

Commentary on the High Cost Pharmaceuticals Review.

Reviewer: Matiu Dickson

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Introduction:

I have been asked to review the reports of Professor Raanan Gillon¹ and Dr Paul Hansen.² Their reports gave responses to questions put by Pharmac³ with regard to how to deal with the funding of high cost pharmaceuticals. With respect, it is my view that the reports address the funding process adequately from a western liberal or mainstream point of view but do not deal with the local New Zealand situation and the special position of Maori who are the indigenous people.

While I have some knowledge of Maori cultural practice I do not want to be regarded as the spokesperson for all Maori. My knowledge comes from my own tribal upbringing,⁴ more particularly that of my maternal grandparents who raised me in a Maori cultural environment at Matakana Island.⁵

I submit that it is important that any considerations as to the delivery of high cost pharmaceuticals requires a Maori component and input because of the following:

1. Maori have a contractual relationship with the Crown by the Treaty of Waitangi 1840 and they are the tangata whenua or people of the land;
2. Maori cultural practice and belief has been ignored in the past yet despite this, it is still highly relevant and vital. It needs to be taken into account as a criteria for funding to achieve a long term beneficial effect for Maori;
3. Maori are most likely to be the in the group requiring such medications because of their susceptibility to illness at a multiple level;
4. Maori comment and consultation on a wide basis is necessary for decisions likely to affect their wellbeing.

These considerations are not in a particular order of priority nor perhaps are they only considerations, but for now they suit the purposes of this review.

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⁴ Ko Mauao te Maunga, Ko Tauranga te Moana, Ko Ngaiterangi te iwi. (Mauao is the ancestral mountain, Tauranga is the life giving sea and Ngaiterangi are the people.) A whakatauki or proverb identifying the writer's tribal connections to the land.

⁵ An island in the Tauranga Harbour whose community is almost wholly Maori.

1. The Relationship of Maori and the Crown.

From a legal point of view the decision in *The New Zealand Maori Council v Attorney-General*⁶ broadly established the relationship of Maori and the Crown with regard to the Treaty of Waitangi 1840. Since that important case, this relationship had developed and been redefined mainly for political reasons. It has now been described more succinctly as being that relationship incorporating the principles of partnership, protection and participation.

This interpretation is referred to as being a commitment of Pharmac in dealing specifically with planning documents, and operating policies and procedures, in the Maori Responsiveness Strategy 2002 (the 'Strategy')⁷.

In my view this commitment alone means that Maori comment and consultation is absolutely required by Pharmac before a process of funding high cost pharmaceuticals is formulated. Failure to do this makes a mockery of the commitment. Given that the Strategy was intended to improve connections between Pharmac and the Maori community, ignoring this commitment would mean a loss of trust by Maori.

The position taken by Pharmac is further endorsed by its adoption of the Maori Health Strategy (Te Korowai Oranga) released by Government in 2001. Pharmac has therefore undertaken to work with Maori communities to achieve their health objectives.

From a Maori cultural point of view, trust ('pono') is essential to a binding and meaningful relationship. Maori relationships ('whanaungatanga') usually depend on blood ties ('whakapapa') but where this is not possible (very rarely, given the extent of genealogical knowledge) the idea of reciprocity ('utu') applies. That is, that a good and therefore honest deed deserves another in return. Reciprocity in its wider sense formed the basis of interaction between Maori social groups, and in a negative way was the reason for many tribal conflicts before and since the Europeans arrived. The positive aspect of this cultural aspect is often overlooked but survival meant that doing good deeds were the most important of all.

The Crown's relationship with Maori has been very much at the whim and political will of the stronger partner, the Crown. Pharmac has an opportunity to progress from this and has a legal if not moral obligation to do so.

⁶ [1987] 1 NZLR 641. Cooke P in an unanimous decision of the Court of Appeal sought to clarify the relationship between Maori and the Crown according to the spirit and principles of the Treaty. He referred *inter alia* to the principle of partnership and to fiduciary duty requiring both parties to act in the 'utmost good faith and trust towards each other'.

⁷ Refer to *Implementing Pharma's Maori Responsiveness Strategy 2006* in which the commitment by Pharmac to the principles of the Treaty are reinforced at p8

As tangata whenua ('people of the land') or indigenous people of New Zealand, Maori perhaps have a moral right also to depend on the Crown and therefore Pharmac to "level the playing field" so that their health statistics compare more favourably to other New Zealanders. Most indigenous peoples throughout the world have had the same colonizing experience as Maori but progress toward a better future for these people has often been abysmal.

Maori Cultural Practice.

The Crown has historically ignored Maori cultural practice and has in some instances actively opposed the teaching and retention of Maori cultural values ('uara'), custom ('tikanga') and language ('reo')⁸. The education system is a case in point. More recently, attitudes have changed for the better but there is still a lingering idea that Maori values do not fit with mainstream New Zealand ideology. And if it were to, it is expected to be validated by the standards of "mainstream" by mainstream experts. What is needed then is a better understanding and acceptance that Maori values still hold a place and validity even in deciding how to fund high cost pharmaceuticals.

Tikanga is the Maori word for custom, it literally means "the right way" or doing what is right ('tika') for all of the parties, for the time being and *for the future*. Maori ideas of doing what is right are determined by open discussion, inclusiveness and the desire to achieve oneness ('whakakotahitanga') of thought and purpose. The collective good is the main objective.⁹

When compared to the utilitarian ideas in the reports there is a quandary. The alternative Rawlsian theory of favouring patient groups with relatively poor health may be more pertinent for Maori.

Culture therefore ought to be a factor for allocation. The connection that Maori have to their group means that any effort to improve the health of some of its members has a positive effect on the group as a whole. There is an overall utility for the Maori community when its un-well members recover.

Maori Need.

Statistics tell an alarming story of Maori un-wellness and the future does not look to great either. Typically, Maori suffer from illness which is mostly related to lifestyle. Some commentators say that these are the long term effects of colonization.

Progress in stopping this trend almost always points to an effort worked out and applied by Maori themselves. In my view, this is the best alternative before us thus far.¹⁰

⁸ See Education Ordinance 1847 State funding for schools was given provided the language of instruction was English. The Government followed a policy of assimilation but Maori complained because the choices of vocation for them were only as domestics and farm labourers for the colonists.

⁹ See Metge J Korero Tahi-Talking Together, p39

¹⁰ See Dickson M in State of the Maori Nation, Ed.M Mulholland. p187

Such an approach is called ‘kaupapa Maori’ or the Maori way/purpose. The only problem is that those who have the power (the decision makers) and the resources (funding for example) have to make bold decisions to allow Maori the opportunity to try things their way.

Would Pharmac consider a Tikanga Panel of elders (‘kaumatua’) that uses Maori tikanga for making decisions (eg funding processes) affecting Maori health?

Maori cultural practice reveres the elderly or the wise ones. Within Maori society the elders are given positions of respect because they have the knowledge of the tribe. They are thought appropriate to make the decisions that will guide the tribe and maintain its traditions.

The nearest alternative would be for the mainstream decision makers to have some understanding and empathy with the Maori predicament. However, experience shows that this half hearted approach recognizes the problem but does not solve it. More innovative ideas are required.

Maori Input.

As mentioned, Maori input into finding a way to fund high cost pharmaceuticals is essential and must be meaningful and not tokenism.

Ideally, Maori tikanga and its application can assist in a collaborative effort to improve Maori wellbeing and therefore the wellbeing of all New Zealanders since the extra resources for Maori should not be necessary.

It may be thought undemocratic to treat Maori as a special case, but there are very good reasons shown above for considering this course of action. Democracy is also about fairness and equity.

Conclusion.

Throughout this paper I have focused on advocating for Maori and their unique position as I see it, in decisions Pharmac has to make. I make no apologies for doing this because it is important to advocate for Maori and in the long term it is a benefit for all New Zealanders.

It bears repeating that though the reports refer to the western liberal or mainstream practices of sharing and ethics, they do not refer to the special circumstances of Maori and the New Zealand context.

It is highly desirable that Pharmac refer to the undertakings they have already made to the Maori community by the Strategy and, with reference to Maori communitarian norms.

*Kei hea te komako e ki nei?
He aha te mea nui o te Ao?
Maku ka ki atu, He tangata, He tangata*

(Where is the bellbird that sings?
What is the most important treasure on earth?
I say to you...It is people, it is indeed people.)¹¹

¹¹ A well known proverb that uses the oral tradition to reinforce the unity of man.

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Materials made available to the Reviewers by Pharmac.