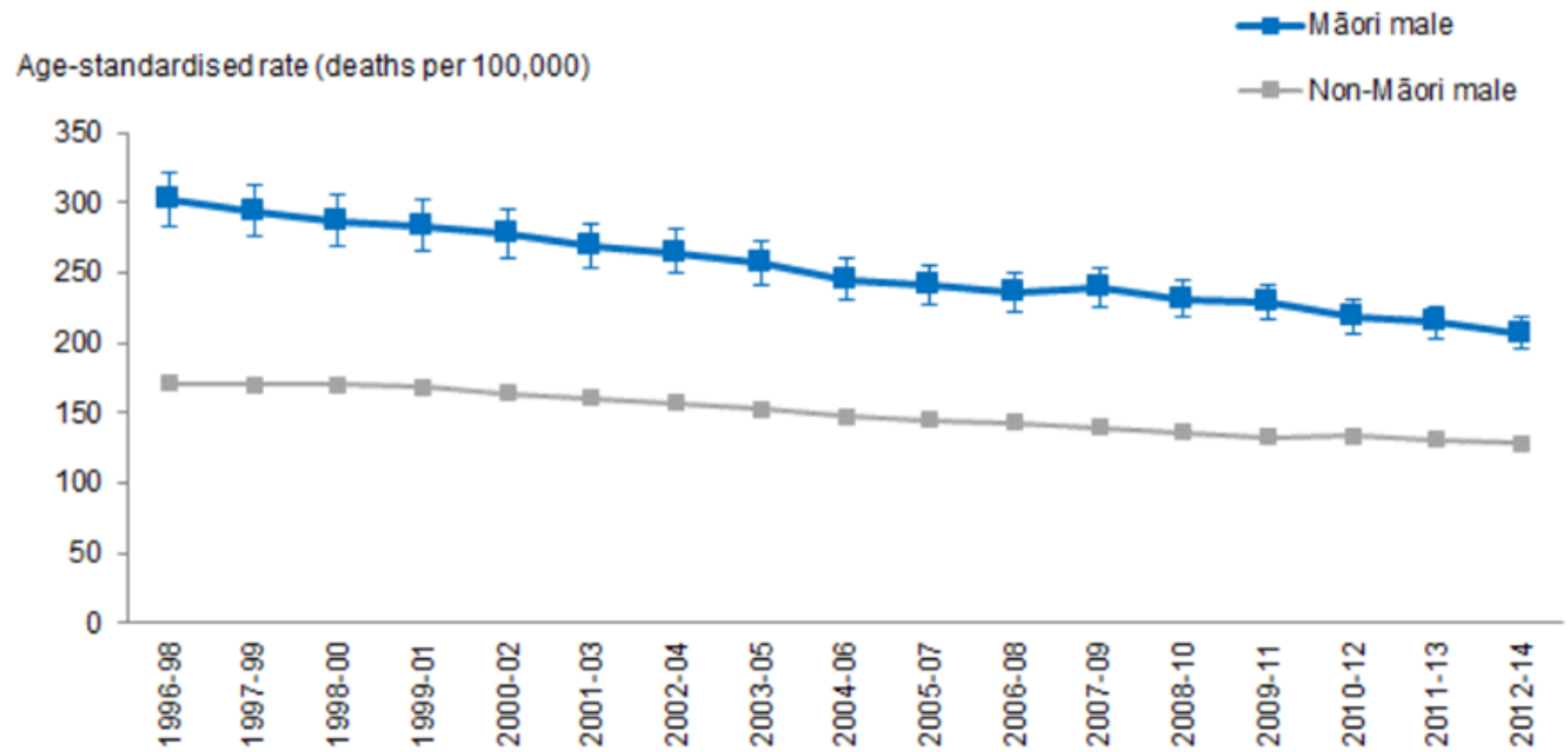
Notes: Rates are age standardised to the 2001 Census Māori population.
If the confidence intervals of two rates do not overlap, the difference in rates is said to be statistically significant.
Source: New Zealand Cancer Registry (NZCR), Ministry of Health.

Total cancer registration, 25+ years



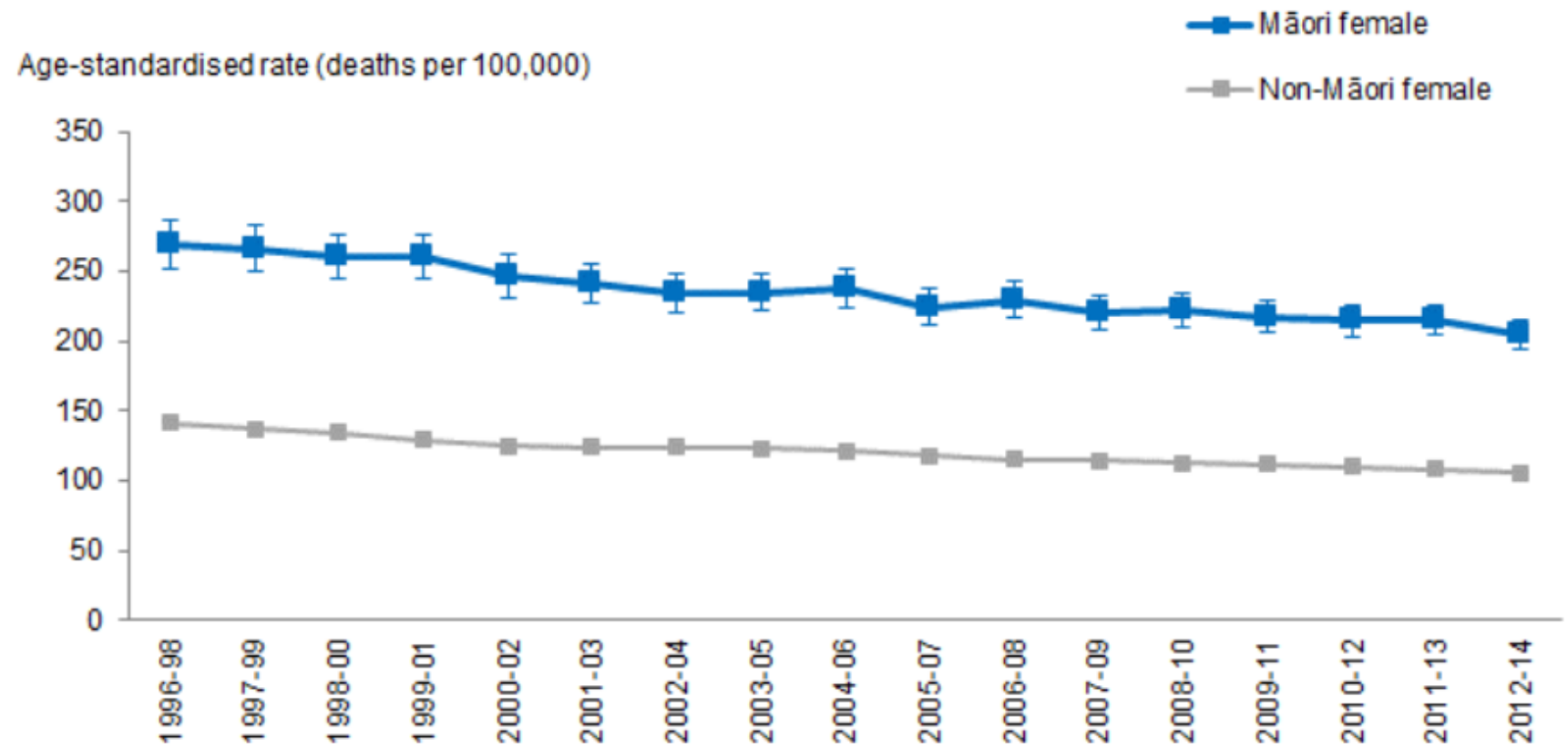
Notes: Rates are age standardised to the 2001 Census Māori population.
If the confidence intervals of two rates do not overlap, the difference in rates is said to be statistically significant.
Source: New Zealand Cancer Registry (NZCR), Ministry of Health.

Total cancer mortality, 25+ years



Notes: Rates are age standardised to the 2001 Census Māori population.
If the confidence intervals of two rates do not overlap, the difference in rates is said to be statistically significant.
Source: Mortality Collection Data Set (MORT), Ministry of Health

Total cancer mortality, 25+ years



Notes: Rates are age standardised to the 2001 Census Māori population.
If the confidence intervals of two rates do not overlap, the difference in rates is said to be statistically significant.
Source: Mortality Collection Data Set (MORT), Ministry of Health.

What drives these inequities

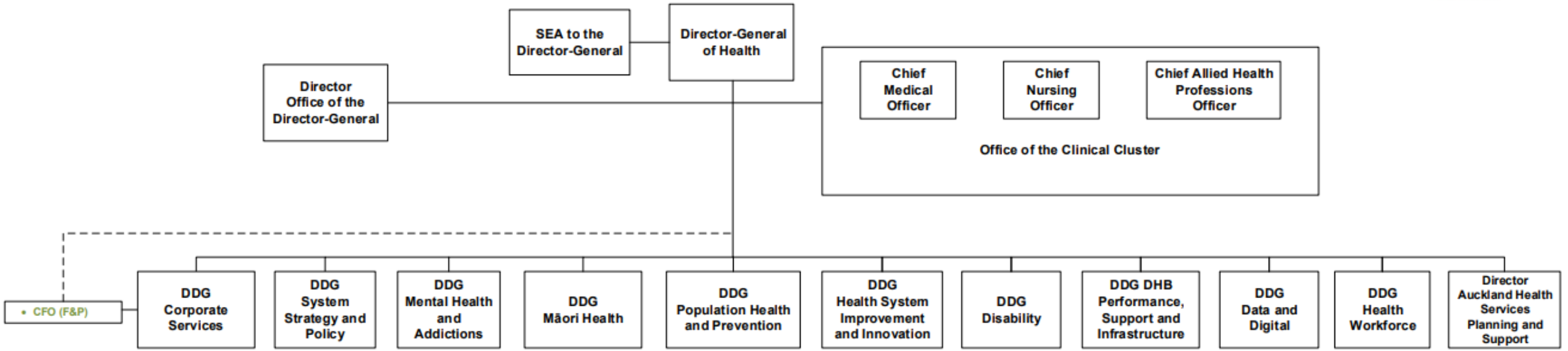
- Previous – discourse was centred on individual lifestyle factors
- Differential access
- Environments that are conducive to ‘unregulated growth’
- Institutional racism – structures and systems that are racist by design

Racist Origins

[Tohunga] *practise on the superstition and credulity of the Maori people by pretending to possess supernatural powers in the treatment and cure of disease, the foretelling of future events, and otherwise, and thereby induce the Maoris to neglect their proper occupations and gather into meetings where their substance is consumed and their minds are unsettled, to the injury of themselves and to the evil example of the Maori people generally…*

Structural implementation of tino Rangatiratanga?

NEW SECOND TIER STRUCTURE – MINISTRY OF HEALTH
1 October 2018



Every word has mana, tapu and mauri

- Addressing structural barriers in the Ministry such as institutional racism, bias and decision-making powers.
- Monitoring the responsiveness to Māori across the Ministry.
- Including key performance indicators for all staff on responsiveness to Māori.
- Working collaboratively with other government agencies to achieve Pae Ora.

Rongoā Māori

Clinical cluster

- $$ total funding support from the ministry – 3 new positions
- Contributors to the new cancer control strategy

Te Kahui Rongoā

- Since 2016 – total funding support from the Ministry - $0
- Central team – new cancer control strategy?
- Waitangi tribunal – necessity to correct ToW breachers
- Have an epistemological advantage
- Contact

Other areas of interest

- Overall structure and privileging of cancer specific teams
- Tikanga holders (where are the accountability frameworks embedded into the system)
- Bowel cancer screening programme (equity negative)
- Cancer Nurse Co-Ordinator programme
- Disinvestment in the smokefree 2025 goal
- Data sovereignty
- Research privileging

Māori Affairs Select Committee Inquiry

Flood the inquiry with submissions

Ngā mihi

- Eru Pomare research unit
- Tohunga rongoā
- Hei Ahuru Mowai
- Dr Heather Came, Jacqui Kidd, STIR
- C3 team/Bode/Public health - Otago
- TWOR – mātauranga Māori
- Korowai tautoko
- Cancer Society/TRT

Summary

- Overview of the claim: map the sites, deconstruct power and privilege
- Stark and consistent inequities – tuki ki te mana
- Institutional racism exists across the cancer continuum
- An example - Testing structures, systems against tikanga/ mātauranga Māori
- Whainga matua - reposition Māori– kaitiaki of all human activity in Aotearoa
- Pou tautoko available, whitiwhiti kōrero, whakawaatea – beach, eru pomare, epidemiologists, C3 team
- Karakia/waiata tau the space

- Any questions, want to join…Nau mai haere mai ki te waka nei