

IN THE WAITANGI TRIBUNAL

WAI 2180

IN THE MATTER

of the Treaty of Waitangi Act 1975

AND

IN THE MATTER

of the Taihape: Rangitīkei ki Rangipō
inquiry

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TE REO RANGATIRA ME ONA TIKANGA GENERIC CLOSING SUBMISSIONS

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MAY IT PLEASE THE TRIBUNAL

“Ka ngaro te reo, ka ngaro taua, pera i te ngaro o te Moa”

(If the language be lost, man will be lost, as dead as the moa)

EXECUTIVE SUMMARY

1. By legislative enactment, the Crown has acknowledged its failure to actively protect te reo Māori and it has expressed its commitment to work to actively protect te reo Māori for future generations.¹ The Crown is able to qualify its duty to actively protect te reo Māori but in light of the depth of crisis that has beset the language's use and retention in the Taihape region, it is incumbent upon the Crown to pull out all the stops, so to speak, and do all it can to arrest further language decline. This is not happening.
2. The use and retention of te reo Māori by the claimants affirms their identity. It is a guide and an anchor. Despite the Crown's legal and/or honour bound obligations to the International Covenant on Civil and Political Rights, the United Nations Declaration on the Rights of Indigenous People and by the New Zealand Bill of Rights Act 1990 to protect and foster the Māori language, te reo Rangatira is a dying language. Biomathematically generated data is used to conclude that the language is facing extinction. The crisis being faced appears to be worse in the Taihape inquiry district than elsewhere. Commensurate action on the Crown's part is warranted in order to offset the crisis. The establishment of a Kura Kaupapa Māori for Mokai-Patea Māori is one appropriate response.
3. The Crown engaged in a policy of linguicide soon after arrival in New Zealand. The death of te reo Māori was pre-meditated and it was engineered primarily through the education system. The Crown had terminated indigenous languages in other countries prior to its colonisation of Aotearoa New Zealand and so when it implemented the English-only rule in New Zealand classrooms, the Crown knew full well that te reo Māori would eventually fade from the planet. It was known that linguicide destroys languages, culture, identity, sanity, value systems and the sense of self-

¹ Section 4, Te Ture mo te Reo Act 2016.

worth. It wreaks havoc in the interests of monolingualism and cultural and social homogeneity. Māori pupils were Europeanised and forced to speak English and if they didn't, they were subjected to a regimen of violence. The Crown's shocking engagement with linguicide warrants commensurate admonition by the Waitangi Tribunal and redress that will restore Taihape Māori to their former cultural and lingual state.

4. Between 1880 and 1902, junior classes in native schools were bilingual. From 1902 on, all Māori pupils were taught in English only. By 1900, the rate at which Māori pupils went on to post-primary learning was far higher than it was 30 or 40 years later. Some of those who may have benefitted from the bilingual schooling they received at the close of the 19th century included Ngata, Buck, Pomare, Wirepa, Kohere and others. Data emerged during the 1950s that showed that native school learners achieved at higher rates than Māori who attended public schools. Recently in their report, the Tomorrow's Schools Independent Taskforce recorded that students in kaupapa Māori settings achieve NCEA on a par with Pākehā students in English-medium settings. From these past learning experiences, the Crown was made aware that learning in a Māori medium environment improves performance and yet multiple barriers have confounded and continue to confound its broader application.
5. Throughout these closing submissions we document various moments in history when the Crown could have avoided the disastrous outcomes of its education policies on the use and retention of te reo Māori. In 1908, Hone Heke Taipua, the Member of Parliament for Northern Māori, complained about language loss at an important national hui held that year. In response to Heke's complaint and that of others, the Crown added a Māori language course to the secondary school syllabus but by this time, very few Māori were going on to secondary school. Action was taken by the Crown on its face but in substance nothing changed. By the 1930s, Māori educational performance was at such a low ebb that the Crown was forced to do something. The cultural adaptation policy was introduced into native schools. It led to the learning of waiata, carving, the poi and the haka. All instruction remained in the English language however. Despite the changes, Māori education performance remained static (and may have

declined) and use of te reo Māori declined as well. Cultural adaptation rang hollow in the end. More recently when the Kōhanga Reo movement of the 1980s prompted a massive upsurge in interest in learning te reo Māori, the Crown failed to recruit sufficient teachers to meet the demand and so the movement faltered a few years later. It was subsequently revealed by the Wai 262 Tribunal in 2011 that by 1987, the Crown was aware that at least 1,000 new language teachers were required. By the time the Crown acted however, it was too little too late. In 2003 when Nga Iwi o Mokai-Patea Services requested the construction of a Kura Kaupapa Māori, their request was denied. In doing so, the Crown gave no weight to the perilous state that te reo o Mokai-Patea was in and so as a result the refusal decision breached the treaty principle of active protection. It should be revisited. Despite long-held awareness of the need for more Māori language teachers, the Crown continues to fail to recruit sufficient teacher numbers. Even though the continued use and retention of te reo Māori in the Taihape region is in a state of crisis, it was revealed during Hearing Week 11 that the Crown is currently without a formulated Māori language teacher recruitment strategy. There is a history of Crown under-performance in the Māori education sphere. This is why there is little confidence in the Crown's ability to revitalise te reo Māori today. It is sadly ironic (non-sensical) that the treaty partner that attempted to terminate the Māori language is now vested with the role of breathing life back into it. That equation does not compute. Questions must be asked as to the nature of the Crown's continued role in language revitalisation.

INTRODUCTION

6. These closing submissions are made for and on behalf of the Claimants and of the Māori community of the Taihape inquiry district. They concern claim issues raised in relation to the demise of the use and retention of te reo Māori by Taihape Māori.
7. The generic closing submissions are filed for the benefit of all claimants in the Taihape inquiry district. Counsel notes that the filing of these generic closing submissions does not prevent claimants from taking their own positions and presenting their own submissions on this issue.

8. These generic closing submissions concern Issue 20 of the Statement of Issues (SOI), which we set out in full below. In our estimation, the issues set out raised in Statement of Issues 20(2), (3), (4) and (5) are similar and so they prompt similar and/or highly inter-related responses. Accordingly, in the submissions below we have responded to these particular issues in the same set of closing submissions. We have clearly indicated in these closing submissions when we are addressing the different issues in the SOI.
9. We have found when responding to the different issues of the Tribunal Statement of Issues that are the subject of these closing submissions that, on occasion, our responses to the different issues entail the treatment of the same evidence, facts, events and/or research material. This is a common occurrence in counsel's experience when responding to what are often inter-related issues in a Tribunal Statement of Issues. Wherever this occurs, our treatment of the same evidence, facts, events and/or research material differs and so in this respect, the different submissions on the same topic/s is/are warranted.
10. The terms "te reo", "te reo Māori", "te reo Rangatira", "the language" and "the Māori language" are used interchangeably throughout these submissions and are intended to have the same meaning.
11. The terms "Mokai-Patea region", "the Taihape region", the region" and the "Taihape inquiry district" are used interchangeably throughout these submissions and are intended to have the same meaning.
12. The submissions on the principles of Te Tiriti o Waitangi are **attached** as Appendix 'A'.

Tribunal Statement of Issues

13. Issue 20 of the Tribunal SOI sets out the following issues:

Protection

- (1) Was the Crown under an obligation to protect and promote Te Reo Māori among Taihape Māori?
 - i. Did this include the protection of dialect of Taihape hapū and iwi in the region?
- (2) Did legislation, policies and practices of the Crown contribute to the decline of Te Reo Māori among Taihape Māori? If so, how?
- (3) What factors influenced legislation, policies and practices of the Crown concerning Te Reo Māori in the Taihape inquiry district?
- (4) Was the generational transmission of Te Reo Māori among Taihape Māori affected by Crown legislation, policies and practices? If so, how?
- (5) What has been the Crown's policy and practice towards Te Reo Māori including dialects of Te Reo in Taihape over time?

Education

- (6) What was the experience of Taihape Māori who used Te Reo Māori in Taihape schools or other Crown-controlled setting?
 - (7) Is current Crown policy towards the survival of Te Reo Māori adequate in schools within the Taihape inquiry district?
14. The generic closing submissions are a combined effort between the law firms of Annette Sykes & Co, of Rotorua, and Tamaki Legal of Auckland. Issues 20(1), (6) and (7) in part were addressed by Annette Sykes and Co. Issues 20 (2), (3), (4), (5) and (7) in part were addressed by Tamaki Legal.

Evidence

15. In addition to the tangata whenua evidence presented to this Tribunal, the following reports and briefs of evidence are particularly relevant to these submissions:

- (1) *Brief of Evidence of Iona Holsted and Jann Marshall for the Ministry of Education* dated 19 February 2019, Wai 2180, #M27;²
- (2) *McBurney, Ngāti Hinemanu and Ngāti Paki Oral and Traditional Report*, dated November 2016, Wai 2180, #A25;
- (3) *Christoffel, Education, Health and Housing in the Taihape Inquiry District, 1880-2013*, Wai 2180, #A41, at 19.

16. We **attach** herewith as **Appendix 'B'**, a table setting out the evidence that was presented to assist the Tribunal with its consideration of the matters that are the subject of these generic closing submissions. While some of the evidence has been incorporated into the following submissions, we commend that the evidence as a whole be taken into account by the Tribunal.

Crown Concessions

17. The Crown referred to section 4 of the Te Ture mō Te Reo Māori Act 2016 ("section 4") when it contributed to the Tribunal Statement of Issues in 2016.³ It is stated in section 4 that the Crown's responsibilities to the Māori language remain despite the language recognition contained in the 2016 Act. We set section 6 of the 2016 Act out below:

- (1) The Crown acknowledges the detrimental effects of its past policies and practices that have, over the generations, failed actively to protect and promote the Māori language and encourage its use by iwi and Māori, matters that –
 - a. have been recorded in evidence given to the Waitangi Tribunal; and
 - b. the Crown has acknowledged in deeds of settlement entered into with iwi to settle their claims under the Treaty of Waitangi.

² *Brief of Evidence of Iona Holsted and Jann Marshall for the Ministry of Education* dated 19 February 2019, Wai 2180, #M27(a), #M27(b), #M27(c), #M27(d), #M27(e), #M27(f).

³ Crown Memorandum Contributing to the Preparation of a Draft Statement of Issues, 2 September 2016, Wai 2180, #1.3.2, at 95.

- (2) The Crown expresses its commitment to work in partnership with iwi and Māori to continue actively to protect and promote this taonga, the Māori language, for future generations.

The Crown acknowledgement reads much like a Crown concession.

18. Crown witnesses Iona Holsted, Secretary for Education, and Jann Marshall, Director of Education, Taranaki-Whanganui-Manawatu, provided evidence in their testimony that is akin to a Crown concession:⁴

The Crown acknowledges that it failed to actively protect Te Reo and encourage its use by iwi and Māori in breach of the Treaty of Waitangi and that this had longstanding and ongoing detrimental effects on the acquisition and use of the Māori language, and on the tikanga and mātauranga of Māori, including for those within the Taihape inquiry district.

And further:

The state education system has not sufficiently valued Māori cultural understandings and has consistently low expectations of tamariki and rangatahi Māori. The failure to respond to the identity, language and culture of Māori has harmed Māori and has contributed to poor education outcomes over generations. These issues have manifested in the Taihape inquiry district and, along with 'out-of-school' factors, have impacted on the education outcomes of the claimants, their whānau and their ancestors.

19. Despite legislative acknowledgement of Crown fault in the demise of te reo in section 6 and acceptance of Crown fault in this regard by senior Ministry officials before this Tribunal, the Crown has not formally conceded to having caused language loss in breach of the principles of Te Tiriti o Waitangi. In fact, the Crown took the following position when contributing to the Tribunal Statement of Issues:⁵

The Crown recognises te reo Māori as a taonga of Māori, including Te Rohe Pōtae Māori, and it accepts it has a duty to

⁴ *Brief of Evidence of Iona Holstead and Jann Marshall*, Ministry of Education, Wai 2180, #M27, at [12] and [13].

⁵ Wai 2180, #1.3.002, at [93].

protect and sustain the language. However, the Crown's duty is not absolute and unqualified; the Crown is required to take "such as is reasonable in the prevailing circumstances." As recognised in the *Broadcasting Assets* case:

While the obligation of the Crown is constant, the protective steps which it is reasonable for the Crown to take change depending on the situation which exists at any particular time.

We establish on the balance of probabilities below that the Crown is responsible for the near extinction of te reo Māori and that by all rights, the Crown should have conceded to having caused language loss.

20. The Crown understands the finding from the *Broadcasting Assets* case to mean that its duty to actively protect te reo Māori can be qualified. This understanding of the *Broadcasting Assets* case finding is valid. However, the finding can also be taken to mean that if the situation with regard to the condition of te reo Māori worsens, that is, if its use and retention plummets and extinction beckons, as it does now in the Taihape region, the Crown's duty to actively protect te reo Māori is less susceptible to being qualified.

Te Reo Māori Matters

21. Before the body of these closing submissions begin, a moment is taken here to confirm the importance of using and retaining te reo Māori within the confines of the inquiry district (and elsewhere). Language is so much more than a mode of oral communication between its speakers. It is through te reo Rangatira that Māori poetry, song, genealogy, stories, history and knowledge are known today. It is the means by which the heart of the culture beats—"If the language dies, the culture will die and something quite unique will have been lost to the world".⁶ To speak in the language of the tipuna is to think as they thought and when that is achieved, so too is the essence of being Māori.
22. The language facilitates adherence to Māori philosophical thought through terminology that readily encapsulates, for instance, the inter-

⁶ Waitangi Tribunal, *Finding of the Waitangi Tribunal on The Te Reo Māori Claim*, Wai 11, April 1986, Brookers (Wellington), at 1.

connectedness of all life, the emphasis on being and not having, the group focus, humility, holism and the ongoing relevance of the spiritual dimensions to everyday life.

23. The ability to express oneself in the language of the culture or race with whom you identify is in itself an identification marker. To say that you belong to or are of a certain people should include the act of speaking the language of that people. However, in circumstances where many people in the Taihape inquiry district identify as Māori, is it going too far to say that identifying with a people is not possible because you cannot speak their language? Many people of the Mokai-Patea region identify as Māori even though they are unable to speak te reo Māori at all let alone to any agreed level of competency. Although that may be true, an inability to speak the language of the people with whom you identify must surely undermine the accuracy and even the legitimacy of the claimed identity. If being Māori was to be defined and if that definition included the fluent use of the native tongue of Aotearoa New Zealand, the depressing reality is that the vast majority of those who identify as Māori in the Mokai-Patea region would not technically fulfil the requirements of the definition. And if that's the case, in the words of the First Inspector of Native Schools, James Pope, are we left with "a sort of Māori-Pākehā"—"neither flesh, fowl nor good red herring"?⁷ Te reo Māori matters because of the identity marker that it is. And what of the importance of identity?:⁸

The evidence from our individual and whānau narratives suggest that a strong cultural identity translates to pride-in-self and the resulting positive self-concept is a powerful defence against the shaming and stigmatising efforts of the colonial narratives. It also offers individuals and whānau with improved coping abilities in the face of stressors.

A strong Māori identity and its concomitant benefits can be achieved through language retention.

⁷ *Appendices to the Journals of the House of Representatives*, 1881 Session I: Being the 3rd session of the 7th Parliament of New Zealand, E7 Education: Native Schools, Reports of Inspectors, at 11.

⁸ Reid *et al*, *The Colonising Environment: An aetiology of the trauma of settler colonisation and land alienation of Ngai Tahu whanau*, May 10, 2017, University of Canterbury Ngai Tahu Research Centre, at 142.

24. In her evidence before this tribunal, Ngaire Anne Te Hirata Kauika-Stevens tied language loss to the erosion of cultural identity and knowledge:⁹

We had a generation of no Te Reo, which was a huge loss that transcended the loss of fluency in our language, and actually eroded our sense of identity. This was due to the government and the education system and, still today, it has not changed. We are still being denied a basic right to learn our language in our own rohe, on our own land.

The impact is that we have been unable to successfully maintain tikanga a hapu, tikanga a Marae, tikanga a whānau.

The Crown must accept responsibility for their arrogance, their mana-diminishing attitude, the oppression of our people, and the intergenerational suffering, all due to the loss of our Reo.

25. Before the Te Reo Māori Tribunal (Wai 11), Sir James Henare uncovered his fear of the effect of language loss on cultural identity:¹⁰

The language is the core of our Māori culture and mana. Ko te reo to mauri o te mana Māori (The language is the life force of the mana Māori). If the language dies as some predict, what do we have left to us? Then I ask our people who are we?

26. Dr Tamati Reedy also emphasised the connection between language and identity:¹¹

The language as a separate but integral part of Māoritanga is significant—it is not reflected to the same degree in pakeha culture. Language, te reo Māori, is an asset in itself not merely a medium of communication . . . It is sufficient for me to say that it is inconceivable that Māori people can retain any measure of (their) identity without the language . . .

Māoridom today appears to be more bent on remaining Māori despite the poor self-image that post-European history has bestowed on the label 'Māori'. Clearly, Māori language is being

⁹ Statement of Evidence of Ngaire Anne Te Hirata Kauika-Stevens, Wai 2180, #J5, at [39]-[41].

¹⁰ *Report of the Waitangi Tribunal on The Te Reo Māori Claim*, Wai 11, April 1986, Brookers (Wellington), at 34.

¹¹ *Report of the Waitangi Tribunal on The Te Reo Māori Claim*, Wai 11, April 1986, Brookers (Wellington), at 43 and 44.

seen by many as a rallying point for a restructuring and piecing together of a much broken and damaged people.

It serves to restore an identity for people who see themselves as Māori and want to be recognised as such.

The Right to Speak Te Reo Māori

27. The right to speak Te Reo Māori is also protected and guaranteed by domestic constitutional safeguards¹² and international instruments to which New Zealand is a signatory and has affirmed its support for.¹³ Such protections confirm that this right is one of many fundamental rights that constitute the framework of protected rights and freedoms in New Zealand. Te reo Māori is an official language of Aotearoa New Zealand and it is an official language of the courts of New Zealand. We discuss these aspects of institutionalisation of te reo Rangatira later in these closing submissions.

International safeguards

28. The ratification of a treaty is an international action whereby a state indicates its consent to be legally bound to a treaty.¹⁴ The International Covenant on Civil and Political Rights (“ICCPR”) was adopted and ratified by New Zealand on 28 December 1978.¹⁵ New Zealand indicated its consent to be legally bound by the ICCPR. Following the ratification of the treaty, the importance of the ICCPR in New Zealand has been reflected on a judicial level.¹⁶ The Court of Appeal in *R v Bain, application by Television New Zealand* applied articles 14(1) and 19(3) of the ICCPR in its determination of whether the lifting of a suppression order was in the public interest and in accord with freedom of expression.¹⁷ The application of the ICCPR by New Zealand’s judiciary confirms that the ICCPR is incorporated into our domestic law.

¹² New Zealand Bill of Rights Act 1990, section 20.

¹³ International Covenant on Civil and Political Rights, article 27; United Nations Declaration on the Rights of Indigenous Peoples, article 13.

¹⁴ Vienna Convention on the Law of Treaties 1969, articles 2(1)(b), 14(1), 16.

¹⁵ Ministry of Justice, international-covenant-on-civil-and-political-rights, accessed at <www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/human-rights/international-human-rights/international-covenant-on-civil-and-political-rights/>.

¹⁶ *From Treaty to Translation: The Use of International Human Rights Instruments in the Application and Enforcement of Civil and Political Rights in New Zealand* (8 Canterbury Law Review, vol 8, no 54 2001)

¹⁷ *R v Bain, application by Television New Zealand* 22/7/96 (CA 255/95).

29. The fundamental right to speak Te Reo Māori is enshrined in the ICCPR under the article 27:¹⁸

Article 27: In those States in which...linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to ... use their own language.

30. The United Nations Human Rights Committee (“Human Rights Committee”) is the body of independent experts that monitors implementation of the ICCPR by its State parties.¹⁹ The Human Rights Committee held that article 27 of the ICCPR recognises “*the existence of a ‘right’ and requires that it shall not be denied*”.²⁰ Further to this, the Human Rights Committee affirmed that parties to the ICCPR are “*under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation*”.²¹

31. Pursuant to the Human Rights Committee’s interpretation of article 27, parties to the ICCPR are required to take positive steps to protect the use of languages that are considered to be in a vulnerable state.²² The Waitangi Tribunal in *Ko Aotearoa Tēnei* concluded that Te Reo Māori is subject to an alarming decline,²³ and is indeed in a vulnerable state that would require protection as per the Human Rights Committee’s interpretation. As a party to the ICCPR, New Zealand has the obligation under article 27 to ensure that the right to speak Te Reo Māori is:

- (1) recognised as a fundamental right;
- (2) protected so as not to be denied or violated.

32. Further to the ICCPR protection, the right to speak Te Reo Māori is protected by the United Nations Declaration on the Rights of Indigenous

¹⁸ International Covenant on Civil and Political Rights, article 27.

¹⁹ United Nations, Monitoring civil and political rights, accessed at <www.ohchr.org/en/hrbodies/ccpr/pages/ccprindex.aspx>.

²⁰ Human Rights Committee General Comment No 23 - The Rights of Minorities (1994) CCPR/C/21/Rev.1/Add.5 at [6.1]-[6.2].

²¹ Human Rights Committee General Comment No 23 - The Rights of Minorities (1994) CCPR/C/21/Rev.1/Add.5 at [6.1]-[6.2].

²² Tai Ahu, Te Reo Māori as a language of New Zealand Law - the attainment of civic status, LLM Dissertation, 2012, at 27.

²³ Ko Aotearoa Tēnei at [5.3.8].

Peoples (“UNDRIP”). New Zealand affirmed its support for UNDRIP on 20 April 2010, in keeping with its “*strong commitment to human rights, and indigenous rights in particular*”.²⁴ The right to speak Te Reo Māori is enshrined in article 13 of UNDRIP.²⁵

- (1) Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
- (2) States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

33. It is acknowledged that UNDRIP is non legally binding given its status as a United Nations declaration.²⁶ However, New Zealand’s endorsement of UNDRIP indicates its willingness to be bound by the articles contained therein. On this basis, there is an international expectation that the Crown will abide by article 13 of UNDRIP.

34. Consistent with article 27 of the ICCPR and given New Zealand’s affirmation of UNDRIP, article 13 on UNDRIP confers a twofold protection on the right to speak Te Reo Māori:

- (1) enshrining the right of Māori to revitalise, use, develop and transmit Te Reo Māori to future generations while designating and retaining Te Reo Māori for communities, places and persons;²⁷ and

²⁴ New Zealand Parliament, Ministerial Statements — UN Declaration on the Rights of Indigenous Peoples— Government Support, accessed at < https://www.parliament.nz/en/pb/hansard/debates/rhr/document/49HansD_20100420_00000071/ministerial-statements-un-declaration-on-the-rights-of >.

²⁵ United Nations Declaration on the Rights of Indigenous Peoples, article 13.

²⁶ United Nations, Indigenous peoples – Indigenous voices, accessed at www.un.org/esa/socdev/unpfii/documents/FAQsindigenousdeclaration.pdf.

²⁷ United Nations Declaration on the Rights of Indigenous Peoples, article 13(1).

- (2) providing the obligation on New Zealand to take effective measures to ensure that this right is protected and that Māori can understand and be understood in political, legal and administrative proceedings (through the speaking of Te Reo Māori if necessary).²⁸

Domestic safeguards

35. The New Zealand Bill of Rights Act 1990 (“BORA”) is the primary domestic instrument through which New Zealand has incorporated its obligations under the ICCPR and has expressed a commitment to those obligations.²⁹ BORA applies to acts of the New Zealand Government or individuals or bodies in their performance of public functions, powers or duties.³⁰ Section 20 of BORA enshrines the fundamental right to speak Te Reo Māori.³¹

Section 20: A person who belongs to a linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practise the religion, or to use the language, of that minority.

36. The wording of section 20 of BORA both reflects and is consistent with the wording of article 27 of the ICCPR. It holds then that the Human Rights Committee’s interpretation of the article 27 obligation on states to protect the use of languages that are considered to be in a vulnerable state can be adopted with respect of section 20 of BORA. Reflecting this, section 20 confers the obligation to ensure that the right to speak Te Reo Māori is:³²

- (1) recognised as a fundamental right;
- (2) protected so as not to be denied or violated.

37. It is an established principle that a generous approach should be taken when BORA rights are interpreted or construed.³³ The Court of Appeal in *Ministry of Transport v Noort (Police v Curran)* held that when considering

²⁸ United Nations Declaration on the Rights of Indigenous Peoples, article 13(2).

²⁹ New Zealand Bill of Rights Act 1990, long title, (b).

³⁰ New Zealand Bill of Rights Act 1990, long title, section 3.

³¹ New Zealand Bill of Rights Act 1990, long title, section 20.

³² As reflected in paragraph 31 above, pursuant to the Human Rights Committee’s analysis of article 27 of International Covenant on Civil and Political Rights.

³³ Tai Ahu, Te Reo Māori as a language of New Zealand Law - the attainment of civic status, LLM Dissertation, 2012, at 33.

rights under BORA, a “*generous interpretation suitable to give individuals the full measure of the fundamental rights and freedoms referred to*” should be given.³⁴ On this basis and consistent with the Human Rights Committee’s interpretation of article 27, section 20 of BORA should be interpreted in a manner than provides full force to the right to speak Te Reo Māori.

Funding constraints

38. While it has been established that the right to speak Te Reo Māori is a fundamental right protected by law, funding barriers remain an obstacle to Māori seeking to defend this right in the Courts. Financial assistance is often inaccessible for those who wish to defend this right but are unable to afford the legal costs of doing so. Given New Zealand’s obligation to uphold this right, the provision of financial assistance for claims of this nature is necessary for those financial less fortunate in accordance with the fundamental right of access to justice.³⁵

Biomathematically predicted extinction

39. In a study published in the *Journal of the Royal Society* on 8 January 2020, researchers applied a complex mathematical model to language transmission in Wales and New Zealand. The respective populations were divided into defined language proficiency categories and dynamically quantified transition rates between categories were calculated. 2013 census data was used. The developed model can predict changes in proficiency levels over time (upwards of 300 years) and, ultimately, whether a given endangered language is on a long-term trajectory towards extinction or recovery. Some of the finely-balanced consideration that was given to formulating the model is set out below:³⁶

The second type of modelling approach, into which this study falls, assumes that the language is fixed and models trends in the number of speakers of that language over time due to shifts in individuals' language use. This approach was popularized by

³⁴ *Ministry of Transport v Noort (Police v Curran)* [1992] CA369/91 (CA) at 32.

³⁵ New Zealand Bill of Rights Act 1990, long title, section 27.

³⁶ Barrett Walker, T., Plank, M.J., Ka'ai-Mahuta, R., Hikuroa, D. and James, A., *Kia kaua te reo e kite ki te moa, ka ngaro: do not let the language suffer the same fate as the moa*, 8 January 2020, *The Royal Society Publishing*— <https://royalsocietypublishing.org/doi/10.1098/rsif.2019.0526#d3e417>

Abrams & Strogatz], who assumed that two languages compete for speakers and an increase in the number of speakers or in the perceived status of one language increases its attractiveness. In this model, one language will ultimately dominate and push the other to extinction. It was subsequently shown that including other factors, such as spatial heterogeneity modelled by a reaction–diffusion equation or population dynamics modelled by a reproduction term, could allow the languages to coexist. Spatially explicit models allow the spread or regression of a language over time to be investigated and have been applied to the geographical range of Gaelic in Scotland and Slovenian in Austria. Other extensions to consider a wider range of societal conditions and parameters including bilingualism and intergenerational transmission. Modelling based on these works has been applied to te reo Māori by, where the amount of te reo Māori heard, family contribution and community contribution were recognized as influential factors. In addition to these differential equation models, agent-based models have been used to add finer-scale information and environmental factors onto the same underlying mechanism of competition between a dominant and a minority language. Mathematically, these models are of Lotka–Volterra type with a mixture of competitive and predator–prey interactions.

40. The model data for Wales showed that with current learning rates, the Welsh language will thrive in the long-term. When applied to the Māori population, the model showed that with current learning rates, te reo Māori is on a pathway towards extinction. The downward trajectory projection is consistent with census data showing a decline in the proportion of Māori under the age of 24 who are able to speak the language from 21% in 2001 to 16% in 2013. When just the Māori population is considered, language revitalization will be successful in the long-term if similar learning rates to those in Wales can be achieved. Unfortunately, Māori participation rates in language learning programmes are substantially lower than in Wales, which suggests that learning rate parameters for te reo Māori by Māori are lower than for Welsh.
41. Statistics broken down by age brackets suggest that adult learning of te reo is relatively strong but school-age learning lags behind. This suggests that

strategies targeting learning at schools are likely to have the highest potential benefits. “Government measures” that have contributed to the Welsh language revitalisation were suggested by the researchers for application here in New Zealand, such as the provision of language-medium early childhood education, the integration of the language into the primary and secondary school curriculum, investment in language-immersion education, development of the quantity and quality of teachers and the use of Welsh in the public and institutional spheres. Most if not all of the suggested measures are being taken here in Aotearoa. The point being made was moreso that the scale and intensity of the suggested measures need to be increased in order for Māori to achieve the necessary language learning rates.

42. The calibrated model was used to show that the Maihi Karauna³⁷ target of 150,000 Māori speaking te reo as their primary language by 2040 will require a learning rate that is approximately 50% higher than Welsh learning rates. At the present learning rates for Māori, the target will not be achieved. The researchers expressed concern with the proposed spread in Maihi Karauna of teachers across the population of New Zealand as a whole “because the limited pool of teachers is spread too thinly”. Where teacher capacity is limited, it was thought that the emphasis should be on learning among Māori. This is prudent advice in the circumstances. However, as we discuss later in these submissions, the Crown has failed to address teacher shortage in Maihi Karauna. For the researchers, the solution is to focus the efforts of the available teachers on Māori learners. Whilst this may be a prudent response to the realities of teacher shortages, it is further evidence in support of the call for more teachers as well.

ISSUE 20(1) CROWN OBLIGATION TO ACTIVELY PROTECT

43. In this section of the closing submissions, we address Issue 20(1) of the Tribunal's Statement of Issues:

20(1) Was the Crown under an obligation to protect and promote te reo Māori among Taihape Māori?

³⁷ Published in February 2019, *Maihi Karauna* is the Crown's strategy for Māori language revitalisation 2019 – 2023—see <https://www.tpk.govt.nz/mi/a-matou-kaupapa/maihi-karauna>

a) Was the Crown's obligation to protect and promote Te Reo Māori include the protection of dialects of Taihape hapū and iwi in the region?

Settled law – *he taonga*

44. Counsel argues that the Crown is under an obligation to protect and promote Te Reo Māori among Taihape Māori. Counsel further say that it is settled law that the Crown has a duty and an obligation to protect and foster Te Reo o Ngā Hapū o Taihape as well as develop, revitalise and safeguard Te Reo o Ngā Hapū o Taihape for the current and future generations as part of a wider obligation to preserve Te Reo me ōna Tikanga generally. This obligation is highlighted in the Wai 11 Te Reo Māori Report and the Wai 262 Ko Aotearoa Tēnei Report.
45. The status of te reo Māori as a taonga for the purposes of Article II of Te Tiriti o Waitangi was confirmed in the Tribunal's Te Reo Māori Report:³⁸
- . . . when the question for decision is whether the te reo Māori is a "taonga" which the Crown is obliged to recognise we conclude that there can only be one answer. It is plain that the language is a "valued Possession". The claim illustrates that fact, and the wide representation from all corners of Māoridom in support of it underlies and emphasises the point.
46. The issue that arises in the context of the present claim is whether individual tribal dialects, such as Te Reo o Ngā Hapū o Taihape, are also taonga for the purposes of Article 2 of Te Tiriti.
47. The answer to this question is that, like the reo itself, tribal dialects must also be taonga for the purposes of Article 2 of Te Tiriti and therefore must benefit from the guarantee of tino rangatiratanga contained in Article 2.
48. The importance of tribal dialects was recognised by the Crown as part of its Māori Language Strategy when the Wai 262 claim was argued. In

³⁸ Waitangi Tribunal, *Te Reo Māori Report* (Wai 11, 1987) at [4.2.4].

discussing the issue of dialects, the Wai 262 Tribunal endorsed the idea that the dialects of various iwi are taonga. That report stated that:³⁹

In 1840, there was not one uniform 'reo' in New Zealand but many variations, and the Treaty recognised tribal independence. And so it must follow that, for individual iwi, dialects are taonga of the utmost importance: they are the traditional media for transmitting the unique knowledge and culture of those iwi and are bound up with their very identity. Ngāti Porou, for example, are well known within te ao Māori for their unique idiom, without which the iwi would lose a core element of its distinctiveness.

49. The terms 'dialect', 'mita', 'tribal reo', and 'reo a iwi' have many interpretations. Some commentators describe dozens of 'dialects' within the reo of one particular iwi, while others identify variations across distinct geographical divides. Ngāti Porou Rūnanga chair Dr Apirana Mahuika told us that he 'bristled' at the use of the phrase 'tribal dialects', and stated that:

Te reo ake o Ngati Porou is not a tribal dialect. It is my language and therefore all that I am.

50. It is these dialects together that comprise the Māori Language as a whole and that contribute to its unique character. The mita and register of the language used by a Māori speaker is one of the ways that the tribal origins of the speaker can be identified. The loss of any of these dialects from the Māori language would, it is submitted undermine the unique character and the rich heritage and culture that the claimants in the original Te Reo Māori claim were seeking to protect, and which the Tribunal in its Te Reo Māori Report concluded required protection.
51. This is also acknowledged in the purpose of the Māori Language Act 1987, which states:

Whereas in the Treaty of Waitangi the Crown confirmed and guaranteed to the Māori people, among other things, all their taonga: And whereas the Māori language is one such taonga.

³⁹ Waitangi Tribunal, *Ko Aotearoa Tenei* (Wai 261, 2011) at 442.

52. In 1994, the Privy Council agreed with the previous Tribunals findings and the Crown's obligation to protect Te Reo Māori: language was at the 'core' of Māori culture and that the Crown is under an ongoing obligation to take what steps are reasonable to assist in its preservation.
53. It's the full recognition of this acknowledgement to preserve the core of Māori culture is to be achieved then it follows that steps must be taken to preserve Māori dialect as part of the ongoing Crown obligation to actively protect Te Reo Māori.

Te Reo Māori and Te Reo o Ngā Hapū o Taihape

54. We refer to the submissions made above at paragraphs 21 to 26. The evidence provided by Taihape Māori as a general proposition mirrored the observations made in the submissions referred to.⁴⁰ Much of the testimony concentrated on Te Reo Māori and its significant position within te ao Māori, and within their rohe and how it has been impacted upon. Claimants highlighted that prior to colonisation and Te Tiriti o Waitangi, Taihape Māori exercised their tino rangatiratanga by actively asserting and implementing Te Reo into everyday lives. It was a means of communication, a means of advancement, of identity and it was what they knew to be normal.⁴¹
55. It was repeatedly emphasised that Te Reo Māori was spoken but it is not merely a language. Te Reo is the vehicle for the transmission of mātauranga Māori and is pivotal to the retention, preservation and development of the entire Māori culture. This was expressed in this way by Mr Jordan Winiata-Haines:⁴²

Before the Pākehā arrived, Māori were devout followers and believed of Māori gods; to spiritual symbology and religious practices that survived centuries. These knowledge practices and belief systems were passed down through the genealogical models and rituals of Māori to protect heritage, history and genealogy to the relationships of a Māori world view.

⁴⁰ To avoid any repetition, the submissions are merely referred to as opposed to being set out again here.

⁴¹ Wai 2180, #K9 at [9].

⁴² Wai 2180, #C6 at [14].

56. In her evidence before this Tribunal, Ngaire Anne Te Hirata Kauika-Stevens tied language loss to the erosion of cultural identity and knowledge.⁴³

We had a generation of no Te Reo, which was a huge loss that transcended the loss of fluency in our language, and actually eroded our sense of identity. This was due to the government and the education system and, still today, it has not changed. We are still being denied a basic right to learn our language in our own rohe, on our own land.

The impact is that we have been unable to successfully maintain tikanga a hapū, tikanga a Marae, tikanga a whānau.

The Crown must accept responsibility for their arrogance, their mana-diminishing attitude, the oppression of our people, and the intergenerational suffering, all due to the loss of our Reo.

Te Reo Māori is expressive in nature; it is enriched with symbolism and imagery that connects us with our surroundings and provides that sense of identity and belonging. It is a part of our heritage and the very heart of our culture. To say the least, Te Reo Māori is a taonga. If one does not possess that understanding of Te Reo Māori and everything that is encompasses, a massive cultural catalogue is also lost.

57. Many witnesses drew the Tribunal to the assertion of Mana Māori Motuhake that underpinned their histories. They asserted that Taihape Māori were an independent people and as such, Te Reo o Ngā Hapū o Taihape was an integral part of their ways of life and separate and distinct identities.
58. A key point of contention for the parties is that the Crown's concessions do not go far enough in their statement of position to recognise that some of these identities are under threat by virtue of historical and contemporary Crown policy frameworks.

⁴³ Statement of Evidence of Ngaire Anne Te Hirata Kauika-Stevens, Wai 2180, #J5, at [39]-[41].

59. The duty of protection protected by the Te Tiriti guarantees, the claimants say, goes beyond a general obligation to Te Reo Māori and is one that requires policy practices and resources for the preservation of Te Reo o Ngā Hapū o Taihape and the unique identities that enable the sustenance and maintenance of their culture and Mātauranga Māori.
60. Language is not only the foundation of any culture; it is also critical to expressing that culture – to literally give voice to it. That this is as true of te reo Māori and Māoritanga as it is of the English language and is a point that was most eloquently made by Sir James Henare (1911-1989) during the Te Reo Māori Hearings. Giving evidence to the Waitangi Tribunal during its 1985 inquiry into the Te Reo Māori Claim, the distinguished bilingual and bicultural Statesman used not only a whakatauki but also the words of an eminent American poet to make his point about the importance of te reo Māori to the Māori people. Citing Oliver Wendell Holmes, Sir James told the Tribunal that:⁴⁴
- Language is a solemn thing, it grows out of life, out of its agonies and its ecstasies, its wants and its weariness. Every language is a temple in which the soul of those who speak it is enshrined.”
61. In the earlier body of these submissions we showed the repeated Crown assertion that the Crown recognises Te Reo Māori as a taonga of Māori, including Taihape Māori, and accepts it has a duty to protect and sustain the language. Yet subtly as the evidence of their witnesses asserted the Crown also maintains that such a duty is not absolute and unqualified particularly in the context of an analysis of dialectical preservation of Te Reo o Nga Hapū o Taihape. We anticipate that the Tribunal will be called upon to assess whether what has been done (or not done in this instant case) is action that is reasonable in the prevailing circumstances”, which of course was a matter articulated in the *Broadcasting Assets* case.
62. These assertions we say need to be measured against the evidence and policies and practices of the Crown that have prevailed since the Te Reo Māori claim was decided.

⁴⁴ Wai 11, #71a Te Reo Māori Claim Transcript of the evidence of Sir James Henare at 8.

63. The evidence is clear that Ngā Hapū o Taihape face significant obstacles in overcoming the Crown resistance to providing appropriate resource for Taihape Māori to ensure the maintenance of their Te Reo which puts their identities also at risk of mono-culturalism and assimilation practices working to diminish the same.

Crown duties in relation to Māori education of Taihape Māori

64. Under the terms and principles of the Treaty of Waitangi, the Crown was, and is, under an obligation to promote and ensure an appropriate education for Taihape Māori and which entails the following obligations to⁴⁵:

- (1) Ensure that Taihape Māori whānau had and continue to have access to an appropriate standard of education;⁴⁶
- (2) Ensure that Taihape Māori received and continue to receive an appropriate standard of education;⁴⁷
- (3) Consult with Taihape Māori on matters relating to their education, including the development of policies to promote and ensure an appropriate education for Taihape Māori;⁴⁸
- (4) Ensure Taihape Māori have a role in education initiatives to promote and ensure an appropriate education for Taihape Māori;⁴⁹

⁴⁵ This must be considered alongside the arguable presence of an overarching responsibility of the Crown and Māori analogous to a fiduciary relationship – i.e. to act solely in other party's best interests see Waitangi Tribunal, Turangi Township Report, Wellington, Brooker's Ltd, 1995, p289.

⁴⁶ Arising expressly out of Te Tiriti o Waitangi/Treaty of Waitangi, Art III. Also arguably out of Art I, Crown's duties as lawmaker to legislate appropriately, and Art II – partnership with duty to act reasonably and in good faith in establishing schools with appropriate education for Taihape Māori (See for e.g. New Zealand Māori Council v Attorney General [1987] 1 NZLR 641, pp664), Art II obligation of active protection of access and right to education and for Taihape Māori in general in receiving education according to their own cultural preferences as guaranteed by Article IV (See also Waitangi Tribunal Wairarapa Ki Tararua Report (Wai 863, 2010) at p1049 and Waitangi Tribunal HeWhiritaunoka: The Whanganui Land Report (Wai 903, 2015) at p1174 in relation to the duties arising from the principle of active protection).

⁴⁷ Arising out of Te Tiriti o Waitangi/ Treaty of Waitangi, Art III. Also, arguably out of Art I, Crown's duties as lawmaker to legislate appropriately, and Art II – partnership with duty to act reasonably and in good faith in establishing schools with appropriate education for Taihape Māori (See for e.g. New Zealand Māori Council v Attorney General [1987] 1 NZLR 641, pp664).

⁴⁸ Arising out of the Te Tiriti/Treaty relationship –the principle of partnership imposing duty to act reasonably and in good faith. This includes the duty to consult with Māori. See for example the Treaty of Waitangi, Articles I-III, New Zealand Māori Council v Attorney General [1987] 1 NZLR 641, pp664, 683, Waitangi Tribunal, Report of the Waitangi Tribunal on the Manukau Claim, 2nd ed, Wellington, Department of Justice: Waitangi Tribunal, 1989, pp70, 87, Waitangi Tribunal, Report of the Waitangi Tribunal on the Orakei Claim, 3rd ed, Wellington, GP Publications, 1996, p147.

- (5) Ensure that sufficient resources and funding were and are provided to promote and ensure an appropriate education for Taihape Māori their whānau hapū and iwi;⁵⁰ and
 - (6) Actively protect and promote te reo and tikanga as taonga for Taihape Māori within the educational system.⁵¹
65. A key factual matrix that has emerged in this Inquiry is that the education system that has been and is operating is unsuccessful because too many Māori children are not reaching an acceptable standard of education. For some reason they do not or cannot take full advantage of it.
66. We say this state of affairs cannot and should not be seen distinct from the policies and practices that have been imposed by the Crown which we have identified as part of a process of linguisticide which sadly continues today. This is because as a region located in the central interior there are no specific funding obligations to the region itself and whānau and hapū inevitably go cap and hand to Whanganui, Taupo, Napier and Wellington to lobby for the resources that are available for Māori language initiatives.
67. The threat of imminent 'language death' spelled out by the research of Richard Benton in the 1970s and reinforced by Māori experiences has meant a major community driven struggle for the revival and retention of Māori language is one that has effectively been denied to Taihape Māori because of the lack of resources invested in the region to promote Māori culture and language. Furthermore, it has meant the denial of the practice of tino rangatiratanga by the peoples of Taihape.

⁴⁹ Arising out of Te Tiriti o Waitangi /Treaty of Waitangi, Article II. Support also present from Waitangi Tribunal, Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim, 3rd ed, Wellington, GP Publications, 1996, p187.

⁵⁰ Arising out of Te Tiriti o Waitangi / Treaty of Waitangi, Articles II and III.

⁵¹ Arising out of Te Tiriti o Waitangi/Treaty of Waitangi, Article II – Crown undertook to protect and preserve Māori property included te reo Māori as a taonga; New Zealand Māori Council v Attorney General [1994] 1 NZLR 513, p517, the word (guarantee) requires active steps to be taken by the Crown to ensure that Māori people have and retain the full exclusive and undisturbed possession of their language and culture; Waitangi Tribunal, Report of the Waitangi Tribunal on the Te Reo Māori Claim, 4th ed, 1996, p20, not just possession, but mana to control in accordance with customs and preferences; Waitangi Tribunal, Report of the Waitangi Tribunal on the Motonui-Waitara Claim, 2nd ed, Wellington GP Office, 1989, p51. Note that taonga includes all valued resources and intangible cultural assets; see for example Motonui Waitara Report p 50, Waitangi Tribunal, Report of the Waitangi Tribunal on the Kaituna River Claim, 2nd ed, Wellington, GP Office, 1989, p13, Manukau Report, p67).

68. In the context of Māori language acquisition and revitalisation, this principle is interpreted in a number of ways:
- (i) as partnership with the Crown;
 - (ii) as self-determination;
 - (iii) as Māori autonomy and control over resources; and
 - (iv) as a symbol around which ideas are organised.
69. The evidence is overwhelming that for Taihape Māori, there is an absence of expression and practice of these principles when efforts by the Education System are analysed both with respect to acquisition of Te Reo Māori and to the revival and maintenance of the unique dialects of the region. The evidence is also clear that the scholastic achievements of Māori in the region falling far short of what they should be when compared between regions and nationally.
70. We say that there is a nexus between the failure to protect Te Reo and scholastic underachievement even for those Māori that have failed in English only mediums of education. The evidence discloses that they have done so because the lack of protection for the mana of their culture and their language Te Reo Māori. The absence of authority by Māori hapū and iwi to demand appropriate learning experience for Māori consistent with their ways of life shows there is a psychological undermining of Māori ways of life and practices. Issues of tikanga are part of the dynamics of a living culture and should not be regarded as recipe or formula which can be learned at a Māori immersion setting only. Kaupapa Māori should inculcate all learning settings if the Te Tiriti promises to protect Tikanga Māori are to be given practical effect.
71. Judged by the system's own standards Māori children are not being successfully taught, and for this reason alone, quite apart from a duty to protect the Māori language, the education system is being operated in

breach of the Treaty. These matters are dealt with in much more detail in the accompanying Generic Submissions on the education system.

72. The experiences of Taihape Māori in schools need to be assessed against these ongoing dynamics and the recognition or lack of recognition of the interconnection of the dialects of the region with the unique hapū and iwi identities to which those dialects inform.
73. We move now to consider how the decline in Te Reo has affected Taihape Māori, their culture and their identity.

Decline in Te Reo Māori for Taihape Māori

74. To illustrate the position of Taihape Māori that the language has declined, we need only turn to the tangata whenua evidence that has been provided concerning the health of Te Reo Māori.
75. Jordan Winiata Haines and Āwhina Twomey shared about the effects of years of oppression on Ngāti Hinemanu and Ngāti Paki which led to the decline of te Reo within their hapū.⁵²

Our ancestor died and our traditional lands that should have been the base for our iwi were taken. Traditional practices of child rearing changed from this point on. The thoughts and opinions of our ancestors changed towards the notion that we should embrace the language, rules and regulations of Pākehā education and under the impression that by doing this we would be able to retain our lands and Māori would survive.

Due to all these extenuating factors, Māori language also suffered and traditional practices dating back pre-European times of Ngāti Hinemanu and Ngāti Paki eventually diminished.

From the early 1900's our ancestor realised our language was slowly dying. More Māori children were becoming educated in English at the expense of te reo Māori. He realised the negative impacts of English ideas and thoughts that had emerged, especially those brought to the area through religious doctrines.

Between 1800 and 1900, the majority of skilled experts of each particular family died. Along with them died their language and customs, and the traditional knowledge systems they each held would be lost to us forever.

⁵² Wai 2180, #C6 at [13]-[14].

76. The decline in Te Reo Māori within this district has been devastating. Dr Soutar stated during cross examination that:⁵³

The language is dying in this region and we have seen it in the amount of times we have come in here, to the maraes to see how many people actually speak Māori and it is a – it is quite tragic the impression I get personally.

77. For many Taihape Māori, Te Reo is more precious now especially because the language is retained by so few among Taihape Māori. Āwhina Twomey, Kiriana Winiata and Jordan Winiata-Haines stressed this fact and stated that:⁵⁴

We currently have only a handful of fluent speaking hapū members and less than five who actively perform on our marae. We are missing a huge part of our cultural identity and, much of it is now lost forever. We hold strong to the view that the fault of the state of our reo does not lie at the feet of Ngāti Hinemanu me Ngāti Paki, but rather it is at the feet of the Crown.

78. Ms Te Rina Warren presented evidence and stated that Te Reo Māori has been absent in her whānau for four generations:⁵⁵

Perhaps it was thought that there was no value in our language, as English is the dominant language of our people. It pains me to no end that the capability of te reo Māori among my whānau is modest.

79. The impacts of urbanisation are also evident when looking at the decline of Te Reo o Ngā Hapū o Taihape. Because many Taihape Māori became dislocated and disconnected to their whenua and reo, the latter generations of Taihape Māori have been subject to learning Te Reo from people who are not from the area which has subsequently, diminished the unique reo o Ngā Hapū o Taihape. This was highlighted in evidence by Āwhina Twomey:⁵⁶

It is also important to note that the reo which is used by these few, is reo that has been learnt from kaumātua from other iwi, or iwi institutions outside of our own rohe. Thousands of dollars have been expended by each person, in an effort to gain

⁵³ Wai 2180, #4.1.19 at 54.

⁵⁴ Wai 2180, #K9 at [13].

⁵⁵ Wai 2180, #G8(a) at [11].

⁵⁶ Wai 2180, #K9 at [14].

fluency; fluency in te reo me ōna tikanga, which should have been ours as a birth right.

80. Ms Twomey also spoke about her recollection of the men on the paepae at Winiata marae. She stated that:⁵⁷

They were the 'taurahere' or 'in-laws' of the families, those men that had married in to the families at Winiata. My grandfathers' Mohi Tūpaea and Tau Wilson held the prestige of the paepae, both from Waikato, before long Rū Kōtua from Takapau assumed a role on the paepae. When they passed on Ray Beatty from Te Wairoa took on a role and not long after him, Jack Simon from Te Arawa. That was how the paepae of Winiata marae was taken care of right up until mine and Jordan's generation learned to stand on our marae. My father turns 75 this year and he does not recall any men from his mother's generation being able to speak Māori. Perhaps there was not one child that was born with Māori as their first language.

81. In Counsel's submission, the Crown guaranteed to protect Te Reo o Taihape and are therefore bound to assist with the development, the revival of Te Reo and also the safeguarding of Te Reo o Ngā Hapū o Taihape, no matter what the circumstance.
82. We move now to consider the Crowns historical and contemporary policies and practices which we say when applied to the situation of Taihape Māori illustrate how abysmal Crown efforts and obligations have been to Taihape Māori specifically and why the principle of tino rangatiratanga has been ignored in these language acquisition and maintenance contexts.
83. The promises in the Treaty of Waitangi of equality in education as in all other human rights are undeniable. The analysis that follows shows a number of shortfalls both in the lack of even-handed treatment of Taihape Māori to access educational opportunities in Māori medium education initiatives and people and the lack of equal standing that Taihape Māori have with the Crown with respect to the development of partnerships to promote and protect Te Reo Rangatira.
84. The submissions also highlight the well-known axiom that equity cannot be achieved, through treating all the people equally rather it can be achieved

⁵⁷ Wai 2180, #C6 at [26].

through treating all the people in an equitable manner, i.e. as per their circumstances. Moreover, equality works, only if the starting point of every individual is same. Clearly that has not been the Taihape experience historically nor in contemporary terms.

ISSUES 20 (2), (3), (4) and (5) ENGLISH ONLY EDUCATION

85. In this section of the closing submissions, we address the issues 20(1), (2), (3) and (4) of the Tribunal Statement of Issues:

- (2) Did legislation, policies and practices of the Crown contribute to the decline of Te Reo Māori among Taihape Māori? If so, how?**
- (3) What factors influenced legislation, policies and practices of the Crown concerning Te Reo Māori in the Taihape inquiry district?**
- (4) Was the generational transmission of Te Reo Māori among Taihape Māori affected by Crown legislation, policies and practices? If so, how?**
- (5) What has been the Crown's policy and practice towards Te Reo Māori including dialects of Te Reo in Taihape over time?**

Linguicidal intent

86. Any examination of the fate of te reo Māori leads inevitably to a focus on New Zealand's education system. The hegemonic propagation of the English language by the Crown in public and Native schools was far more injurious to the retention and use of te reo Māori than any other Crown-related activity. In the following submissions, it is contended that the Crown initiated and pursued a deliberate policy of language annihilation—a policy of linguisticide. There was no intention to preserve te reo Māori at all. Language homogeneity was the goal and there's no room for bi-lingualism in such a colonial project. The term "linguicide" refers to the death of a

language, either naturally or from political causes.⁵⁸ Language death occurs when the last native speaker is lost or, more typically, the few remaining speakers of a language no longer use it to communicate with. The generational transmission of te reo Māori among Taihape Māori was affected, in particular, by the Crown policy of linguicide. Linguicide is a slow process that occurs across generations until the moribund language's use is restricted to ceremony, poetry or song.⁵⁹

The extreme form of deprivation of linguistic rights is linguicide ("glottophagie"/linguistic cannibalism, Calvet 1974, Brenzinger 1992, Skutnabb-Kangas & Phillipson in press). A more appropriate metaphor than language death, which seems to imply natural causes for the demise of a language, might be language murder, since it has frequently been a conscious policy of the dominant group to eliminate minority languages. Linguistic wrongs occur when languages are marginalized and deprived of resources or recognition, when language shift is imposed on individuals and groups. There is abundant documentation of the major role played by education systems worldwide in this process, the underlying policy being to assimilate linguistic minority groups to the dominant language and culture (see, for instance, many of the contributions to Skutnabb-Kangas & Cummins 1988).

87. The fact that te reo Rangatira has not (yet) died out does not mean that linguicide was not the Crown's language policy. It is not controversial that monolingualism was a key language-related goal for the Crown. It is patently obvious from, for instance, the Crown's education-related legislation, policy and actions of the mid-to-late 19th century in particular (and for the first half of the 20th century at least).⁶⁰ The Crown sounded the death-knell for te reo Māori when its English-only policy for Māori pupils was implemented in the mid-19th century. A language programme that fosters a monolingual society must have the demise of any rival language

⁵⁸ <https://en.wiktionary.org/wiki/linguicide>; <https://www.yourdictionary.com/linguicide>; <http://definition.org/define/linguicide>

⁵⁹ Phillipson, Robert and Skutnabb-Kangas, Tove. *Linguistic Rights and Wrongs*, 1995, at 2—

https://www.researchgate.net/publication/311453345_Linguistic_rights_and_wrongs

⁶⁰ We expand on the Crown's monolingualism legislation and policy later in these submissions and we examine the reasons for it, they being social control, law and order and security.

in its design. It is essential. Language homogeneity cannot be achieved if other languages are left to abound.

88. It was not as if the Crown hadn't already terminated indigenous languages by the time of its arrival in Aotearoa. In his 1992 text *Linguistic Imperialism*, Professor Phillipson wrote:⁶¹

A struggle against the odds was necessary because the consolidation of English and the suppression or neglect of other languages was official policy in Great Britain, as in other core-English speaking countries. The policy has had even more devastating effects on indigenous languages in Scotland and Ireland than in Wales (on Celtic languages see Trudgill 1984, Price 1985, on Irish language issues see Hindley 1990; on the dominance of English in Britain, Grillo 1989). His Majesty's Inspector of Schools, Matthew Arnold (also an influential poet and thinker), saw the issue thus in 1852, in what amounts to a prescription for linguicide:

Whatever encouragement individuals think it desirable to give to the preservation of the Welsh language on grounds of philological or antiquarian interest, it must be the desire of a government to render its dominions, as far as possible, homogenous, and to break down barriers to the freest intercourse between the different parts of them. Sooner or later, the difference of language between Wales and England will be effaced, as has happened with the difference of language between Cornwall and the rest of England.

The Crown policy of other language suppression for the purpose of societal homogeneity is illuminated. For present purposes however, we highlight how the Crown policy of linguicide was forged and applied elsewhere prior to its implementation here in Aotearoa. A decade or so after the Crown's arrival in Aotearoa, Matthew Arnold (see above) was already projecting that the language difference between Wales and England "will be effaced . . .".

⁶¹ Phillipson, Robert. *Linguistic Imperialism*, Oxford University Press (1992), at 18. Robert Phillipson is Research Professor at Copenhagen Business School's Department of English. He graduated as an undergraduate from Cambridge University and gained his PhD from the University of Amsterdam. He is best known for writing *Linguistic Imperialism* and *English-Only Europe?: Challenging Language Policy*.

The Crown-sponsored demise of the Welsh language by the 1850s means that when its English-only policy was instituted in Aotearoa in the 1860s, the Crown was aware that it would destroy te reo Rangatira.

89. Phillipson discussed the longevity of the Crown's linguicidal policy. Its agedness alone further confirms that the Crown was aware of its destructiveness prior to its application here in Aotearoa:⁶²

Monolingualism has a long pedigree. Its roots can be traced back at least to the Greek stigmatization of speakers of other languages as 'barbarian', which originally meant one who uttered meaningless sounds, a non-language.

90. It is known that the Romans took their city-state language of Latin and after imposing it on the rest of Italy, it was instilled on people as far apart as the British Isles and Africa.⁶³

As it turns out, having a military that spoke Latin was integral to the language's success. In his book *Ad Infinitum: A Biography of Latin*, Dr. Ostler identifies three reasons why Latin succeeded where Etruscan and Oscan ultimately failed: "it was a farmers' language, a soldiers' language, and a city language," he asserts.⁶⁴ The seeds of Latin were sown throughout the Italian peninsula with every Roman conquest. Rather than destroying the fields of their enemies, Rome seized fertile tracts of land on which to settle retired soldiers. Soon, well-situated farmers throughout the peninsula were speaking Latin, which increasingly came to be regarded as a language of prestige. Another Roman policy was to compel the youth of the tribes they conquered to enlist in the well-regulated Roman army, where it would become necessary for them to learn Latin, which they would then bring back to their families or wherever they retired. Finally, Latin was spoken in Rome and in the cities that the Romans were establishing in conquered territories.

Following the Norman conquest of England in 1066, the English language was the object of linguistic imperialism by the French language. For

⁶² Phillipson, Robert. *Linguistic Imperialism*, Oxford University Press (1992), at 19.

⁶³ <https://unravellingmag.com/articles/latin/>, per Natalia Zecca-Naples.

⁶⁴ Ostler, N. *Ad Infinitum: A Biography of Latin* (2007), New York: Walker & Company, at 56-57.

hundreds of years, French or Anglo-Norman was the language of administration and therefore a language of higher status in England. William Blackstone considered the use of French in England's court system "as a badge of foreign tyranny".⁶⁵

91. Terminating host languages was standard operating procedure for the colonial powers. The widespread use of Arabic, Chinese, English, French, Russian and Spanish around the globe evidences this practice elsewhere other than in Aotearoa and the Home Countries. Just as Columbus was "discovering" the Americas, Queen Isabella of Spain instituted the Castilian language as a "tool of conquest abroad and a weapon to suppress untutored speech at home".⁶⁶ According to the Queen's language advisor, Nebrija, "[l]anguage has always been the consort of empire, and forever shall remain its mate".⁶⁷ Castilian Spanish was labelled "the companion of the Empire" by Nebrija in the introduction to his *Gramatica de la lengua castellana* (1492) and subsequently exported to the new world.
92. The British followed suit but with the English language and in their particular spheres of interest. For example:⁶⁸

Colonial policy in Ireland involved the imposition of English and the relegation of Irish beyond the pale from the early 16th century.

93. Crown prior knowledge of the destructive effect of monolingualism is pivotal to the Claimants' claims. Knowing of the harm it would cause and proceeding nevertheless with monolingualism places a higher onus on the Crown to resurrect te reo Māori. In turn, this reprehensible conduct mitigates the Crown's ability to qualify its duty to actively protect te reo Māori. The Waitangi Tribunal in *Ko Aotearoa Tenei* found that Crown resourcing for arresting language decline was deficient. On the basis that te reo Māori is a taonga and that Te Tiriti o Waitangi is of constitutional significance, it was found that in the competition for Crown resources, "te

⁶⁵ Blackstone, William. *Commentaries on the Laws of England*, 2nd ed vol 3 (Oxford: Clarendon Press, 1766-69), at 317.

⁶⁶ Illich, Ivan. *Shadow Work*, Salem, New Hampshire and London: Marion Boyars, 1981, at 35. Illich was a Croatian-Austrian philosopher, Roman Catholic priest and critic of the institutions of modern western culture. His 1971 book *Deschooling Society* brought him to public attention. In it he critiqued compulsory mass education and the crippling effects of the institutionalisation of all life.

⁶⁷ Illich, Ivan. *Shadow Work*, Salem, New Hampshire and London: Marion Boyars, 1981, at 34.

⁶⁸ Phillipson, Robert. *Linguistic Imperialism*, Oxford University Press (1992), at 19.

reo must take a reasonable degree of preference”.⁶⁹ We submit that the Crown’s engagement with linguicide also makes it incumbent upon the Crown to properly resource language revitalisation.

94. The Crown delivered education services to Māori in order to create a monolingual, English-speaking society. The professed benevolence of its “civilising” mission is wholly undone if, in order to secure a homogenous society, the Crown was actually on a mission to extinguish the Māori culture and its life-blood language. The advantage the Crown took of young Māori minds to impress upon them the dominance of the English tongue has a disturbing, manipulative veneer to it. Māori were stripped of their culture and imbued with that of a people whose culture they could never truly be a part of. This nonsensical outcome confirms that Māori education was about control and not growth.

Assimilation for homogeneity

95. There is ample evidence that the Crown’s homogenous society owed much to its policy of linguicide. An examination of the colony’s education system and the policy of assimilation reveals this process. In his instructions to Governor Hobson, Lord Normanby stipulated that the civilisation of Māori would be achieved by the “establishment of schools for the education of the aborigines in the elements of literature”.⁷⁰
96. Nothing was more damaging and undermining of te reo rangatira than the policy of assimilation. Borne out of the Crown’s need for security, the policy was essentially about social control and was ineffective therefore as a learning mechanism. Despite the eventual acquisition of control and security, the Crown persisted with assimilation until it was unable to hide its utter detriment to Māori any longer. In 1962, the Hunn Report exploded with the awful truth about the legacy of assimilation and the failing of a people and their language. The wholesale and irreparable harm caused to te reo Rangatira by the Crown’s prolonged reliance on its assimilation

⁶⁹ Waitangi Tribunal, *Ko Aotearoa Tēnei – A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, Legislation Direct, Volume 1, at 167.

⁷⁰ Normanby’s subsequent instruction to Hobson to defend Māori “in the observance of their own custom” may be said to offset the objective of a homogenous society. It should be noted however that Hobson’s defence of Māori custom was only to continue “until they can be brought with this pale of civilised life.”—Normanby to Hobson, 14 August 1839, Great Britain Parliamentary Papers (GBPP), 1840. 238, at 40.

agenda means that its implementation and use culminated in the failure by the Crown to actively protect the Claimants' taonga.

97. The ultimate purpose of assimilation was social control through the creation of a homogenous society. It is accepted that there is also a "civilising" purpose to assimilation.⁷¹ However, the imposition on Māori of western philosophy, language, politics, law, economics and societal standards through the education system engendered compliance with the new norms thus making it easier for the Crown to exert control. In Aotearoa however, the Crown's assimilation agenda was so pervasive, disarming and effective that a political, economic, social and cultural pogrom resulted. The degree of suppression was so insidious it is as if a genocidal war of subjugation was waged. Indeed, the manner in which assimilation and genocide are two sides of the same coin is evident in the view expressed by Premier William Fox when discussing Grey's 'Plan of Native Government' in 1861:⁷²

The present issue is whether they are to be exterminated, or to become civilised people; and with the elements by which we are surrounded a hair may turn the scale.

98. Assimilation has been the cornerstone of the Crown's education policy for Māori since Governor Fitzroy's *Native Trust Ordinance* in 1844:⁷³

Whereas the native people of New Zealand are by natural endowment apt for the acquirement of the arts and habits of civilised life, and are capable of great moral and social advancement; and whereas large numbers of the said people are already desirous of being instructed in the English language, and in English arts and usages; and whereas great disasters have fallen upon uncivilised nations on being brought into contact with colonists from the nations of Europe, and in undertaking the colonization of New Zealand her Majesty's Government have recognised the duty of endeavouring by all practical means to avert like disasters from the native people of

⁷¹ See Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand's Educational History*, The Dunmore Press: Palmerston North 1993, at 40, where the authors set out "three principles" that were to dominate Māori education for many years from 1867 on—"first, that Europeanisation/assimilation was an appropriate policy for the government to pursue in order to "civilise" Māori; second, that the schools could be used for the express purpose of social control; and finally, that education should be made available only in those communities where Māori had not only asked for schooling but also committed resources".

⁷² Dr Vincent O'Malley, *Te Rohe Potae Political Engagement, 1840-1863*, Wai 898, Wai 898, #A23, at 394.

⁷³ *Statutes of New Zealand, 1841-1853*, at 140.

these islands, which object may be best attained by assimilating as speedily as possible the habits and usages of the native to those of the European population; . . .

The English-only agenda was confirmed with the provision that land and funds were to be set aside to develop schools “[f]or the instruction of the Native people in the English language, and for a systematic course of the industrial and moral training in English usages, . . .”.⁷⁴

99. Although the *Native Trust Ordinance* was allowed to lapse, in 1847 Governor Grey provided for, inter alia, mandatory “instruction in the English language” in *An Ordinance for Promoting the Education of the Youth of the Colony of New Zealand* (“the Education Ordinance”).⁷⁵ Whilst applicable to both races, Barrington noted that Grey applied its provisions to the education of Māori and half-caste children.⁷⁶ A number of Māori schools were established as a result, including Te Aute College, St Stephens, St Mary’s⁷⁷ and Wesley College. In evidence he provided to the Te Paparahi o Te Raki Tribunal, Morehu McDonald contended on behalf of Nga Taurira Tawhito o Hato Petera that the primary objective of the Education Ordinance was “the education of the native race of New Zealand.”⁷⁸ McDonald’s evidence was given in relation to the Takapuna Crown Grant, an area of approximately 376 acres in Northcote, Auckland, that was granted by Governor Grey to Bishop Pompallier for educational purposes. In recent Crown closing submissions regarding education and te reo Māori, the Crown submitted that the Education Ordinance was designed chiefly for the purpose of Māori education.⁷⁹ The Crown’s early emphasis on Māori education and on instruction being given in English is evidence that the Crown’s intention with te reo Māori was to eradicate it altogether. A homogenous society would be more readily achieved if the Māori language was gone and with homogeneity would come security through ease of control. Monolingualism would be achieved through education and so what

⁷⁴ *Statutes of New Zealand*, 1841-1853, at 117.

⁷⁵ <https://paperspast.natlib.govt.nz/newspapers/NENZC18480129.2.9> Although the Education Ordinance did not apply on the ground in the Mokai-Patea region, the assimilation agenda that it first propounded would eventually apply in the region. In this regard, submissions concerning the Education Ordinance are relevant to this inquiry.

⁷⁶ Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 26.

⁷⁷ St Mary’s was established in Freeman’s Bay, Auckland, pursuant to the Takapuna Crown Grant. It eventually became Hato Petera College in 1928.

⁷⁸ McDonald, M. *Hato Petera College Research Report Summary*, Wai 1040, #K1(a), at [3] and [17].

⁷⁹ Crown Law, *Closing Submissions for the Crown – Te Reo Māori, Waahi Tapu, Taonga and Tikanga – Issue 14* dated 9 October 2017, Wai 1040, #3.3.415, at [37], [38] and [42].

was supposed to be an act of liberation became, in fact, a pathway to suppression.

100. The trajectory towards a monolingual society was continued in the Native Schools Act 1858 (“the 1858 Act”). Under the 1858 Act, the Crown funded missionary run boarding schools “for the Education of persons of the Aboriginal Native Race (whether children or adults) and of Half-cast children being Orphans, or the Children of indigent persons.” “Instruction in the English language and in the ordinary subjects of the English primary education, and industrial training”⁸⁰ were required. Dr Simon provided evidence concerning the 1858 Act’s subjugative purpose:⁸¹

The Education Ordinance of 1847 first provided for Government funding of mission schools. The support of mission schools continued via the Native Schools Act 1858. Dr Simon believed that the Government was using the schooling of Māori as a means of social control and assimilation, and for the establishment of British law. She provided as evidence a report by school inspector Hugh Carleton, who said in 1862 that schools were ‘aiming at a double objective, the civilisation of the race and the quietening of the country’ . . .

101. Carleton’s complaints about the 1858 Act reveal the legislation’s social control purpose.⁸²

It fails to civilise the race, because, as before observed, it does not reach the masses. It fails to keep down the insurrectionary feeling, for it needs something more than school-boy’s lessons to reconcile men to the idea of lost nationality.

102. The Waananga Capital Establishment Tribunal accepted that Māori schools were “vehicles of social control”.⁸³

Others, according to Dr Simon, were motivated by the opportunities that schools presented as vehicles of social control. She again cited Hugh Carleton, who asserted that

⁸⁰ Native Schools Act 1858, section IX.

⁸¹ Waitangi Tribunal, *Waananga Capital Establishment Report*, 1999, at 5.

⁸² *Appendices to the Journals of the House of Representatives*, 1862 Session I: Being the 2nd session of the 3rd Parliament of New Zealand, E4 Native Schools, Reports of Inspectors, at 18.

⁸³ Waitangi Tribunal, *Waananga Capital Establishment Report*, 1999, at 6.

‘things had now come to pass that it was necessary to either exterminate the Natives or to civilise them’, as well as Major Heaphy, who stated that ‘Any expenditure in this direction would be true economy, as the more Natives were educated the less would be the future expenditure in police and gaols.

Other educationalists have acknowledged the social control purpose of the assimilation agenda⁸⁴—a purpose that would be achieved through an English-only curriculum at the expense of te reo Māori. Professor Ranginui Walker considered that Māori were invaded by the assimilationists:⁸⁵

Beginning with the missionaries, the founding fathers of the new nations state were therefore committed to the policy of assimilation. To this end, the missionaries, and later the state, used education as an instrument of cultural invasion.

103. Growing concerns with the 1858 Act and with missionary based schooling in general led to more forceful calls to expunge the Māori language from society altogether. According to school inspector Henry Taylor:⁸⁶

The Native language itself is another obstacle in the way of civilisation. So long as it exists there is a barrier to the free and unrestrained intercourse which ought to exist between the races.

Hugh Carleton was just as adamant:⁸⁷

I consider that too much stress cannot be laid on the requirement of the English language . . . civilisation cannot be advanced beyond a very short stage through means of the aboriginal tongue. The Māori tongue has sufficed for the requirements of a barbarous race, but apparently would serve for little more.

104. Widespread dis-satisfaction with missionary-based schooling saw the Crown wrest control of Māori education (and the language annihilation

⁸⁴ Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand's Educational History*, The Dunmore Press: Palmerston North 1993, at 40.

⁸⁵ Walker, Ranginui. *Ka Whawhai Tonu Matou: Struggle Without End*, 1990, at 145.

⁸⁶ *Appendices to the Journals of the House of Representatives*, 1862 Session I: Being the 2nd session of the 3rd Parliament of New Zealand, E4 Native Schools, Reports of Inspectors, at 35.

⁸⁷ *Appendices to the Journals of the House of Representatives*, 1862 Session I: Being the 2nd session of the 3rd Parliament of New Zealand, E4 Native Schools, Reports of Inspectors, at 77.

programme) from the churches with the enactment of the Native Schools Act 1867 (“the 1867 Act”). Schools established under the 1867 Act were specifically for Māori. No school would receive Crown funding unless “the English language and the ordinary subjects of primary English education are taught by a competent teacher and the instruction is carried out in the English language as far as practicable.”⁸⁸ Barrington would write:⁸⁹

. . . the policy of excluding te reo Māori from Crown primary schools for the next 100 years can be viewed as probably the single most damaging aspect and legacy of its schooling policies.

105. The monolingual tenet of the 1867 Act would apply in Native schools for the next century or so. Monolingualism was also at the heart of the public school system. This is significant. The vast majority of Māori children of the Mokai-Patea region attended public schools.⁹⁰ Despite substantial numbers of Māori pupils at some of these schools,⁹¹ no effort was made to preserve te reo Māori. According to Dr Christoffel:⁹²

Māori did not come to school to learn about Māori culture and language. They came there to learn about Pākehā culture and language.

And then:⁹³

In the main the general school system really tended to ignore Māori and in that sense it was assimilationist in that it ignored Māori language and culture. It treated Māori as if they were simply students like any other and didn’t take into account the different backgrounds that Māori came from, except to the extent that this was often seen as a disadvantage rather than Māori culture as something to be preserved.

Furthermore, the first schools established in the region “catered almost exclusively for the children of Pākehā settlers.”⁹⁴

⁸⁸ Native Schools Act 1867, section 21.

⁸⁹ Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 49.

⁹⁰ Christoffel, *Education, Health and Housing in the Taihape Inquiry District, 1880-2013*, Wai 2180, #A41, at 19.

⁹¹ Christoffel, *Education, Health and Housing in the Taihape Inquiry District, 1880-2013*, Wai 2180, #A41, at 19.

⁹² Hearing week 7 transcript, Wai 2180, #4.1.15, at 390, per Dr Christoffel.

⁹³ Hearing week 7 transcript, Wai 2180, #4.1.15, at 425, per Dr Christoffel.

106. At hearing, Dr Soutar asked Dr Christoffel why “did the language die earlier than it has in other regions. Did you come across any evidence that explains?”⁹⁵ The response confirmed the perennial application of the English-only rule in Taihape’s public schools that the vast majority of Taihape Māori were subjected to.⁹⁶

Well I think one reason would be that in all the schools within the district (and its known to be noted a number of times apart from one for a short time) were general schools and in many cases an overwhelming majority of Pākehā students. I mean by far the biggest school most of the time was Taihape District High School and in that school certainly until the 1960s Māori were very much a minority, so really in order to get by they needed to use English and you know this is something that was over several decades so it wouldn't have just been a single generation thing.

Whilst under cross-examination, Christoffel was asked whether Māori was discouraged in all schools. He replied that “it was quite clearly a policy that was followed within the school system in general.”⁹⁷

107. It is appropriate to examine the 1867 Act’s underpinnings as they were expressed by those who saw its passage through Parliament. All who spoke in favour of the Native Schools Bill supported the mandatory, English-only policy. In moving the second reading of the Bill, Native Affairs Minister J.C. Richmond considered that “for a people in the position of the Māori race it was a first condition of their progress to put them in the way of learning the language of the inhabitants and Government of the Colony.”⁹⁸ Similarly, John Hall, Member for Heathcote (Christchurch), claimed that learning English would pave the way for the “civilisation of the remnants of

⁹⁴ Christoffel, *Education, Health and Housing in the Taihape Inquiry District, 1880-2013*, Wai 2180, #A41, at 19. An examination of the Crown’s early legislation, policies and practices that led to language decline is appropriate even though the first school in the Taihape region did not open at Moawhango until 1897⁹⁴ and the only Native school did not open until 1944.⁹⁴ By the time these schools were opened, the policies of linguicide, monolingualism, Europeanisation and assimilation were already firmly in place and being applied by education officials. These policies and the associated legislation were subsequently applied in all Taihape schools and so their early origins are relevant to the Claimants’ claims.

⁹⁵ Hearing week 7 transcript, Wai 2180, #4.1.15, at 376, per Dr Soutar.

⁹⁶ Hearing week 7 transcript, Wai 2180, #4.1.15, at 377, per Dr Christoffel.

⁹⁷ Hearing week 7 transcript, Wai 2180, #4.1.15, at 428, per Dr Christoffel.

⁹⁸ New Zealand Parliamentary Debates, 10 September 1867, Volume 1, Part 2, at 862.

a noble race”.⁹⁹ When it came to a choice, Carleton preferred to subjugate Māori through the education process—wars were too costly.¹⁰⁰

. . . another serious war would not only cripple the Colony, but would actually break its back. . . . All that the Government must do with the Natives must be done by moral influence, nothing could be done by force, for the Māoris were men who did not fear death. They could be crushed, they could be exterminated, but they could not by force be brought into subjection.

He then sounded the death-knell for te reo Rangatira.¹⁰¹

They could never civilise through the medium of a language that was imperfect as a medium of thought. If they attempted it, failure was inevitable; and civilisation could only be eventually carried out by means of a perfect language.

108. According to Carleton, Hall, Richmond, Ball and others of the day, a colonising power can and should educate for security by “civilising” a people in a process where the English language was the only one to be spoken. Whilst that might be a plan for subjugating a people, it cannot be an appropriate plan for educating them. The Crown breached the Treaty principle of active protection by promoting a learning policy that was based more so on social control through cultural suppression than it was on education. A better course would have been to provide Māori with an education that was bi-cultural and bi-lingual.
109. As discussed, the policy of assimilation was borne in an era of fear and insecurity. Its historical roots lie in the Education Ordinance. When it was enacted in 1847, Pākehā were a conspicuous minority in New Zealand and the military advantage lay with Māori. Assimilation was devised by Grey in the (vain) hope of addressing the power imbalance without recourse to costly wars. Acquiring *de facto* sovereignty would be achieved on the cheap through the promotion of western ideology and practice in schools. The emphasis on the education process was not cognitive learning. The emphasis was on disempowerment. This would be achieved by devaluing

⁹⁹ New Zealand Parliamentary Debates, 10 September 1867, Volume 1, Part 2, at 866.

¹⁰⁰ New Zealand Parliamentary Debates, 10 September 1867, Volume 1, Part 2, at 863.

¹⁰¹ New Zealand Parliamentary Debates, 10 September 1867, Volume 1, Part 2, at 863.

Māori culture and te reo Rangatira through the overt elevation of all things Pākehā including, in particular, the English language. Dr Simon's evidence before the Waananga Capital Establishment Tribunal was to this effect:¹⁰²

According to Dr Simon, the structure of the Native School system served to promote Pākehā knowledge as more important and valid than Māori knowledge. She believed that Māori cultural values and institutions were both consciously and unconsciously denigrated, while Pākehā-dominant class ideas and values were promoted. Central to the Native Schools philosophy was the limitation of the curriculum, designed to restrict Māori to working class employment.

Given that the real purpose behind the assimilation agenda was Pākehā security, the policy's true objective then was the dismantling of Māori society. This would be achieved by denigrating or suppressing Māori values, knowledge and institutions. This is ironic, to say the least, because the education process is supposed to be a growth experience. However, there can be little real growth if the education system is purposefully designed to undermine a pupil's identity, their knowledge-base and their value system. Europeanising the Māori was akin to saying that being Māori was no longer relevant and nor was it of any importance. Thus, an entire culture and its language would be invalidated and not by force of arms but by a supposed learning process.

110. Assimilation would undermine Māori communalism as well. As a result, traditional societal and leadership structures would break down as Māori property rights were individualised:¹⁰³

In carrying out the work of civilisation among the aboriginal Native race, through the medium of school, some impediments to progress [could be] gradually overcome by a diligent course in training...and the first and most serious of all is that state of communism in which all kinds of property are held amongst them. Their present social condition bears testimony to the ill effects of such a system. Tribal rights destroyed personal

¹⁰² Waitangi Tribunal, *Waananga Capital Establishment Report*, at 6-7.

¹⁰³ *Appendices to the Journals of the House of Representatives*, 1862 Session I: Being the 2nd session of the 3rd Parliament of New Zealand, E4 Native Schools, Reports of Inspectors, at 35.

ownership . . . few attempts have been made by the Natives to individualise property. In the school room, by a careful and persevering system of appropriation we may gradually train them to a proper perception for the meum and the tuum.

111. Māori of the day were alive to the assimilation agenda and resistant to it. Henry Taylor relayed this awareness to Parliament:¹⁰⁴

The present disturbed state of the country, and the hostility and mistrust with which the Natives regard the exertions [of the government] to promote their welfare, have alike combined to frustrate the good which the establishment of Schools was calculated to effect. Many children have either been prevented from entering or rashly withdrawn from our Schools, because the Schools were dependent upon Government for support, or because the Natives fancied the Government had some ulterior motive beyond the welfare of their children in establishing Schools.

112. The Crown would combat Māori resistance to the education system. Taylor noted the possibility that Māori resistance to schooling at the time, 1863, was because it was government funded. When promoting the 1867 Act a few years later, Carleton addressed Māori resistance to government funded schools by engendering a sense of ownership:¹⁰⁵

So long as people have all done for them they remain listless and helpless. Give them a difficulty to overcome, a task to perform. Oblige them to seek us, in place of our seeking them. If we attempt to hunt them into education as we have hunted them into selling their lands, a spirit of resistance will naturally be engendered. Make education a part of the Runanga; give the direction of it to themselves; let them feel that it is their own work.

He also stated:¹⁰⁶

¹⁰⁴ *Appendices to the Journals of the House of Representatives*, 1862 Session I: Being the 2nd session of the 3rd Parliament of New Zealand, E9 Native Schools, Reports of Inspectors, at 1.

¹⁰⁵ *Appendices to the Journals of the House of Representatives*, 1862 Session I: Being the 2nd session of the 3rd Parliament of New Zealand, E4 Native Schools, Reports of Inspectors, at 17.

¹⁰⁶ New Zealand Parliamentary Debates, 10 September 1867, Volume 1, Part 2, at 863.

The Natives like other men; they held cheap what cost them nothing, but what they paid for they valued.

113. Consistent with Carleton's urgings, Māori parents were compelled by the Native Schools Act 1867 to provide land and other resources for the schooling of their children.¹⁰⁷ Not only would the Crown achieve buy-in from Māori to the social control agenda in this way but tangata whenua would also foot a part of the education bill as well. Having Māori "feel that it is their own work" so there would be buy-in to the Crown's control agenda was a manifested act of bad faith.
114. When the requirements for establishing native schools proved too rigid, the Native Schools Amendment Act 1871 was passed to give the Governor new power to expend money where it was needed. The 1871 Act was supported by the (then) 4 Māori Members of Parliament. It could be argued that in supporting the 1871 Act, the Māori MPs also supported the eradication of te reo Māori. It could be said that they thought the best interests of Māori children lay in forsaking their mother tongue for English. This is refuted. Had Māori leaders of the day known what some of their Pākehā counterparts already knew, that the Māori language would face expiration in a few short decades, the entire programme of assimilation would have been rejected for bilingualism. It is unfathomable that the 4 Māori MPs would have willingly agreed to the demise of their cherished taonga. At the time as well, use of te reo Māori remained strong in the homes and villages. This would have allayed concerns with the workings of the assimilation agenda.

Bilingualism was the answer

115. When speaking in Parliament to the Native Schools Bill in 1867, Graham "thought the Bill did not go far enough, as they should first teach the natives to read and write in their own language".¹⁰⁸ Teaching new entrants in a language they could not hope to understand had obvious flaws. After some years of the English only rule, the Crown would relent. The Native

¹⁰⁷ Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 76.

¹⁰⁸ New Zealand Parliamentary Debates, 10 September 1867, Volume 1, Part 2, at 866.

Schools Code of 1880 (“the Code”) would allow for the use of te reo Rangatira when teaching junior classes. It read:¹⁰⁹

It is not necessary that teachers should, at their time of appointment, be acquainted with the Māori tongue. In all cases, English is to be used by the teacher when he is instructing his senior classes. In junior classes the Māori language may be used for the purpose of making the children acquainted with the meanings of English words and sentences. The aim of the teacher, however, should be to dispense with the use of Māori as soon as possible.

116. Te reo Māori became a learning bridge for younger pupils but no more than that. Although there was a degree of bilingualism in the Code, language eradication remained the agenda.¹¹⁰ While there was a marked emphasis on practical education such as agriculture, woodwork and crafts, and although history, elementary science and formal grammar were omitted, the curriculum was similar to that prescribed for Standards I-IV in the public schools.¹¹¹ In other words, the curriculum remained Eurocentric despite the bilingual component.
117. Just 14 years after the enactment of the 1867 Act, James Pope was already expressing concerns to Parliament about identity loss:¹¹²

At the end of [two years] they would be educated Māoris, able and probably willing to do much good among their own people, to whom they should always return. If an attempt is made to Europeanize them thoroughly, and to separate them from their relatives, the result will probably be that they will eventually become strong reactionists, or a sort of Māori-Pākehā, “neither flesh, fowl, nor good red-herring.”

¹⁰⁹ *Appendices to the Journals of the House of Representatives*, 1880, H-1f Education: Native Schools, *The Native Schools Code*, at 1.

¹¹⁰ Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand’s Educational History*, The Dunmore Press: Palmerston North 1993, at 47.

¹¹¹ Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand’s Educational History*, The Dunmore Press: Palmerston North 1993, at 47.

¹¹² *Appendices to the Journals of the House of Representatives*, 1881 Session I: Being the 3rd session of the 7th Parliament of New Zealand, E7 Education: Native Schools, at 11.

William Bird, Pope's successor, also stressed the importance of Māori returning to their communities.¹¹³ Implicit in the officials' views is an awareness of the destructiveness of assimilation.

118. Later in that same address to Parliament, Pope discussed the inevitability of Europeanisation; of culture and language loss. Monolingualism was assured. The plan was working.¹¹⁴

That the Māoris will ultimately become Europeanised and be absorbed into the general population does not admit of doubt. It is easy to see that the process has already commenced and that it is going on more or less with rapidity in most parts of New Zealand.

Although Europeanisation was assured, he urged his Parliamentary audience to be patient. Notably, Pope referred to "[p]ast experience" with "uncivilised peoples" and how they "cannot without imminent risk of extermination, give up their old ways of life all at once . . .".¹¹⁵ Obviously, the process of Europeanisation that was applied in New Zealand was not without precedent. Pope's reference to "[p]ast experience" confirms the Crown's prior knowledge of the destructive effect of assimilation and linguicide on the culture and language of indigenous peoples. It is clear from Pope's address however that he was under a great deal of pressure to hasten the process of Europeanisation.

119. In 1902, official attitude hardened against the use of any Māori language. It was decided to dispense with bilingualism altogether in favour of the 'direct method' of learning. According to James Pope, Inspector-General of Schools, the "only way to teach English was through English."¹¹⁶ This method of language teaching was based on the belief that the most effective way to learn a second language was to be totally immersed in

¹¹³ *Appendices to the Journals of the House of Representatives*, 1906 Session 2: Being the 2nd session of the 16th Parliament of New Zealand, E2 Education: Native Schools, at 14, per WW Bird.

¹¹⁴ Inspector general of Schools James Pope "Report of the Inspector-General of Schools" [1881] I AJHR E7, at 11.

¹¹⁵ Inspector general of Schools James Pope "Report of the Inspector-General of Schools" [1881] I AJHR E7, at 11.

¹¹⁶ *Appendices to the Journals of the House of Representatives*, 1903, E2 Education: Native Schools, at 18, per James Pope.

it.¹¹⁷ Use of the direct method would have disastrous consequences for Māori education as the level of post-primary participation fell away over the next 40-odd years. In 1938, the number of Māori pupils at Native and public schools was 20,049.¹¹⁸ According to Barrington, the number of Māori enrolled in all types of state secondary schools in 1938 was 404,¹¹⁹ or 2.01% of the total number of Māori attending school that year. In 1900, the total number of Māori attending Native schools was 2,762.¹²⁰ 1,436 Māori pupils attended public schools as at December 1900.¹²¹ The number of Māori pupils receiving higher education in 1900 at schools such as Te Aute, Hukarere and St Joseph's was 207,¹²² or 4.93% of the total number of Māori attending school that year. Despite the greater number of Māori pupils attending public and Native schools by 1938, since 1900 the number of Māori pupils going on to secondary schooling had decreased as a percentage of total enrolments. It can be concluded that when bilingualism was used at the junior level in Native Schools from 1880 on, Māori educational achievement was enhanced. This stands to reason. This conclusion is supported by the post-primary educational achievements at this time of Ngata, Buck, Pomare, Kohere, Wi Repa and others. Despite this, the Crown entrenched its policy of linguisticide and, it is submitted, with the knowledge that bilingualism was a better learning process.

120. From 1909, Māori was included as an optional subject for Junior Scholarship holders at the denominational boarding schools for Māori boys. As discussed, very few Māori attended secondary school at this time and

¹¹⁷ Simon, Judith and Tuhiwai Smith, Linda (eds) *A Civilising Mission? Perceptions and Representatives of the New Zealand Native Schools System*, Auckland University Press: Auckland, 2001, at 165.

¹¹⁸ *Appendices to the Journals of the House of Representatives*, 1939 Session I: Being the 1st session of the 26th Parliament of New Zealand, E3 Education of the Native Children. See Table H1 at 7—*Number of Native Schools Classified According to Grade, with Number of Teachers and Average Number of Children per Teacher*. The total average attendance at all Native Schools for the year ending 31 August, 1938 was 8,595. See also Table H5 at 8—*Māori Children Attending Public Schools, December, 1938*. The total number of Māori pupils attending public schools at the end of 1938 was 11,451. Thus, the combined number of Māori attending Native and public schools was 20,049.

¹¹⁹ Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 333.

¹²⁰ *Appendices to the Journals of the House of Representatives*, 1901 Session I: Being the 2nd session of the 14th Parliament of New Zealand, E2 Education: Native Schools. See *Summary of Table No.5* at 24. The number of "European" and "between half-caste and European" pupils has been deducted from the total enrolment number of 3,109.

¹²¹ *Appendices to the Journals of the House of Representatives*, 1901 Session I: Being the 2nd session of the 14th Parliament of New Zealand, E1 Education: Twenty Fourth Annual Report of the Minister of Education. See Table B2 at iv—*Māoris and Half-castes Attending Public Schools, December 1900*. We have added the total of "Pure Māoris" with the total of "Half-castes living as Māoris" for a combined total of 1436.

¹²² *Appendices to the Journals of the House of Representatives*, 1901 Session I: Being the 2nd session of the 14th Parliament of New Zealand, E2 Education: Native Schools. See Table No.10 at 27. The number of Europeans and pupils who are "more European than Māori" has been deducted from the "Private Pupils" total of 151.

this was the case for many years thereafter. So, whilst the subject was now available, take-up of the language offer was limited at best. The piece-meal language offering was, at least in part, a response to a plea to include te reo in primary schools that was made by the Member of Parliament for Northern Māori, Hone Heke, in 1908:¹²³

. . . the Māori tongue should be systematically taught in the native schools, as at present the people were in grave danger of losing their language altogether. This must be prevented at all costs, for if the language were not retained they would lose their nationhood and be neither one thing nor the other.

It is clear from Hone Heke's comments that as early as 1908, Māori leadership¹²⁴ was aware of the harm being caused to te reo Māori by the English-only education policy. Another observation we make concerns the "piece-meal" response to Heke's plea. As we shall see, the Crown's inadequate response is typical.

121. By 1918, the Māori language became a subject for matriculation. Papers in te reo Māori could be applied towards a Bachelor of Arts degree at the University of Auckland by 1929. In 1934 it was included as a subject for the school certificate examination. Despite these and other educational developments, use of te reo Māori continued to decline. Walker noted that over 90% of Māori school entrants spoke Māori in 1900 but that by 1960 this had fallen to 25%.¹²⁵ Dr Bruce Biggs gave similar figures to the Te Reo Māori Tribunal (Wai 11).¹²⁶

¹²³ Cited in Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 54.

¹²⁴ Henare Kaihau, MP for Western Māori, made a similar statement to the Dominion newspaper in August 1910:

. . . unless some scheme is brought into operation the Māori language, Māori tradition and customs will be lost to an irreparable extent before many years have gone. The real Native Language was fast passing away . . . and if it was to be preserved it must be systematically taught.

Cited in Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 58.

¹²⁵ Walker, Ranginui. *Cultural domination of taha Māori: the potential for radical transformation* in Codd J., Harker R. and Nash R. (Eds) *Political issues in New Zealand Education*, The Dunmore Press Limited, Palmerston North, 1985, at 74.

¹²⁶ *Report of the Waitangi Tribunal on The Te Reo Māori Claim*, Wai 11, April 1986, Brookers (Wellington), at 3.3.2.

Linguicide intensifies—20th century

122. In the early years of the 20th century, it became clear that use and retention of the Māori language was faltering. It was dying. The Crown was faced with a familiar situation—one it had previously encountered in Wales and Ireland for instance and yet despite the ominous signs of pending doom, the Crown continued nevertheless with the direct method of learning in a second language and with its policy of linguicide. In fact, the Crown deepened its efforts to eradicate the Māori language. When it was suggested in 1918 that Māori weaving and carving be introduced into the Native Schools, William Bird was unrelenting:¹²⁷

I do not see that there can be much educational benefit to be derived from including in the curriculum a scheme for instruction in the art of weaving.

In the same way, the language itself must pass through the Maypole Soap process of mongrelism, as it is doing now in the more civilised parts, and finally disappear as a spoken language. Then, too, its interest will consist in the same fact as does that of specimens of old Māori work, viz., that it represents a lost art.

Bird maintained his influence in education circles even after his retirement. In May 1930, he advised a Native School teacher that the direct method should be used in order to suppress the use of the Māori language in schools.¹²⁸

123. Having entrenched monolingualism in Native School teaching methods and, needless to say, in the teaching methods that were used at the public schools that Taihape Māori attended, the Crown took its methods for imposing the English language to a violent, much more strident level. Monolingualism would be brutally enforced by teachers with rods, canes, straps, sticks or other weapons of choosing on their young and vulnerable charges. Other humiliating and malicious forms of non-violent punishment were also administered.

¹²⁷ Cited in Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 56. Bird was Senior Inspector of Native Schools at this time.

¹²⁸ Cited in Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 56.

124. Despite the absence of official policy, there is no doubt that corporal punishment was adopted as a Crown policy in the education of Taihape Māori. Although Christoffel does not discuss its use in the education section of his research report,¹²⁹ he agreed that “quite clearly it happened”¹³⁰ and that “it became much more common in the 20th Century”.¹³¹ Curiously however, Christoffel found no evidence of the use of corporal punishment in the school logbooks that he examined. It was agreed however that the Education Department had failed to check that the logbooks had been properly administered.¹³²
125. Barrington concluded that corporal punishment for speaking te reo Māori¹³³ was used widely in primary schools in New Zealand during the 19th and much of the 20th Century.¹³⁴ The Te Reo Māori Tribunal (Wai 11) concluded that “it was clearly at least a practice widely followed that during the first quarter of [the twentieth] century Māori children were forbidden to speak Māori in school ... and that they were punished if they did so.”¹³⁵ As the late Sir James Henare attested in that hearing, “[t]he facts are incontrovertible. If there was no such policy there was an extremely effective gentlemen’s agreement!”¹³⁶
126. The reading material used in schools assaulted the Māori psyche and sense of self-worth.¹³⁷ This angle of attack was designed to devalue the Māori culture and te reo Māori and make it irrelevant. The Māori character was denigrated in widespread publications such as *The New Zealand*

¹²⁹ Christoffel, *Education, Health and Housing in the Taihape Inquiry District, 1880-2013*, Wai 2180, #A41.

¹³⁰ Waitangi Tribunal Hearing Week 7 transcript, Wai 2180, #4.1.15, at 382.

¹³¹ Waitangi Tribunal Hearing Week 7 transcript, Wai 2180, #4.1.15, at 376.

¹³² Waitangi Tribunal Hearing Week 7 transcript, Wai 2180, #4.1.15, at 434.

¹³³ Cited in Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 57.

¹³⁴ Cited in Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 166.

¹³⁵ Waitangi Tribunal, Wai 11, *Report of The Waitangi Tribunal on the Te Reo Māori Claim* (Wellington, 1986), paragraph 3.2.8, at 9.

¹³⁶ Waitangi Tribunal, Wai 11, *Report of The Waitangi Tribunal on the Te Reo Māori Claim* (Wellington, 1986), paragraph 3.2.8, at 9.

¹³⁷ Dr Christoffel did not examine the reading materials that were provided to Māori pupils who were educated in the Taihape region—see *Education, Health and Housing in the Taihape Inquiry District, 1880-2013*, Wai 2180, #A41(d), at 10.

School Journal, whilst claims of white superiority were imprinted on young minds:¹³⁸

A selective phraseology made careful use of adjectives, intensifiers, and metaphors to heighten images of colonial 'heroes' and Māori 'enemies'. In various situations Māoris were evaluated as 'treacherous', 'cunning', 'troublesome', 'distrustful', 'cruel', 'savage', 'wild', and 'fierce'. 'Native' was a term synonymous with 'Māori' and strongly implied images of inferiority and barbarism. Also, comparative and patronising adjectives such as 'little' and 'brown' portrayed Māoris in a discernible light to be ranked in a scale of negative value alongside the 'white', 'bold', 'fearless' and 'noble' colonial settlers. Moreover, 'white' conveyed symbolic and emotive connotations of cleanliness, purity, objectivity, rationality and normality, which 'black' and 'brown' did not share.

127. In his analysis of the New Zealand primary school curriculum since 1877, McGeorge identified a racial "pecking order" that:¹³⁹

[a]utomatically placed the white race first . . . there was general agreement, amongst both British and New Zealand writers, that they (Māori) were members of a lesser race or racial sub-group but were worthy for all that (reflected in comments like); "Whites form by far the most important race, for they have the best laws, the greatest amount of learning, and the most excellent knowledge of farming and trade. There are five great races of men, and of these the white race is highest"; "The men of our race sometimes complain because the white people have taken away so much of their land; but I am sure that our teacher is right when he tells us that we have more land left than we can use. He says too that the white men have given us peace and order, and a thousand blessings that we could never have

¹³⁸ M Read, *Ideology, Hegemony and the New Zealand School Journal: A Comparative and Critical Analysis of Two Selected Topics 1907-1914, 1930-1940*, MA theses, University of Otago, 1988, at 162. Cited in Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 63-64.

¹³⁹ McGeorge, Colin. *Race and the Māori in the New Zealand Primary School Curriculum Since 1877*, Journal of the Australiana and New Zealand History of Education Society (JANZHES), 10, 1, (1981), at 13-23. Cited in Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 63. The reference to a "Māori boy [s]peaking in a story in the *Sixth Imperial Reader*" is probably an error. The *Sixth Reader of The Imperial Reader* series was a text that recorded British military and colonial history. It was published by Whitcombe and Tombs in New Zealand c. 1900.

enjoyed but for their coming to settle amongst us.” (Māori boy, speaking in a story in the *Sixth Imperial Reader*).

From cultural adaptation to the Hunn report

128. In the 1930s, education officials such as Inspector of Native Schools Doug Ball were looking to address aspects of the system’s failings. The Māori achievement rate had fallen to an appalling level (see above). The Māori culture and identity were dissipating. Alarmed by the increasing rate of language loss, Apirana Ngata sought change in the form of a bilingual education system.¹⁴⁰ In response, Ball instituted the policy of cultural adaptation in Native Schools from 1931.¹⁴¹ The result was the incorporation of Māori cultural activities, such as carving, singing and poi dancing into the Native School curriculum. Significant for our purposes are Ball’s concerns with the earlier assimilationist approach, the objective of which was, in his words, the “repudiation of the indigenous culture,” the “divorce of Māori from all aspects of their culture,” and the exclusion of “all things Māori from the scheme of (native) education.”¹⁴² Ball’s view of assimilation is both illuminating and deeply concerning. He confirms its destructive intent—social control through cultural annihilation.
129. The policy of cultural adaptation saw Ball inveigling teachers to “restore to the Māori his pride of race, initiative and confidence.”¹⁴³ Later in 1940 he wrote that the Māori “cannot, and should not, spurn the past experience of his forefathers. Such a negation of all things Māori would be unnatural.”¹⁴⁴ Although Ball instituted the teaching of aspects of the Māori culture, all lessons were taught in English, including for new entrants. According to Christoffel, “[t]he language was never emphasised at all”.¹⁴⁵ Cultural adaptation would fall well short of Ngata’s aims for the Māori language. Māori were still punished for speaking Māori in Native Schools. In fact, Christoffel claimed that the rate of punishment for speaking te reo

¹⁴⁰ Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 261-2.

¹⁴¹ Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand’s Educational History*, The Dunmore Press: Palmerston North 1993, at 60.

¹⁴² [1935] I AJHR E3, pages 1 and 3; See also Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand’s Educational History*, The Dunmore Press: Palmerston North 1993, at 60.

¹⁴³ Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand’s Educational History*, The Dunmore Press: Palmerston North 1993, at 61.

¹⁴⁴ Douglas Ball, ‘Māori Education’ in *The Māori Today*, pages 280-1.

¹⁴⁵ Hearing week 7 transcript, Wai 2180, #4.1.15, at 391, line 8.

increased at this time, through into the 1940s and beyond.¹⁴⁶ Ball had no intention of revitalising te reo Māori. In particular, he criticised its utility in the 20th Century:¹⁴⁷

. . . the language of a people living so long in isolation and in primitive conditions must be inadequate in vocabulary to meet the needs of a civilised community with all the modern inventions of science.

130. The Director of Education of the day, T.B Strong, sought to hasten te reo's demise as well:¹⁴⁸

The Native is gradually losing knowledge of his own language, and the question has been raised whether there is not good reason to introduce the teaching of the Māori tongue. Sentiment would incline one to say yes; but sentiment alone is not sufficient justification. Language is a means of communicating thought and is a social necessity. By its measure not only meeting the needs of daily association with our fellows but having the advantage of being able to study the thought of the best thinkers of the ages. From both points of view a knowledge of the Māori language is unnecessary to Natives who know only English. The Māori language has no literature and consequently in this direction, too, the natural abandonment of the native tongue inflicts no loss on the Māori.

131. Simon and Smith considered that Ball's reforms "were largely a continuation of the assimilation policy".¹⁴⁹ According to Openshaw *et al*, "the new education policy initiative proved much less radical than it claimed to be".¹⁵⁰

Later commentators viewed the change less optimistically. Whitehead, for example, described the new policy as 'largely rhetorical in nature', while Powell saw it as being 'too superficial ... an ordinary European education system garnished rather

¹⁴⁶ Hearing week 7 transcript, Wai 2180, #4.1.15, at 489, lines 29-31.

¹⁴⁷ Sutherland, I.L.G, edited. *The Māori People Today—A General Survey*, Wellington, 1940, at 299.

¹⁴⁸ Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 76.

¹⁴⁹ Simon, Judith and Tuhiwai Smith, Linda (eds) *A Civilising Mission? Perceptions and Representatives of the New Zealand Native Schools System*, Auckland University Press: Auckland, 2001, pages 193-4.

¹⁵⁰ Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand's Educational History*, The Dunmore Press: Palmerston North 1993, at 62.

ineffectually by a few extras called Māori activities'. Barrington's assessment of what actually happened in the Native Schools and classrooms after the changes were implemented in 1931 points to several factors that impeded the progress of educational reform – inadequate consultation with, and preparation of teachers; the lack of a proper syllabus and a shortage of Māori teachers; a 'bits and pieces' (cultural engineering) approach to culture; economic depression and cost restraints (until 1935); and the exclusion of the Māori language.

Not only were the Claimants and their forebears being robbed of their identity, they were failing at school in droves. Systemic, perennial, educational apathy had set in, te reo Māori was a dying language and still the Crown persisted with Europeanising the Māori.

Moawhango Native School

132. Moawhango School became Moawhango Native School on 4 September 1944.¹⁵¹ It was established nearly 60 years after Māori at Moawhango first requested a native school.¹⁵² The land provision requirement plagued the native school request for many years and in the end it fell away.¹⁵³ Eventually, a school was established in a wool store on Richard Batley's farm in Moawhango in 1897. The school opened with 11 Māori and 9 Pākehā pupils. It was not until 1920 that a dedicated school building was erected in Moawhango.¹⁵⁴ Christoffel contributed the delay with construction of the school building to a fluctuating roll over the years but it is conceivable that the roll fluctuated because there was no dedicated school building.
133. During the 1930s, the roll was dominated by Māori.¹⁵⁵ In late 1943, Moawhango parents opted for a native school to take advantage of the extra resources that could be made available such as a teacher's assistant, free school books and stationary and woodwork and cookery facilities.¹⁵⁶

¹⁵¹ Christoffel, *Education, Health and Housing in the Taihape Inquiry District, 1880-2013*, Wai 2180, #A41, at 80.

¹⁵² Christoffel, *Education, Health and Housing in the Taihape Inquiry District, 1880-2013*, Wai 2180, #A41, at 54.

¹⁵³ Christoffel, *Education, Health and Housing in the Taihape Inquiry District, 1880-2013*, Wai 2180, #A41, at 62-3. Christoffel discusses the drawn-out establishment of a school at Moawhango school in his report.

¹⁵⁴ Christoffel, *Education, Health and Housing in the Taihape Inquiry District, 1880-2013*, Wai 2180, #A41, at 71.

¹⁵⁵ Christoffel, *Education, Health and Housing in the Taihape Inquiry District, 1880-2013*, Wai 2180, #A41, at 75-78.

¹⁵⁶ Christoffel, *Education, Health and Housing in the Taihape Inquiry District, 1880-2013*, Wai 2180, #A41, at 79.

Tom Fletcher, Senior Inspector of Native Schools, met with Moawhango parents on 8 August 1944 to discuss the establishment of a native school. Fletcher was instrumental in instituting Ball's cultural adaptation programme in native schools during the 1930s and 1940s.¹⁵⁷ As discussed however, te reo Māori was not a part of the programme. Fletcher maintained a monolingual curriculum. In the *Report of the Senior Inspector of Native Schools* for 1944, he extolled the virtues of the English-only policy that was applied in native schools that year:¹⁵⁸

The importance attached to the teaching of English was again emphasised and in response to our circular on the teaching of this subject an improvement was noted, more especially in regard to business and general correspondence, telegrams, the accurate filing-in of forms, and other aspects of everyday English, which are so necessary in adult life. Oral English continues to be stressed for the tone and efficiency of a school depend upon the keenness and interest of its pupils, and these can best be promoted by a brightness in all forms of oral work.

134. Despite its availability, it appears that Māori cultural activities were not a part of the curriculum at Moawhango Māori School.¹⁵⁹ Although there is a record that some of the pupils “put on Māori items at a Queen Carnival Concert in the Town Hall” in 1952, Māori cultural activities aren't mentioned in an inspector's report until 1963.¹⁶⁰
135. In 1955, the National Committee on Māori Education (“the National Committee”) recommended the abolition of Māori schools. In 1962, a Commission on Education recommended that the transfer (or closure) process be sped up. In 1964, the Moawhango Māori School roll peaked at 68. By 1968, it had dropped to 47. The last school inspection occurred in 1967, just 2 years before the native school was transferred to the Wanganui Education Board in February 1969.

¹⁵⁷ *Appendices to the Journals of the House of Representatives*, 1948 Session I: Being the 2nd session of the 28th Parliament of New Zealand, E3 Education of Māori Children, at 2.

¹⁵⁸ *Appendices to the Journals of the House of Representatives*, 1945 Session I: Being the 2nd session of the 27th Parliament of New Zealand, E3 Education of Native Children, at 2.

¹⁵⁹ Christoffel, *Education, Health and Housing in the Taihape Inquiry District, 1880-2013*, Wai 2180, #A41, at 94. Along with an official move away from use of the word “Native” to “Māori” in 1947, the school was re-named Moawhango Māori School that year.

¹⁶⁰ Christoffel, *Education, Health and Housing in the Taihape Inquiry District, 1880-2013*, Wai 2180, #A41, at 86.

136. The final inspector's report "was an extraordinarily positive one" according to Christoffel.¹⁶¹ Whilst true in one sense, the inspector's report is bereft of any reference to use of te reo Māori in the school. Unsurprisingly, there is no evidence in Christoffel's research report on Moawhango Māori School that the language was taught as a subject or that it was used as a learning aid. Like all of the other native schools, Moawhango Māori School was an English-only school. Its Māori pupils were subject to the very same linguicidal policies such as assimilation, monolingualism, monoculturalism, the direct method, cultural adaptation, integration and so forth.

Native School abolition and Hunn

137. If cultural adaptation had gone on to improve the educational lot of the Claimants and their forebears, there may have been some redemption for the Crown and some justification for the new policy. But in 1955 for example, 95.9% of Māori left school without a qualification of any sort.¹⁶² By 1955 there had been a sufficient amount of time for cultural adaptation to have set in and to have "worked its magic". However, the tinkering that Ball did was ineffective. But Ball was up against it anyway. The die had long since been cast by Grey, Carleton, Pope, Bird and others. Education failure by Taihape Māori and language death had long since been assured by this time.
138. When the National Committee met in 1955, Doug Ball was now Assistant Director of Education and the National Committee's chairman. There was Māori participation for the first time in its history.¹⁶³ One of the recommendations was that instruction in Māori history, legends, song, art and crafts be given greater emphasis in the primary school curriculum. These measures were designed to strengthen Māori culture.¹⁶⁴ The National Committee's concern with strengthening Māori culture belies a concern with the devastating effect of linguicide on identity and learning processes. The fact that the National Committee should recommend an

¹⁶¹ Christoffel, *Education, Health and Housing in the Taihape Inquiry District, 1880-2013*, Wai 2180, #A41, at 89.

¹⁶² Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand's Educational History*, The Dunmore Press: Palmerston North 1993, at 74.

¹⁶³ Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand's Educational History*, The Dunmore Press: Palmerston North 1993, at 70.

¹⁶⁴ Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand's Educational History*, The Dunmore Press: Palmerston North 1993, at 71.

increase in the teaching of Māori culture is a clear sign of awareness that monolingualism was destructive and that it needed to be addressed as a learning mechanism. Despite that awareness, the National Committee did not move to terminate the policy. Instead, their efforts merely culminated in an attempted dilution.

139. The National Committee made the language situation much worse. Another of its recommendations was the abolition of Native Schools within “a generation or two” after “full consultation ... with the local Māori people.”¹⁶⁵ All Māori pupils would attend public schools. The abolition decision was made despite research that indicated that most well-educated Māori came through the native school system and not through board schools.¹⁶⁶ As it turned out, the transfer of 105 native schools to public schools was completed by 1969. There was inadequate consultation with local Māori communities before it was done. Given the comparative potency of the form of assimilation that was applied in public schools, it is submitted that the National Committee's abolition recommendation was a step in the wrong direction.¹⁶⁷ The Native Schools should have been turned into bilingual or full immersion schools. This was the appropriate measure to take if language decline was to be arrested and if education achievement was to be improved upon.
140. The National Committee's recommendation to strengthen Māori culture through history, legend, song, art and craft merely echoed the cultural adaptation theory of the 1930s. But the latter policy had not worked. Māori were still failing in droves by the time of the National Committee's recommendation. Cultural and language deprivation was even more deep-seated. The implementation of an already failed learning policy was another, typically inadequate response by the Crown. It amounted to an act of professional negligence (given its earlier failures). And as usual, it didn't work. Within five years, J.K. Hunn would report that Māori education and Māori society as a whole were in crisis.

¹⁶⁵ Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand's Educational History*, The Dunmore Press: Palmerston North 1993, at 71.

¹⁶⁶ Fitzgerald, T.K. *Education and identity—a study of the New Zealand Māori graduate*, NZCER, Wellington, at 11.

¹⁶⁷ See Judith Simon (ed), *Nga Kura Māori: the Native Schools System 1867-1969*, AUP: Auckland, 1998, page 19.

141. Hunn recorded that Māori attendance rates in secondary schools had stopped increasing in the late 1950s.¹⁶⁸ A comparative lack of academic success amongst Māori children was noted.¹⁶⁹ The number of Māori receiving tertiary-level education was about one-eighth of what it should have been.¹⁷⁰ The policy of integration was introduced as a solution:¹⁷¹

. . . a dynamic process by which Māori and Pakeha are being drawn closer together in the physical sense of the mingling of the two populations as well as in the mental and cultural senses where differences are gradually diminishing. Remembering that the dictionary definition of the verb “to integrate” is “to make whole” we regard the integration of the Māori and Pakeha as the making of a whole new culture by the combination and adaptation of the two pre-existing cultures.

According to Harker, the imbalance of power between Māori and Pākehā meant that the less powerful would have to do the adapting.¹⁷² The purpose of integration was “to combine (not fuse) the Māori and Pākehā elements to form one nation wherein Māori culture remains distinct.”¹⁷³ The notion of cultural distinctiveness gave some hope to preserving te reo Māori. However, the overarching aim was the “full integration of the Māori people into the mainstream of New Zealand life.”¹⁷⁴ This smacked of the linguistic agenda of homogeneity. Hunn was so pre-occupied with addressing racial segregation, a political issue at the time,¹⁷⁵ that it blinded him to his perpetuation of the assimilation agenda.

142. Whilst it is arguable that Māori education performance improved following the Hunn report on the basis that more Māori were leaving school with School Certificate,¹⁷⁶ it should be noted that the rules about School

¹⁶⁸ Hunn “Report on Department of Māori Affairs” [1961] I AJHR G10, page 28.

¹⁶⁹ Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand’s Educational History*, The Dunmore Press: Palmerston North 1993, at 72.

¹⁷⁰ Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand’s Educational History*, The Dunmore Press: Palmerston North 1993, at 72.

¹⁷¹ Booth J.M. and Hunn J.K., *Integration of Māori and Pakeha*. Wellington, Government Printer, 1962, at 10.

¹⁷² Harker, Richard. *Schooling and cultural reproduction* in: Codd J, Harker R and Nash R (Eds). *Political issues in New Zealand education*, The Dunmore Press Limited, Palmerston North, 1961, at 61.

¹⁷³ Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand’s Educational History*, The Dunmore Press: Palmerston North 1993, at 72.

¹⁷⁴ Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand’s Educational History*, The Dunmore Press: Palmerston North 1993, at 72.

¹⁷⁵ Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 237.

¹⁷⁶ [1969] I AJHR E1, page 32.

Certificate had been relaxed and a fail in one subject no longer meant overall failure. The disparities between Māori and non-Māori education achievement remained.

Increased effort but continued decline – 1960 to 1987

143. The Crown has undertaken a number of educational initiatives since circa 1960 to enhance the use and retention of te reo Māori. Hoani Waititi was commissioned in 1960 to produce *Te Rangatahi* Books I and II. The number of secondary schools teaching te reo Māori increased during the 1960s and beyond. Most New Zealand secondary schools offered Māori language as a regular academic subject by 1980. During the 1960s, the *Te Wharekura* and *Tautoko* language series were published, the Williams *Dictionary of Māori* was revised and Māori studies lecturers were appointed at teachers colleges. Education officials were appointed during the 1970s to develop and monitor the learning of te reo Māori. In 1978, Māori language courses were set up at technical institutes, a Primary Māori Language Syllabus Committee was established and a bilingual primary school was approved at Ruatoki. In 1980, three further bilingual schools were approved. However, despite the numerous Crown initiatives, Māori remained deeply concerned with the fate of te reo Māori. So much so that they took matters into their own hands. Without any government assistance, the Aataarangi adult teaching method was begun in 1979, Kōhanga reo were established in the early 1980s and the first Kura Kaupapa Māori was opened at Hoani Waititi marae in 1985. One of the earliest kohanga reo was Te Kōhanga Reo o Mokai Patea. Without any government support, it opened in Taihape in 1983 with 26 children.¹⁷⁷ Te Kōhanga Reo o Te Puawai o Te Kakano opened in Taihape in 1990. Two other Kōhanga Reo opened in the region but they have since closed.¹⁷⁸ It would be useful to examine why they closed. The growth of Kōhanga Reo led to increased demand for bilingual schools or bilingual units within schools at the primary and secondary school level. This led in turn to a demand for more teachers of the Māori language. We discuss later how the Crown failed to provide more teachers and how this one-time opportunity to arrest language decline was not taken at the tide.

¹⁷⁷ Christoffel, *Education, Health and Housing in the Taihape Inquiry District, 1880-2013*, Wai 2180, #A41, at 154.

¹⁷⁸ Christoffel, *Education, Health and Housing in the Taihape Inquiry District, 1880-2013*, Wai 2180, #A41, at 154.

144. The filing of the te reo Māori claim by Nga Kaiwhakapumau i Te Reo in 1985 was another expression of dissatisfaction by Māori with Crown initiatives taken to that point in time. The central claim was that the Crown had failed to protect the Māori language. It was found that te reo Māori is a taonga for the purposes of clause 2 of Te Tiriti o Waitangi. On that basis:¹⁷⁹

. . . the Crown did promise to recognise and protect the language and that that promise has not been kept. The 'guarantee' in the Treaty requires affirmative action to protect and sustain the language, not a passive obligation to tolerate its existence and certainly not a right to deny its use in any place. . . But educational policy over many years and the effect of the media in using almost nothing but English has swamped the Māori language and done it great harm.

145. The Te Reo Māori Tribunal made a number of recommendations. The Māori language should be made an official language,¹⁸⁰ there should be legislative change to enable the use of the Māori language in all courts of law and in any dealings with Government Departments, local authorities and other public bodies.¹⁸¹ The establishment of an official body was recommended to supervise and foster the use of the Māori language.¹⁸² Broadcasting policy should be formulated to recognise and protect the Māori language¹⁸³ and where deemed necessary by the State Services Commission, bilingualism in Māori and English should be a prerequisite for appointments made by that Commission.¹⁸⁴
146. Of further note in the Te Reo Māori claim is the evidence of Mr Ross, Deputy Director-General of Education, "which set out the Department's policies and philosophy on Māori language, taha Māori (culture), bilingual education, syllabus development, advisory services, Teachers' College

¹⁷⁹ Waitangi Tribunal, *Finding of the Waitangi Tribunal on The Te Reo Māori Claim*, Wai 11, April 1986, Brookers (Wellington), at 1.

¹⁸⁰ Waitangi Tribunal, *Finding of the Waitangi Tribunal on The Te Reo Māori Claim*, Wai 11, April 1986, Brookers (Wellington), at 44-45.

¹⁸¹ Waitangi Tribunal, *Finding of the Waitangi Tribunal on The Te Reo Māori Claim*, Wai 11, April 1986, Brookers (Wellington), at 51 and at para 8.2.8.

¹⁸² Waitangi Tribunal, *Finding of the Waitangi Tribunal on The Te Reo Māori Claim*, Wai 11, April 1986, Brookers (Wellington), at 51 and at para 8.2.12.

¹⁸³ Waitangi Tribunal, *Finding of the Waitangi Tribunal on The Te Reo Māori Claim*, Wai 11, April 1986, Brookers (Wellington), at 51 and at para 7.1.9.

¹⁸⁴ Waitangi Tribunal, *Finding of the Waitangi Tribunal on The Te Reo Māori Claim*, Wai 11, April 1986, Brookers (Wellington), at 51 and at para 9.1.4.

Māori language lecture courses and related matters.”¹⁸⁵ Mr Ross gave evidence of, inter alia, compulsory Māori language courses for teacher trainees at Teachers’ Colleges, a schedule of written texts in Māori being published by the Education Department¹⁸⁶ and statistical evidence of increasing numbers of Māori language learners in New Zealand’s schools.¹⁸⁷ Despite the evidence of improved Crown initiative and activity, the Te Reo Māori Tribunal remained deeply concerned with the state of the Māori language and its future. So much so that the Tribunal recommended as follows:¹⁸⁸

We have therefore decided to recommend to the Minister of Education that there should be an **urgent inquiry** conducted **almost at once** into the way Māori language and culture is taught in schools (and all matters related to them) so that detailed evidence can be offered to him by persons best qualified to give it, and so the serious complaints of practice, procedure and attitudes on which the claimants have produced such a body of evidence can be fully and thoroughly investigated. But we add **such a report should be in the hands of the Minister well before this year is out. There is no time for further procrastination or delay.** (emphasis added)

Despite the Tribunal’s anxiousness with the manner in which the Māori language was taught in schools, no urgent inquiry was held. We note as well the continuing inadequacy of the Crown’s response to language decline—a Crown response characteristic that we have remarked on already in these submissions.

147. The Te Reo Māori Tribunal recommendations influenced the passing of the Māori Language Act 1987 (“the 1987 Act”), pursuant to which the Māori language was made an official language of New Zealand.¹⁸⁹ Whilst te reo

¹⁸⁵ Waitangi Tribunal, *Finding of the Waitangi Tribunal on The Te Reo Māori Claim*, Wai 11, April 1986, Brookers (Wellington), at 34.

¹⁸⁶ With regard to Māori language book production by the Education Department, the Te Reo Māori Tribunal observed that “the total production seems to be distressingly small”—Waitangi Tribunal, *Finding of the Waitangi Tribunal on The Te Reo Māori Claim*, Wai 11, April 1986, Brookers (Wellington), at 35.

¹⁸⁷ Waitangi Tribunal, *Finding of the Waitangi Tribunal on The Te Reo Māori Claim*, Wai 11, April 1986, Brookers (Wellington), at 35.

¹⁸⁸ Waitangi Tribunal, *Finding of the Waitangi Tribunal on The Te Reo Māori Claim*, Wai 11, April 1986, Brookers (Wellington), at 38.

¹⁸⁹ Section 3, Māori Language Act 1987.

Māori was formally legitimated by the 1987 Act, substantive legitimation must occur otherwise the official tag risks being “an empty provision” which “does no more than state the obvious”.¹⁹⁰ Substantive legitimation can be achieved through legal institutionalisation—“the process by which a language becomes adopted by a state as it carries out its law-making and administrative functions.”¹⁹¹ This includes the activities of government departments and other public bodies. These Crown agency spheres of activity are referred to as “the civic realm”.¹⁹² Te reo Māori must be functional for it to be preserved. Function would be achieved should it become the language of statute, legislative drafting, Parliamentary debates, court procedural record, hearing transcripts, court judgments, contracts, deeds, wills and the like. The extension of the functional use of te reo Māori into the legal sphere is consistent with High Court Justice McGechan’s finding in the *Broadcasting Assets* case. It was considered that the onus on the Crown to actively protect the language extends “. . . not only to avoidance of present damage, but so as to facilitate the future revival and development of the language”.¹⁹³ Just such an approach allowed for the expansion of the Māori language into the broadcasting sphere of government activity.

148. The legal institutionalisation of te reo Māori is more warranted now than it was when the Te Reo Māori Tribunal considered the topic given that te reo Māori is in need of “life support”. According to the Wai 262 Tribunal:¹⁹⁴

there must be a deep-seated fear for the survival of te reo. The number of speakers is down in the key younger age groups, and older speakers with the highest fluency – whose language comprises the unique tribal variations of te reo – are naturally declining in number. For all the rhetoric about forward progress, even the Crown’s key witness conceded that there was still a need for ‘life support’.

¹⁹⁰ Waitangi Tribunal, *Finding of the Waitangi Tribunal on The Te Reo Māori Claim*, Wai 11, April 1986, Brookers (Wellington), at 43, para 8.1.1. This is the complaint that the Te Reo Māori Tribunal had for section 77A of the Māori Affairs Act 1953, which provision gave official recognition to the Māori language.

¹⁹¹ Ahu, Tai. *Te Reo Māori as a Language of New Zealand Law: The Attainment of Civic Status*, LLM Dissertation, Faculty of Law, Victoria University, 2012, at 7.

¹⁹² Ahu, Tai. *Te Reo Māori as a Language of New Zealand Law: The Attainment of Civic Status*, LLM Dissertation, Faculty of Law, Victoria University, 2012, at 5.

¹⁹³ *New Zealand Māori Council v Attorney-General* HC Wellington CP 942/88, 3 May 1991, at 17.

¹⁹⁴ Waitangi Tribunal, *Ko Aotearoa Tēnei – A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, vol 2 at [xxv].

In circumstances where by 2011 there is “a deep seated fear for the survival of te reo”, in the words of the Privy Council it is appropriate for “the Crown to take especially vigorous action for its protection”.¹⁹⁵ As such, making te reo Māori a formal language of New Zealand’s legal system is appropriate.

149. The growth of use of te reo Māori in the civic realm would be achieved alongside community-based revitalisation. However, in order to ensure survival, languages must be actively used across a range of human activities. As Dr Benton pointed out to the Te Reo Māori Tribunal, “languages are learned and established most effectively through use in a wide variety of contexts”.¹⁹⁶ Through legal institutionalisation, the functionality of te reo Māori will grow to meet the daily exigencies placed on it. The mana of the language will be enhanced when it is seen to be in regular use in the legal system. Furthermore, Māori access to government and justice will be facilitated, especially if, as recommended by the Wai 262 Tribunal, the Crown learns to speak te reo Māori:¹⁹⁷

To ensure the survival of the language, the Government’s goal must be for a significant proportion of Māori people to be able to speak Māori in future. That goal must be supported by a plan for how these people will be able to engage with the State in te reo, which they will surely want to do. Any progress in the speaking of Māori by Māori, therefore, must be matched by the State – otherwise, the familiar pattern of supply falling well short of demand will be repeated.

150. The 1987 Act statutorily enshrined the right to speak Māori in legal proceedings.¹⁹⁸ However practical and procedural difficulties hindered the exercise of the right.¹⁹⁹ Minimal use of the 1987 Act was made. Only six notices of intention to speak Māori were filed in the High Court and District

¹⁹⁵ *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513 (PC) at 517.

¹⁹⁶ Waitangi Tribunal, *Finding of the Waitangi Tribunal on The Te Reo Māori Claim*, Wai 11, April 1986, Brookers (Wellington), at 11, para 3.3.4.

¹⁹⁷ Waitangi Tribunal, *Ko Aotearoa Tēnei – A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, vol 2 at [5.3.3(2)].

¹⁹⁸ Section 4(1), Māori Language Act 1987.

¹⁹⁹ This view is shared by the Waitangi Tribunal—see Waitangi Tribunal, *Ko Aotearoa Tēnei – A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, Legislation Direct, Volume 1, at 168. Although the Māori Language Act 1987 was replaced by Te Ture mo Te Reo Māori Act 2016 (“the 2016 Act”), the following submissions concern the language rights provided under the 1987 Act. The submissions made with regard to section 4 of the 1987 Act are also applicable to the equivalent section 7 of the 2016 Act. We discuss other provisions of the 2016 Act later in these submissions.

Court between 1987 and 2011. No notices were filed in either the Employment Court or the Human Rights Review Tribunal during this period.²⁰⁰

151. The low use rate may be attributable, at least in part, to the 1987 Act's notice requirements. Reasonable notice had to be given if there was an intention to exercise the right to speak Māori in a court.²⁰¹ The court should organise an interpreter once notice is given.²⁰² If an interpreter is not available, there will be an adjournment of the proceeding until an interpreter becomes available. In very busy courts, the requirement on the court to allow a person to address the court in te reo Māori and to then organise an interpreter gives rise to a very real tactical issue as to whether the right to speak Māori in court should be exercised. There is a risk that the presiding officer of a very busy court will regard a person who can speak English but who wishes to exercise their right to speak Māori as a nuisance or a show-off or a troublemaker. In any event, the notice requirement discourages use of Māori in the courtroom.

152. Section 1.12 of the High Court Rules provide as follows:

- (1) A person upon whom a document is served in any proceedings is entitled to receive a translation of the document into the Māori language if he or she-

...

- (c) satisfies the Registrar that he or she is **unable to read the document** but could read it if it were translated into the Māori language. (emphasis added)

²⁰⁰ Ahu, Tai. *Te Reo Māori as a Language of New Zealand Law: The Attainment of Civic Status*, LLM Dissertation, Faculty of Law, Victoria University, 2012, at 45-6.

²⁰¹ Section 4(5), Māori Language Act 1987.

²⁰² Section 4(3), Māori Language Act 1987.

The requirement that the applicant prove they cannot read the document unless it is translated into Māori is restrictive and a contravention of the Treaty-based right to use Māori in court.²⁰³

153. If the right to speak Māori in court is sought for the purpose of propagating the use and retention of te reo Māori, such a purpose is attenuated by the following provisions:

- (1) There is no requirement that the person will be addressed or answered in Māori;²⁰⁴ and
- (2) There is no requirement that the proceeding be recorded in Māori.²⁰⁵

154. There were other issues with the 1987 Act:

- (1) Although the right to use Māori was extended to all courts and to the tribunals listed in Schedule 1 of the 1987 Act, contrary to the Te Reo Māori Tribunal's recommendation, the right to use Māori was not extended to all government departments, local authorities and other public bodies;
- (2) An award of costs may be made if reasonable notice of an intention to speak Māori was not provided.²⁰⁶ If reasonable notice was not provided, the matter would be adjourned until an interpreter is located, thus delaying an outcome. In these circumstances, the opportunity to exercise the right to speak Māori may be dispensed with in order to avoid delay;
- (3) A dispute regarding the interpreter's accuracy of interpretation will be determined by the presiding officer.²⁰⁷ If the presiding officer has little or no knowledge of te reo Māori, issue arises as to how the interpretation dispute can be properly determined;

²⁰³ Ahu, Tai. *Te Reo Māori as a Language of New Zealand Law: The Attainment of Civic Status*, LLM Dissertation, Faculty of Law, Victoria University, 2012, at 47.

²⁰⁴ Section 4(2)(a), Māori Language Act 1987.

²⁰⁵ Section 4(2)(b), Māori Language Act 1987.

²⁰⁶ Section 4(6), Māori Language Act 1987.

²⁰⁷ Section 4(4), Māori Language Act 1987.

- (4) A Māori speaker must meet the cost of translating court documents into te reo Māori and this cost may be prohibitive. In other words, there is no unfettered right to file court documents in the Māori language;
- (5) Other than the Waitangi Tribunal, simultaneous translation is not available in any other forum, including the Māori Land Court; and
- (6) The 2016 Act does not confer a right to speak te reo Māori at a job interview, when applying for rental accommodation or when purchasing a car.

155. Another significant aspect of the Māori Language Act 1987 was provisioning for the formation of the Māori Language Commission, known as Te Taura Whiri i te Reo (“Te Taura Whiri”). The Te Reo Māori Tribunal had recommended its formation.²⁰⁸ It’s 5 member board was tasked with giving effect to the official language status of te reo Māori, with promoting the language’s use, with granting certificates of competency in the Māori language, and with reporting to the Minister of Māori Affairs on language matters.²⁰⁹ Te Taura Whiri was empowered to consult with the Māori community in relation to the promotion and use of the Māori language, undertake research, consult with government departments on their use of te reo Māori, publish information and report to the Minister.²¹⁰ Te Taura Whiri was continued under Te Ture Mo Te Reo Act 2016.

ISSUE 20(6) USE OF TE REO MĀORI AND THE CROWN

156. In this section of the generic closing submissions, we address issue 20(6) of the Tribunal Statement of Issues:

20(6) What was the experience of Taihape Māori who used Te Reo Māori in Taihape schools or other Crown-controlled settings?

²⁰⁸ Waitangi Tribunal, *Finding of the Waitangi Tribunal on The Te Reo Māori Claim*, Wai 11, April 1986, Brookers (Wellington), at 51.

²⁰⁹ Section 7, Māori Language Act 1987.

²¹⁰ Section 8, Māori Language Act 1987.

157. These generic closing submissions provide an overview of various education issues that have been covered in evidence by and on behalf of the different claimant groups within the Taihape Inquiry.

158. The essential contention advanced in these submissions can be simply stated as follows:

The Crown's failure to provide adequately for the schooling of Māori throughout the District ... undoubtedly contributed to ensuring that disproportionately large numbers of Taihape Māori remained in the lowest socio-economic groupings, and were denied opportunities for social and occupational advancement that were increasingly being opened up for other ethnic groups.

Despite the Crown's legal and/or honour bound obligations to the International Covenant on Civil and Political Rights, the United Nations Declaration on the Rights of Indigenous People and by the New Zealand Bill of Rights Act 1990 to protect and foster the Māori language, te reo Rangatira is a dying language and the dialects of Hapu and Iwi of Taihape have been put at threat of extinction.

The Wai 262 inquiry found with reference to the four principles required of the Crown in modern Māori-language policy, the Crown had failed in respect of their duty to be a good partner; failed to provide adequate support and oxygen; failed to provide adequate priority to Te Reo in resourcing; and failed to ensure more Māori-speaking amongst its citizens and thus reflect the aspirations of a growing number of the citizens it represents.

The evidence in the Taihape Inquiry is overwhelming that this sad state of affairs continues.

159. The failures of the education system for Taihape Māori are the product of a wide range of factors, not to be viewed in isolation.

160. It is more than just Acts, Ordinances and school inspectors' reports to which heed must be given to if one wishes to see the full picture of Crown failures in this area and the impacts of those failures on Taihape Māori.
161. The tangata whenua evidence presented to this Tribunal clearly shows the historical and ongoing negative impacts of the Crown's education system on Taihape Māori their whānau, hapū and iwi.
162. As well, wider social issues are also inherently connected with and symptomatic of the educational underachievement by many Taihape Māori. Factors such as poverty, ill health and the impacts of the Native Land Court contributed to inhibit the educational achievement of Taihape Māori.
163. The evidence presented to this Tribunal shows that Taihape Māori have struggled and, in many cases, continue struggle to obtain an education that appropriately caters to their needs. The consequent disparity between the educational achievement of Taihape Māori and those Taihape non-Māori speaks for itself. We note sadly that is still reflected even in more contemporary settings.
164. The ongoing nature of this disparity has often been due to the Crown's apparent lack of concern and consequent failure to remedy the negative impacts of particular education policies on Taihape Māori and their resistance to enabling Total Immersion Māori Education initiatives to be established matters that are further elaborated upon later in the body of the submission.

Corporal punishment

165. The tangata whenua evidence illustrates that schooling was commonly a negative experience for Taihape Māori, the full picture of which is not shown by official records. While corporal punishment has been referred to earlier in these submissions, the experiences endured by Taihape Māori for using te reo Māori in schools requires further emphasis here.

166. Taihape Claimants gave evidence concerning the use of corporal punishment in the suppression of te reo Māori. Jordan Winiata Haines and Awhina Twomey recounted the harsh experiences of earlier generations:^[1]

My grandmother never spoke English therefore my mother only spoke Māori. Te Reo Māori was not passed down to any of her siblings nor any others of her generation. Even though all of their parents spoke Māori, they hold enduring scars of pain as they were all subjected to the corporal punishment of the ruler on the hand.

167. Patricia Cross's evidence highlights the close surveillance that Māori speakers were under at Turangarere School:^[2]

When I think of it of about one hundred pupils, there were more Pākehā than Māori at Turangarere School, one day Charlotte Kingi spoke a few words in Māori while out in the playground and two Pākehā kids ran straight to the teacher and told on her. "Charlotte Kingi is talking Māori". When Charlotte went into the classroom, she got six of the best, she got the 6 straps. You weren't allowed to speak Māori at all, not even in the playground in 1929.

168. The evidence of Te Rina Warren and Christina Chase showed how often corporal punishment was used:^[3]

Back then when the cane was used...I remember that Ritchie Chase, Johnny Wereta and Danny Chase, they would be caned.^[4]

A lot of my mates went to high school in Taihape, but I didn't. In those days we either had a school mistress or a male teacher. When Mr McNicholls came along it changed everything. One day he chased Albert McCarthy down the road. We got the strap in those days, and you got out on the floor, held your hands out and 'whack'.^[5]

^[1] Brief of Evidence of Jordan Winiata-Haines and Awhina Twomey, Wai 2180, #C6, at [21].

^[2] Brief of Evidence of Patricia Cross, Wai 2180, #C2, at [11].

^[3] Statement of Evidence of Te Rina Warren and Christina Chase, Wai 2180, #G6, #G6(a).

^[4] Statement of Evidence of Te Rina Warren and Christina Chase, Wai 2180, #G6(a).

^[5] Statement of Evidence of Te Rina Warren and Christina Chase, Wai 2180, #G6(a).

169. Greg Toatoa and Rhonda Toatoa were subjected to corporal punishment for speaking te reo Māori:^[6]

I can recall being strapped for speaking Māori at school. We weren't able to speak our own language. The government persecuted us. Our native tongue is something that has been lost.

170. Tanya Betty gave evidence concerning the inter-generational non-transmission of te reo Māori:^[7]

The Crown's education system did not mean equity amongst all people. It really meant 'brainwashed' from thinking and living as Māori and punishment for speaking Te Reo Māori. This brainwashing and punishment made a huge social impact on Winiata Te Whaaro's later siblings and Ngaati Hinemanu me Ngaati Paki.

171. The evidence above establishes that Taihape Māori were subjected to a regime of state-sponsored violence. Physical harm was inflicted in order to suppress a language and its related culture. Unwarranted assaults and other forms of harm were serially committed against very young children across decades of schooling. Despite clear signs that use of the Māori language was waning, the policy of assimilation and the direct method of language learning were not effecting the demise of the language quickly enough. Violence was employed to expedite the process and to ensure language death. The physical harm suffered was prejudicial enough but in addition to that, hundreds and perhaps thousands of Taihape Māori schoolchildren gave up on their first language and their culture and then they actively encouraged later generations to do the same thing.

Mainstream schooling and its deleterious effects

172. The mainstream or Pākehā medium schooling system in New Zealand has failed to respond to the needs of many Māori tamariki and their whānau including those located in this inquiry district. Furthermore, previous

^[6] Amended Joint Brief of Evidence of Greg Toatoa and Rhonda Toatoa, Wai 2180, #J9.

^[7] Brief of Evidence of Tanya Beatty, Wai 2180, #K12, at [49].

Tribunals have the discussed how unsuccessful the education system in New Zealand has been.

173. The Tribunal in the Te Reo Māori inquiry found that:^[8]

The education system in New Zealand is operating unsuccessfully because too many Māori children are not reaching an acceptable standard of education. For some reason they do not or cannot take full advantage of it. Their language is not adequately protected and their scholastic achievements fall far short of what they should be. The promises in the Treaty of Waitangi of equality in education as in all other human rights are undeniable. Judged by the system's own standards Māori children are not being successfully taught, and for this reason alone, quite apart from a duty to protect the Māori language, the education system is being operated in breach of the Treaty.

When such a system produces children who are not adequately educated they are put at a disadvantage when they try to find work. If they cannot get work that satisfies them they become unemployed and live on the dole. When they live on the dole they become disillusioned, discontented and angry. We saw such angry people giving evidence before us. They are no more than representatives of many others in our community. When one significant section of the community burns with a sense of injustice, the rest of the community cannot safely pretend that there is no reason for their discontent. That is a recipe for social unrest and all that goes with it. Recent events in other places illustrate this fact with tragic vividness.

174. The Crown acknowledges that it failed to actively protect Te Reo and encourage its use by iwi and Māori in breach of the Treaty of Waitangi and that this had longstanding and ongoing detrimental effects on the acquisition and use of the Māori language, and on the tikanga and

^[8] Waitangi Tribunal *Report of The Waitangi Tribunal on The Te Reo Māori Claim* (Wai 11, 1993) at [6.3.8] – [6.3.9].

mātauranga of Māori, including for those within the Taihape inquiry district.^[9]

175. The Crown has further argued that none of its policies and practices or laws were designed to ban Te Reo Māori. We submit that this is inaccurate and provide the following submissions in response.
176. The Crown has acknowledged that the state education system has not sufficiently valued Māori cultural understandings and has consistently low expectations of tamariki and rangatahi Māori. The failure to respond to the identity, language and culture of Māori has harmed Māori and has contributed to poor education outcomes over generations. These issues have manifested in the Taihape inquiry district and have impacted on the education outcomes of the claimants, their whānau and their ancestors.^[10]
177. Māori children within Taihape were punished in order to rid them of their language and their tikanga and were forced to adhere to the ways of foreigners. They were expected to think, speak and act like Pākehā.
178. There was some evidence presented in relation to being threatened at school if they spoke Māori. The stigma and shame associated with that experience remains with many of them to the present day. Many claimants gave evidence in relation to punishment at school for speaking Māori. Some of the evidence referred to below was discussed earlier in these submissions in relation to the intensification of the Crown policy of linguisticide in the 20th century. We now refer to the same evidence but specifically in relation to the claimants' experience with speaking te reo Māori in the Taihape district.
179. Hineaka Winiata stated:^[11]

During my time at school, there was no importance at all on encouraging te reo Māori or tikanga. Instead, we were forced to learn Pākehā concepts at the expense of our Ngāti Hinemanu

^[9] Wai 2180, #M27 at [12].

^[10] Wai 2180, #M27 at [13].

^[11] Wai 2180, #H3 at 3-4.

and Ngati Paki way of life. The majority of students were Māori and the majority of teachers were Pākehā. If you said Māori words, you would get the strap, or your mouth washed out with soap. Although we wanted to learn the English teachings in order to be able to develop positive relationships with the settlers, it was never supposed to be at the expense of our own tikanga and knowledge of te reo and our systems. I will always remember my father saying to me that, "it's going to be a Pākehā world."

180. Nicola Chase also presented evidence on this issue and spoke about the stories from her grandparents' generation which were not positive.^[12]

We heard how the 'black was beaten out of them' due to the unofficial policy to wipe out the Māori language, and assimilate the people.

181. It is submitted that as a result of the various punishments faced by Taihape Māori at school, Te Reo was hardly ever passed on to their children as the parents did not want to risk their children suffering the same fate.
182. Te Rangiangoa Hawira spoke about her desire to learn Te Reo Māori while schooling at Taihape College and the response she received from her mother. She stated.^[13]

Our mother was a fluent speaker of te reo; although, she never spoke it at home. Mum was brought up by her father's mother, Pureti Te Hitaua Turoa, and her father's sister, Mania Te Hitaua Toi, on the Whanganui River at Manganui a Te Ao, Tawata and later Tangarākau. Our father didn't speak te reo at all.

I had approached a teacher by the name of Mat Campbell who agreed to help me with the correspondence course, provided that my mother agreed. However, she didn't as she couldn't see any use for it: "where is that going to get you..." were her exact words.

^[12] Wai 2180, G9 at [16].

^[13] Wai 2180, #H11 at [11], [12] and [14].

In retrospect, I can understand my mother's attitude. Like so many of her generation she was given a pākehā name and beaten for speaking te reo at school. She could not see the benefit of it until the Kohanga Reo movement began some 20 years on, which she wholeheartedly embraced.

183. Additionally, because Te Reo Māori was not constantly heard or used in schools, at work, families quickly came to believe that Te Reo had no benefit in this changing landscape. It was only the English language that was heard in all aspects of life including in schools, places of work, in Parliament and through the media. It is no wonder then that Māori were led to believe that there was no value in Te Reo Māori me ōnā tikanga within the environment they lived in. The Crown, in counsel's submission, played a significant role in the resulting attitudes which by its policies the Crown continues to perpetuate.

184. Neville Lomax presented evidence which highlighted this issue:^[14]

The only thing that concerned me at primary school was the fact that not one word of the Māori language was spoken by teachers or students while we were on the school grounds. When I asked Mum why we could not learn to speak our native language she replied that; "our people had been constantly informed during the past fifty years that the Māori language was dying out, and all children needed to learn to speak, read and learn English if they wanted to be successful in their future careers.

185. Te Rangiangoa Hawira stated that:^[15]

While at Taihape College I joined the kapa-haka group. It was the only reo experience I had since it was never spoken at the back of the marae. It sparked a desire in me to understand and speak the language. Accordingly, in the 5th Form I chose Māori as one of my options. I had approached a teacher by the name of Mat Campbell who agreed to help me with the

^[14] Wai 2180, #H10 at [20].

^[15] Wai 2180, #H11 at [12], [13] and [15].

correspondence course, provided that my mother agreed. However, she didn't as she couldn't see any use for it: "where is that going to get you..." were her exact words. This reiterated the reaction I had already received from my principal and his wife, our French teacher, who said words to this effect: "...but you need to learn French for it is the international language and it will take you anywhere around the world...". Mat Campbell was sympathetic; however, he was adamant he would not go against my mother's will.

At the time I was angry and rebelled. I would have left school if I had been old enough; instead, I took art. But my grades in all subjects except art and mathematics went downhill. I had made my mind up to leave school at the end of the year to pursue a trade, swearing never to return and live in Taihape again.

186. Many Taihape Māori have tried to pursue their own pathway in learning te reo but many have still felt the historic shame attached to the language and have struggled in their journey to learn as a result. Neville Lomax highlights this in his evidence.^[16]

During this period of study, I found that the negativity towards the Māori language that I had been subjected to during the previous thirty plus years in the Pākehā world now made me feel whakamā about using the language. With the support of co-students in classes we could overcome this state of "whakamā" amongst ourselves to a certain degree. However, there are still occasions when I am called upon to speak when I become overwhelmed by this whakamā that grew within me during those years of not being able to learn te reo. This makes my thoughts revert from thinking in Māori to thinking in English, and inhibits my expression of the language.

187. It must not be forgotten that it has been more than 160 years since the mainstream education system has been operating in New Zealand and the challenges and effects of that system faced by Taihape Māori today, are largely the same as they were back then.

^[16] Wai 2180, #H10 at [30]-[31].

Current Statistics

188. Counsel would like to direct these submissions to the current statistics to illustrate how the education system in New Zealand is still continuing to fail Māori children within this district. Māori children are achieving lower standards than non-Māori and are therefore, less prepared for any future work or study.
189. The statistics listed below illustrates that Māori children in this district are continuing to underachieve compared to non-Māori.
190. There are nine schools in the inquiry district. Taihape Area School is the only secondary school in the Inquiry district.^[17]
191. The statistics provided by the Crown shows that Māori students are not achieving as well as non-Māori. Māori in this district, particularly Māori boys are struggling to attain NCEA numeracy and literacy standards.^[18] It was highlighted that Māori boys tend to have the lowest levels of achievement and engagement, followed by Māori girls. The NCEA results in 2018 showed that 22% of Māori boys and 18% of Māori girls left school without NCEA level 1. In contrast, 10% of Pākehā boys left without this qualification.^[19] During cross examination, Ms Holsted stated that NCEA level 2 is New Zealand's lowest formal qualification and it does not provide real opportunities for future work or study.^[20]
192. The proportion of Māori school leavers in the Inquiry district achieving NCEA Level 2 fluctuates from 48% to 90 between the years 2009 to 2018. The proportion of Māori school leavers achieving NCEA level 3 or University Entrance also fluctuates slightly between 9% and 26% since 2010, and has been consistently below the proportion of total school leavers in the Inquiry district and Māori school leavers nationally.^[21]

^[17] Wai 2180, #M27 at [59].

^[18] Wai 2180, #M27.

^[19] Wai 2180, #4.1.19 at 30-31.

^[20] Wai 2180, #4.1.19 at 32.

^[21] Wai 2180, #M27(g) at 7(b).

193. The attendance of Māori students in the Inquiry District is more regular than Māori nationally, however, they still do not attend as regularly as the total student population. On average Māori in the Inquiry district were 8% less likely to attend regularly from 2013-2017. Across Aotearoa New Zealand, Māori were 17% less likely to attend regularly over the same period.^[22]
194. The Ministry of Education witnesses Ms Holsted and Ms Marshall stated the following: ^[23]
- . . . failure to respond to the identity, language, and culture of Māori has harmed Māori and has contributed to poor education outcomes over generations. These issues have manifested in the Taihape Inquiry district and, along with ‘out of school’ factors, have impacted on the education outcomes of the claimants, their whānau and their ancestors.
195. In questions of clarification, the witnesses were asked to clarify what other “contributing factors” the Ministry considers exist for the disparities faced^[24] and what other “out of school factors” the Ministry considers have impacted Māori particularly.^[25] It was acknowledged by the witnesses that there may be other contributing factors to learner outcomes such as socio-economic issues, health issues and employment opportunities.
196. During cross-examination, Dr Soutar sought further clarification around this statement and asked whether the environment in which a child comes from is partly to blame.^[26] The witness responded by saying it is important that children come ready to learn, but it’s more important that schools are ready for the child.^[27]
197. Dr Soutar further emphasised the fact that despite everything that our education system is doing, we’re still failing our Māori children in this region. He then proceeded on to ask whether this meant that the schools in

^[22] Wai 2180, #M27(g) at 7(a).

^[23] Wai 2180, #M27 at [13].

^[24] Wai 2180, #M27(g) at 5(a).

^[25] Wai 2180, #M27(g) at 5(b).

^[26] Wai 2180, #4.1.19 at 49.

^[27] Wai 2180, #4.1.19 at 49.

the Taihape district aren't ready for the child.^[28] The response was that there was clearly an issue in how Taihape Māori are experiencing schools in this area. The witnesses further stated that there does need to be a way to better connect the experience that young people have in the Taihape area as they do in other areas in terms of getting better outcomes.^[29]

Impact of urbanisation

198. The effects of urbanisation on Taihape Māori are still devastating the communities in the district today. The percentages of enrolments in all education mediums within the district has consistently fluctuated due to the decline in student population.^[30] This consequently had impacts on the funding provided to the different education mediums in the district. Ms Beatty presented evidence and likened Taihape to a ghost town. She stated that.^[31]

The Crown came in and gave the township schools, hospitals, doctors, the telephone exchange and the railways. Two decades later the Crown is doing the reverse; now they are taking away what we, the township, have relied on for so long.

We have no hospitals, temp doctors, no trains stopping at the train station, we are down to one school, there is little employment, there is no ANZ or BNZ bank and the bank that is there is only open for 4 hours a day. We don't even register on the weather forecast on the evening news. I wonder if the Crown is trying to turn Taihape into a ghost town."

199. The decline of population in the district has been a factor emphasised throughout Crown evidence.^[32] It is particularly raised when addressing the issues relating to funding, resourcing and school closures that is a feature of the tangata whenua evidence. We anticipate their submission will build on this to try and establish that the Crown's inaction in Taihape is justified by dint of this process of forced migration from rural to urban areas (which

^[28] Wai 2180, #4.1.19 at 49.

^[29] Wai 2180, #4.1.19 at 50.

^[30] Wai 2180, #M27 at [53], [60].

^[31] Wai 2180, #K12 at [51]-[52].

^[32] Wai 2180, #M27.

of course are a product of Crown policies themselves) and justify the lack of investment in Māori Immersion teaching opportunities and institutions in the district.

200. The Te Reo Māori Report; the Wai 262 report and the Kōhanga Reo Reports have all rejected similar propositions as unsustainable. We say the evidence in this region also points to why such an argument should be rejected.
201. We move now to consider the Crown's historical and contemporary policies and practices which we say when applied to the situation of Taihape Māori illustrate how abysmal Crown efforts and obligations have been to Taihape Māori specifically which have exacerbated efforts of Te Reo Māori Acquisition.

ISSUE 20(7) CURRENT CROWN EDUCATION POLICIES

202. In this section of the generic closing submissions, we address issue 20(7) of the Tribunal Statement of Issues:

20(7) Is the current Crown policy towards the survival of Te Reo Māori adequate in schools within the Taihape inquiry district?

203. A number of current and not-so-current education policies are analysed below. It is deeply troubling that nothing the Crown has devised of late has been effective in arresting language decline. We highlight the need for more Māori language teachers below and then we expose the Crown's ongoing failure to satisfy this need.
204. With much reliance on the Waitangi Tribunal's findings in *Ko Aotearoa Tenei* (Wai 262), we briefly record the Crown's failure to properly support Māori revitalisation efforts in the 30 year period since the 1980s, with a particular focus on the failure to recruit sufficient numbers of Māori language teachers.²¹¹ The Crown's failure to accede to a request by Mokai-Patea Māori for a Kura Kaupapa Māori is featured in this section. It is

²¹¹ Waitangi Tribunal, *Ko Aotearoa Tenei – A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, Legislation Direct, Volume 1.

difficult to fathom the Crown's refusal given the near terminal use of te reo Māori in the region. The failings of the Crown's Ka Hikitia policy are identified insofar as those failings relate to language use and retention. Teachers are simply not implementing the policy, too much reliance is being placed on Māori parents and caregivers and there is no provisioning for more Māori language teachers. In order to properly submit on Ka Hikitia's failings, it was necessary to amply describe the policy and support our claims of failure with like criticism from the Auditor-General and the Tomorrow's Schools Independent Taskforce.²¹² We analyse the struggles of the Kōhanga Reo movement through the lens of the Tribunal's urgent inquiry, noting in particular the resourcing issues that are faced. The policy known as the Māori Language Strategy 2014 is considered below. It represents a glaring failure at arresting language decline.

205. A particular focus in this section is the topic of teacher recruitment. It is apparent from evidence provided at hearing that the Crown is without an operational teacher recruitment strategy. This quite shocking state of affairs only came to light after Crown witnesses were probed about teacher shortages by Tribunal panel members. The deficiencies of Te Ture mot e Reo Act 2016 are discussed as well. There is little compulsion on Crown agencies to embrace the use and retention of te reo Māori in a way that might cause the rest of Pākehā society to develop its use of the language. Under the 2016 Act, Crown agencies rely on a non-existent strategy for the recruitment of Māori language teachers. It is abundantly clear that the relevant Crown agencies are not working cohesively together at a time when it is essential to be doing so. The Crown's review of Tomorrow's School's is analysed and Minister Hipkin's response to the review. We note in particular the failure to provide for much needed teacher recruits in the Minister's response.

Ko Aotearoa Tenei—Wai 262

206. In the years following the enactment of the Māori Language Act 1987, but not necessarily attributable to it, there was a significant upsurge in the

²¹² *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow's Schools Independent Taskforce*, Ministry of Education, November 2018.

number of children and adults learning the Māori language. The Waitangi Tribunal in *Ko Aotearoa Tēnei* recorded the following:²¹³

By 1993, there were 809 kohanga reo attended by more than 14,000 students – half of all Māori in pre-school. By 1999, there were 455 schools (including 59 kura Kaupapa) offering some degree of Māori-medium education. Nearly 31,000 pupils—27,000 Māori and 4,000 non-Māori—were being educated through te reo Māori in varying degrees. Funding for wananga after Treaty settlement with the Crown saw the number of students learning te reo at the tertiary level peak at 36,000 in 2003.

Other language-related milestones included the formulation in 1999 of Te Aho Matua, the guiding philosophy for Kura Kaupapa Māori. Cabinet approved the first Māori Language Strategy in 2003 (“the MLS”). This comprised a set of Māori language policy objectives for Government agencies. The Education Ministry’s Māori-medium curriculum was launched in 2008. Unfortunately, the revitalisation impetus that was gained during the 1990s started to wane in the following decade and beyond.

207. By 1996, 25% of Māori rated themselves able to converse in te reo Māori. In 2006, the number had dropped to 23.7%. There were 8,000 fewer speakers than there should have been. Between 1996 and 2006, the percentage of Māori children under 10 who spoke te reo declined from 22.1% to 18.5%—a deficit of 4,000 tamariki. By 2009, there were 5,200 fewer children attending nearly 350 fewer kōhanga than at the 1993 peak. As discussed above, 2 kōhanga reo that were begun in the Taihape region have since closed. Kōhanga tamariki were now less than a quarter of all Māori children in pre-school, as against half at the peak.²¹⁴ Census figures reflected declining participation in Māori-medium education by 2009 and tertiary students participating in Māori language courses dropped from 36,000 in 2003 to 17,000 in 2007.
208. The language use data in the previous paragraph was sourced from the Waitangi Tribunal’s *Ko Aotearoa Report*, which was written in 2011.

²¹³ Waitangi Tribunal, *Ko Aotearoa Tēnei – A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, Legislation Direct, Volume 1, at 155.

²¹⁴ Waitangi Tribunal, *Ko Aotearoa Tēnei – A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, Legislation Direct, Volume 1, at 157-161.

Census figures that were released after the publication of *Ko Aotearoa Tenei* show a continued decline in language use. In 2013, 21.31% of Māori rated themselves able to converse in te reo Māori.²¹⁵ However a survey known as *Te Kupenga* was undertaken by Statistics NZ in 2013 suggests that just 11% (50,000) of Māori adults could speak Māori well or very well.²¹⁶

209. The Wai 262 Tribunal analysed where the Crown went wrong. There was heavy criticism for not producing enough qualified teachers to meet the demand for kōhanga reo and Māori-medium primary education during the 1980s and 1990s. There was a “predictable bubble” and indeed a report commissioned by the Department of Education estimated in 1987 “that at least 1,000 more Māori-speaking teachers would be needed over the following decade to service the kōhanga generation”.²¹⁷ Although there was an effort to increase teacher numbers in the mid-1990s, it was too little too late. Māori parents and caregivers began to vote with their feet back to mainstream education. The blame was heaped on the Crown:²¹⁸

. . . a failure of imagination and planning in the education sector led to the major gulf between Māori-medium education supply and demand. Moreover, it was this very deficit of supply that drove demand down and may continue to drive it down.

Regrettably, the opportunity to arrest language decline was not taken when it was presented. The Crown’s response was typically inadequate. We have remarked about this response characteristic previously. Its exhibition at crucial moments in the history of te reo’s decline is wholly disconcerting and a worthy subject of examination in of itself. The Crown’s failure to produce an ample number of language teachers in circumstances where the Crown was patently aware of the need to do so is consistent with the Crown’s earlier policy of linguicide.

²¹⁵ http://archive.stats.govt.nz/browse_for_stats/snapshots-of-nz/nz-social-indicators/Home/Culture%20and%20identity/Māori-lang-speakers.aspx

²¹⁶ http://www.Māorilanguage.info/mao_lang_faq.html

²¹⁷ Waitangi Tribunal, *Ko Aotearoa Tēnei – A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, Legislation Direct, Volume 1, at 164.

²¹⁸ Waitangi Tribunal, *Ko Aotearoa Tēnei – A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, Legislation Direct, Volume 1, at 165.

210. The Crown's Māori Language Strategy ("the MLS") was criticised by the Waitangi Tribunal in *Ko Aotearoa Tenei*. It was "intentionally high-level, and so lacking in ambition that its goals were either easily achievable or so vague as to be meaningless".²¹⁹ The teacher supply issue was not addressed at all. Pre-school and Māori-medium learner rates continued to decline. Although by 2007, the supply of Māori-medium education now met demand, this was due to poor policy making as opposed to increased capacity. A "matter of deep concern" to the Waitangi Tribunal was the Ministry's education strategy for Māori education for 2008 to 2012 and its stated ambition to keep the number of students in Māori language education at 2006 levels.²²⁰ No growth was planned for. Rather strangely, it was as if the Ministry had decided on the maximum level of language learner rates and it was not to go beyond that.
211. It is more than curious that the claim of significant growth by Ministry of Education and Te Puni Kokiri in te reo speakers in 2006 was contradicted by the 2006 Census. Other data has contradicted the growth claim.
212. The Waitangi Tribunal in *Ko Aotearoa Tenei* found that Crown resourcing for arresting language decline was deficient and that in the competition for Crown resources, "te reo must take a reasonable degree of preference".²²¹

Kura Kaupapa Māori Refused

213. In 2003, Nga Iwi o Mokai-Patea Services requested the creation of a Kura Kaupapa Māori in the region. The request was raised during the Taihape Schools Network Review, which resulted in, inter alia, the establishment of Taihape Area School.²²² The Taihape area at the time was experiencing population decline. The general population fell by 15% between 1992-2002. The number of secondary school students fell by 27% and the number of primary students fell by 23%.²²³ 10 schools were included in the review. The quality of education varied across the schools. In 2002,

²¹⁹ Waitangi Tribunal, *Ko Aotearoa Tenei – A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, Legislation Direct, Volume 1, at 165.

²²⁰ Waitangi Tribunal, *Ko Aotearoa Tenei – A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, Legislation Direct, Volume 1, at 166.

²²¹ Waitangi Tribunal, *Ko Aotearoa Tenei – A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, Legislation Direct, Volume 1, at 167.

²²² *Brief of Evidence of Iona Holsted and Jann Marshall* dated 18 February 2019, Wai 2180, #M27, at [92].

²²³ *Brief of Evidence of Iona Holsted and Jann Marshall* dated 18 February 2019, Wai 2180, #M27, at [94].

Education Review Office reports resulted in interventions at 5 schools in the area. Taihape College had staffing issues and it could not offer a range of curriculum areas.²²⁴

214. Nga Iwi o Mokai-Patea Services considered that the education needs of Māori in the region were not being met. There was no option for total immersion schooling or any other form of follow on in the Taihape district. An education environment separate from the mainstream schools was sought. In a survey that was carried at the time, 86% of those who were surveyed supported the establishment of a Kura Kaupapa Māori.²²⁵ The kura was to be separate from the mainstream in order to ensure “the revival and survival of te reo me ona tikanga ki Mokai Patea”.²²⁶
215. The request for a Kura Kaupapa Māori was refused by the Minister of Education, the Hon Trevor Mallard (“the Minister’s decision”). It was considered that the “risks probably outweighed the benefits.”²²⁷ According to the Crown witnesses, the factors that contributed to the refusal included Taihape’s significant population decline, falling rolls, variable education quality, staffing issues and the susceptibility of rural Kura Kaupapa Māori to statutory intervention. Many of the schools had financial issues as well.²²⁸ As a solution, the Reo Rua unit that had operated at the Taihape Primary School (“the Reo Rua unit”) would continue at the newly established Taihape Area School and extend through to secondary levels. There are a number of issues with the Minister’s decision. A close examination is in order.
216. The Reo Rua unit was not what Nga Iwi o Mokai-Patea Services sought or needed. It was not a full immersion language unit and the Crown was fully aware of this at the time.²²⁹ Local iwi were made to accept a learning option that was insufficient for the needs of the community in circumstances

²²⁴ *Brief of Evidence of Iona Holsted and Jann Marshall* dated 18 February 2019, Wai 2180, #M27, at [95].

²²⁵ *Statement of Evidence of Ngaire Anne Te Hirata Kauika-Stevens*, Wai 2180, #J5, at 35; *Exhibits to Brief of Evidence of Iona Holsted and Jann Marshall* dated 18 February 2019, Wai 2180, #M27(a), at 206.

²²⁶ *Statement of Evidence of Ngaire Anne Te Hirata Kauika-Stevens*, Wai 2180, #J5, at 35.

²²⁷ *Brief of Evidence of Iona Holsted and Jann Marshall* dated 18 February 2019, Wai 2180, #M27, at [97].

²²⁸ *Brief of Evidence of Iona Holsted and Jann Marshall* dated 18 February 2019, Wai 2180, #M27, at [99] to [100].

²²⁹ *Exhibits to Brief of Evidence of Iona Holsted and Jann Marshall* dated 18 February 2019, Wai 2180, #M27(a), at 203.

where the Crown had “obligations, . . . , to actively protect Māori language as a taonga guaranteed under the Treaty of Waitangi”.²³⁰ The Minister’s decision should be revisited. It violated the principles of Te Tiriti o Waitangi because it failed to actively protect te reo Māori. As a result, in the Crown’s own words, “[t]here is limited Māori language provision in the Taihape Inquiry district, . . .”.²³¹ This was underscored by the Claimants in their evidence. The Minister’s decision made language retention even more difficult. Nicola Chase stated that Mokai-Patea children are sent away to learn the language or families who want to speak te reo Māori “move to where those reo speaking communities are”. Ms Chase complained about how the “marae struggle to fully uphold tikanga” due to language loss.²³² In her evidence, Te Rina Warren relayed how she took her whānau to the Rangitane people of Palmerston North to continue their efforts to retain te reo. She added that “we are not the only whānau who have left Mokai Patea to seek out te reo Māori.”²³³ The impact of the Minister’s decision, according to Ngaire Kauika-Stevens, “. . . is that we have been unable to successfully maintain tikanga a hapū, tikanga a Marae, tikanga a whānau”.²³⁴ There is more evidence of prejudice that can be attributed to the Minister’s decision. The te reo Māori learning statistics provided by the Crown witnesses in their evidence for the region make for dismal reading. Whilst in “the care” of the Taihape Area School, Māori Language Immersion Levels (“MLIL”)²³⁵ 3 and 4 were disestablished in 2011. MLIL 3 students are taught for 31-50% of the time in te reo Māori. In 2011, Taihape College had been funded for 16 MLIL 3 students. MLIL 4 had been funded for 49 students.²³⁶ In 2018, most students participating in Māori language education were MLIL 6. These students learn Māori songs, greetings and a few simple words. The next largest group of learners were MLIL 5. They were learning the language for less than 3 hours a week. In

²³⁰ *Brief of Evidence of Iona Holsted and Jann Marshall* dated 18 February 2019, Wai 2180, #M27, at [82].

²³¹ *Brief of Evidence of Iona Holsted and Jann Marshall* dated 18 February 2019, Wai 2180, #M27, at [85].

²³² *Statement of Evidence of Nicola Chase*, Wai 2180, #G9, at [8].

²³³ *Statement of Evidence of Te Rina Warren (translation)*, Wai 2180, #G8(a), at 10.

²³⁴ *Statement of Evidence of Ngaire Anne Te Hirata Kauika-Stevens*, Wai 2180, #J5, at 41.

²³⁵ *Brief of Evidence of Iona Holsted and Jann Marshall* dated 18 February 2019, Wai 2180, #M27, Table 3, at 23.

This table describes the Māori Language Immersion Levels.

²³⁶ *Brief of Evidence of Iona Holsted and Jann Marshall* dated 18 February 2019, Wai 2180, #M27, at [87].

2018, approximately 10 students were learning te reo Māori for at least 3 hours a week (MLIL 4(b)).²³⁷

217. We set out the Ministry's advice to the Minister that was provided in the Taihape Schools Network Review in early 2004 ("the Ministry's advice").²³⁸

46. The Ministry notes the points made at the meeting of Iwi, particularly the preference of the rohe for the establishment of a Kura Kaupapa Māori.
47. You addressed this matter at a meeting in Taihape where you acknowledged the call for a Kura Kaupapa Māori, but you also commented on the risks to quality education faced in very small schools. You indicated your view that for Taihape at present, the risks probably outweighed the benefits.
48. The Ministry supports this view, and suggests that the reorganised network of schools in the district should be encouraged by the Ministry towards ensuring that the education needs of Māori students are addressed within their schools.

It is notable that no consideration was given to the precarious state of the Māori language in general and in the Taihape region in particular. The unfortunate level of language decline in the Taihape inquiry district is palpable.²³⁹ Since it is not a factor in the Minister's decision and given the onus on the Minister to actively protect te reo Māori, the Minister's decision was flawed. Ngaire Anne Kauika-Stevens observed the Minister's failure in this regard.²⁴⁰

However, for us here in Mokai Patea, we were denied the right to have Kura Kaupapa Māori established in 2004. We were denied the right to practise or even exercise tino rangatiratanga. We were denied the opportunity to protect our taonga, *he taonga to reo*. There was no consideration from the Crown to

²³⁷ *Brief of Evidence of Iona Holsted and Jann Marshall* dated 18 February 2019, Wai 2180, #M27, Table 4, at 24.

²³⁸ *Exhibits to Brief of Evidence of Iona Holsted and Jann Marshall* dated 18 February 2019, Wai 2180, #M27(a), at 210.

²³⁹ Waitangi Tribunal, *Transcript, Hearing Week 7*, Wai 2180, #4.1.15, at 376, per Dr Soutar—"I'm trying to understand why here in this region did the language die earlier than it has in other regions".

²⁴⁰ *Statement of Evidence of Ngaire Anne Te Hirata Kauika-Stevens*, Wai 2180, #J5, at 36.

honour any treaty obligations at all. The Crown was only interested in pleasing the Taihape community at large, not its Treaty partner.

218. There was no need for a full immersion school because, according to the Minister, the “reorganised network of schools” would address the education needs of Māori students. There is no basis for such an expectation. As discussed, the Reo Rua unit could never address the education needs of Māori students who wished to immerse themselves in the learning of their native tongue. Mokai Patea were told by Minister Mallard to “work with what you have been given”.²⁴¹ Clearly, the Minister held the mistaken belief that the Reo Rua unit would suffice.
219. In their evidence, Crown witnesses infer that the Minister’s decision was influenced by population decline, falling rolls, variable education quality, other school financial issues, staffing issues and the risk statutory intervention.²⁴² It should be noted that there is no reference to these factors in the Ministry’s advice. Instead, the “very small size” of the proposed school was the predominant factor. It was tactless of the Minister to have based his refusal on this factor alone given that since 2010, Māori students have consistently made up over 40% of the inquiry district population. In 2018, 46% of students identified as Māori and 61% of the students at Taihape Area Schools identified as Māori.²⁴³ Nicola Chase indicated that at the time, there was strong local Māori support for learning te reo Māori.²⁴⁴
220. The Minister should have placed more emphasis on revitalising te reo Māori. An opportune moment to do so was not taken and as a result, Māori language use and retention in the region has continued towards expiration. The Minister’s decision breached the treaty principle of active protection. The Waitangi Tribunal is urged to recommend the establishment of a Kura Kaupapa Māori in the Taihape inquiry district.

²⁴¹ *Statement of Evidence of Nicola Chase*, Wai 2180, #G9, at [22].

²⁴² *Brief of Evidence of Iona Holsted and Jann Marshall* dated 18 February 2019, Wai 2180, #M27, at [99] to [100].

²⁴³ *Brief of Evidence of Iona Holsted and Jann Marshall* dated 18 February 2019, Wai 2180, #M27, at [60].

²⁴⁴ *Statement of Evidence of Nicola Chase*, Wai 2180, #G9, at [19.5].

Māori education strategies—*Ka Hikitia*

221. Following consultation with Māori by the Ministry of Education and Te Puni Kokiri in 1997 and 1998, the first Māori Education Strategy was launched in 1999 with 3 main goals:²⁴⁵
- (1) To raise the quality of mainstream education for Māori;
 - (2) To support the growth of high-quality Kaupapa Māori education; and
 - (3) To support greater Māori involvement and authority in education.
222. This first strategy recognised that Māori educational success was a Ministry-wide responsibility. It created an environment that led to a range of new initiatives, including:
- (1) iwi education partnerships;
 - (2) professional development programmes such as Te Kotahitanga and Te Kauhua;
 - (3) the Whakaaro Mātauranga communications campaign (Te Mana — ki te Taumata) and the appointment of more than 20 pouwhakataki (Māori community liaison officers) throughout the country;
 - (4) additional Māori-medium schooling support initiatives such as resource teachers of Māori; and
 - (5) student engagement initiatives.
223. In 2005, the strategy was republished to reaffirm the Ministry of Education's commitment to Māori education. In the 2005 re-publication, it was stated that more policies were introduced during 2000 and 2001 including “investing in teacher supply” and “investing in effective teaching and high-

²⁴⁵ This strategy was referenced in the *Brief of Evidence of Iona Holsted and Jann Marshall* dated 18 February 2019, Wai 2180, #M27, at [24], footnote 7. The Māori Education Strategy is distinct from the Māori Language Strategy 2003.

quality schooling programmes”.²⁴⁶ No detail was provided with regard to how teacher supply was going to be increased.

224. The Māori Education Strategy was further developed by Ka Hikitia, a Māori education development strategy that is based on the belief that Māori students thrive in educational settings that reflect their identity, language and culture. It emphasises “quality teaching, supported by effective leadership, and educationally powerful connections with whānau and iwi.”²⁴⁷ Ka Hikitia is to be implemented in three phases. The first of these phases is called ‘*Managing for Māori Success*’ and it took place from 2008-2012. Phase two is called ‘*Accelerating Success*,’ and it began in 2013 running through until the end of 2017. Phase three began in 2018 and will run through until 2022.²⁴⁸ Included in the five guiding principles of Ka Hikitia, which are outlined below, is an intention to foster te reo Māori:²⁴⁹

- (1) Treaty of Waitangi;
- (2) Māori potential approach;
- (3) Ako – a two-way teaching and learning process;
- (4) Identity, language and culture count; and
- (5) Productive partnerships.

225. The strategy has been beset by a number of issues. In *Our Schooling Futures: Stronger Together*, the Tomorrow’s Schools Independent Taskforce (“the Taskforce”) reviewed the 1989 reforms.²⁵⁰ It was remarked that innovation in kaupapa Māori schooling “remains patchy, and the spread of effective innovation is very uneven and not matched with central support”. Similarly:²⁵¹

the ten year old Ka Hikitia Strategy, which aimed to rapidly change how the education system served Māori,

²⁴⁶ *Māori Education Strategy*, Ministry of Education, 2005, at 6—<http://gdsindexnz.org/wp-content/uploads/2019/04/135.-Māori-education-strategy-may-05.2000.pdf>

²⁴⁷ *Brief of Evidence of Iona Holsted and Jann Marshall* dated 18 February 2019, Wai 2180, #M27, at [24].

²⁴⁸ Ministry of Education, *Ka Hikitia – Accelerating Success 2013-2017, The Māori Education Strategy*, at 7-8.

²⁴⁹ Ministry of Education, *Ka Hikitia – Accelerating Success 2013-2017, The Māori Education Strategy*, at 11.

²⁵⁰ We discuss the Taskforce’s report in more depth later in these closing submissions.

²⁵¹ *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow’s Schools Independent Taskforce*, Ministry of Education, November 2018, at 29.

has not been able to achieve the desired step-change. This tells us that our schooling system isn't working well enough: high-level strategies on their own are not sufficient to reach every school and every classroom.

226. A series of publicly-available reports were written by the Auditor-General traversing Māori education ("the AG reports"). Ka Hikitia was examined and reported on in detail. The AG reports are Parliamentary Papers from the Office of the Controller and Auditor-General, and comprise the following documents:

- (1) *Education for Māori: Context for our proposed audit work until 2017*,²⁵²
- (2) *Education for Māori: Implementing Ka Hikitia – Managing for Success*,²⁵³
- (3) *Education for Māori: Relationships between schools and whānau*,²⁵⁴
- (4) *Education for Māori: Using information to improve Māori educational success*,²⁵⁵ and
- (5) *Summary of our Education for Māori reports*.²⁵⁶

227. The *Summary of our Education reports* document consolidates the findings of each of the AG reports. A key issue raised by the Auditor-General concerns the flawed implementation of Ka Hikitia.²⁵⁷

The implementation of Ka Hikitia was originally flawed by a slow and unsteady introduction by the Ministry of Education. As a result, the introduction of Ka Hikitia was not as effective as it

²⁵² Wai 2180, #M27(f), at 15. Also see *Parliamentary Paper, Controller and Auditor General, 'Education for Māori: Context for our proposed audit work until 2017'*—www.oag.govt.nz

²⁵³ Wai 2180, #M27(f), at 59. *Parliamentary Paper, Controller and Auditor General, 'Education for Māori: Implementing Ka Hikitia - Managing for Success'*—www.oag.govt.nz

²⁵⁴ *Parliamentary Paper, Controller and Auditor General, 'Education for Māori: Relationships between schools and whānau'*—www.oag.govt.nz

²⁵⁵ Wai 2180, #M27(f), at 125. *Parliamentary Paper, Controller and Auditor General, 'Education for Māori: Using information to improve Māori educational success'*—www.oag.govt.nz

²⁵⁶ Wai 2180, #M27(f), at 199. *Parliamentary Paper, Controller and Auditor General, 'Summary of our Education for Māori reports'*—www.oag.govt.nz

²⁵⁷ *Parliamentary Paper, Controller and Auditor General, 'Summary of our Education for Māori reports'*, at 19—www.oag.govt.nz

could have been, and it could have had more of an effect in raising Māori educational achievement. This was a missed opportunity.

Ka Hikitia was not effectively communicated to schools...

...the implementation of Ka Hikitia was faulty because it relied too much on goodwill and devolved responsibility....

.... having several initiatives and actions happening at the same time contributed to Ka Hikitia being put into effect slowly.

228. During Hearing Week 11, Dr Ballara asked Ms Holsted why Ka Hikitia had not been implemented “across the board”. The extensive reply merely fortified the Auditor-General’s observation that implementation was flawed. There was a lack of integration. The policy had been “appended to, but not integrated with everything else that’s happening with the Ministry” and that “[i]t was quite typical of the time in the Public Service for Māori policy to be set aside to [be] developed almost in isolation.”²⁵⁸ Furthermore, teachers were inundated with policies and Ka Hikitia was just another one of many.²⁵⁹

If you then think from the teacher’s perspective and it’s fundamentally the teachers who have to make the changes, consistent with the policy to get the results, they are subject to any number of policies at any given time, and if you’ve got a Ministry that’s got a range of policies coming at you in a classroom setting – those of us who have spent any time teaching will know, that making priority decisions is quite difficult in that environment.

229. Another flaw with implementation was admitted:²⁶⁰

There was insufficient time given to training teachers to understand what the policy meant. Insufficient time and resources to providing the curriculum to support it. Insufficient attention in initial teach education to ensure that graduating teachers were coming into the system, steeped in Ka Hikitia.

²⁵⁸ Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 40-41, per Iona Holsted.

²⁵⁹ Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 41, per Iona Holsted.

²⁶⁰ Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 42-3, per Iona Holsted.

230. Under cross-examination, Ms Holsted accepted that monitoring the effectiveness of Ka Hikitia was deficient.²⁶¹

Q. Right, and just to delve further into the monitoring aspect for strategies beyond Ka Hikitia, if I can get you to turn to page 225 of the bundle? And again, this is the Auditor General's Summary of Education for Māori's 2016 Report, and if I can take you to paragraph 6.21, and it says here, doesn't it that the Ministry of Education's stocktake identified that evaluation information on the effectiveness of programmes is scarce?

A. Correct.

The remarks of the Taskforce, the Auditor-General's observations and Ms Holsted's evidence indicate that the Crown is not up to the task of language revitalisation. Some 30 years after the Te Reo Māori Report of the Waitangi Tribunal, the requisite level of care, organisation and skill is still not being demonstrated.

231. The lack of care was further highlighted when Dr Ballara complained to Ms Holsted that "policy statements" such as Ka Hikitia "are good . . . but they do not get very far down from the top management penetrating the lower levels as it were of bureaucracy". When asked if that "[w]ould that apply here?", Ms Holsted's appeared to agree that it would.²⁶² In other words, the flawed implementation arose, at least to some degree, out of the nature of bureaucracy—the inability of top management to get lower management to execute the requisite tasks. If that is so, it was then incumbent on top education officials to have anticipated what is a relatively common place issue,²⁶³ and then adequately train **and monitor** those at the coal face in

²⁶¹ Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 100, per Iona Holsted.

²⁶² Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 42, per Dr Angela Ballara.

²⁶³ When putting her complaint to Ms Holsted, Dr Ballara inferred that she had encountered a similar problem with "another department of Government"—see Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 42, per Dr Angela Ballara. A similar observation about the New Zealand Broadcasting Corporation was made by the Waitangi Tribunal in the Te Reo Māori Report—see Waitangi Tribunal, *Finding of the Waitangi Tribunal on The Te Reo Māori Claim*, Wai 11, April 1986, Brookers (Wellington), at 7.3.8:

. . . we are prepared to say that, on the face of it, like the education system, there may be some breakdown between the topmost levels of policy making and the ultimate administration at the middle and lower levels of the broadcasting system.

whose hands the success or failure of a language initiative lie. It is apparent from the evidence that this level of care and execution was not applied with Ka Hikitia. In Ms Holsted's words, "[i]t was something – a fantastic piece of policy which was sort of a 'launch and hope' strategy . . .".²⁶⁴ Sadly, the fate of te reo Māori was pinned to a 'launch and hope' strategy.

Productive Partnerships

232. We refer to the Ka Hikitia principle of Productive Partnerships in so far as it relates to the capacity and willingness of Māori communities to participate in the education of Māori youth. Devolution, in this sense, proves to be problematic. The Auditor-General critiqued Ka Hikitia in this regard:²⁶⁵

We heard from a senior staff member of the Ministry of Education that the implementation of Ka Hikitia was faulty because it relied too much on goodwill and devolved responsibility....

233. A manifestation of the Productive Partnerships principle is the establishment of whānau, hapū and iwi links with schools and other education providers. The Crown's aims with Productive Partnerships generally are outlined in the *Ka Hikitia-Accelerating Success* policy document ("the aims").²⁶⁶ The aims are rather broad so the following quotes, extracted from the above-mentioned policy document, provide just a summary of them:

- (1) ...an ongoing exchange of knowledge and information where everybody contributes to achieving goals.
- (2) ...the understanding that Māori children and students are connected to whānau and should not be viewed as separate, isolated or disconnected.
- (3) Parents and whānau must be involved in conversations about their children and their learning.

²⁶⁴ Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 59, per Iona Holsted.

²⁶⁵ *Parliamentary Paper, Controller and Auditor General, 'Summary of our Education for Māori reports'*, at 19—www.oag.govt.nz

²⁶⁶ Ministry of Education, *Ka Hikitia – Accelerating Success 2013-2017, The Māori Education Strategy* (Te Kāwanatanga o Aotearoa).

- (4) The Ministry of Education, ERO, education agencies, councils and boards must form productive partnerships with iwi, Māori organisations, parents, whānau, hapū and communities so they can play a greater role in influencing better educational outcomes for Māori students.

234. One cannot argue with the merit of the aims. They represent an ideal that is more than appealing. However, the aims do not account for significant 'on the ground' realities. A level of commitment is required from Māori parents and community members in circumstances where the parents of history or science students aren't required to devote any time or activity to the learning of such subjects. A deep level of commitment by Māori parents may not be sustainable when it is shared with full time work. There is nothing in the aims that account for the negative education experiences of parents and whānau. There may not be a willingness let alone the capacity and skills to assist in the manner that the Ministry would expect. Another important issue with the aims is the inherent imbalance of power between Crown education agencies. At the individual level, no funding is available whatsoever. The programme relies on goodwill and in-built capacity. The expectation is that individual Māori should participate "for aroha".

Inadequate Provision for Te Reo Māori

235. As stated in Ka Hikitia, "Māori, identity, language and culture recognises, acknowledges and validates Māori students as Māori."²⁶⁷ This principle goes hand in hand with the so-called 'Focus area 1' for Ka Hikitia, this being the development and promotion of Māori language in education. The following affirmations are made about te reo Māori in Ka Hikitia:²⁶⁸

- (1) Māori language is the foundation of Māori culture and identity;
- (2) Māori language in education is critical in enabling the Crown to meet its Treaty obligations to strengthen and protect the Māori language; and

²⁶⁷ Ministry of Education, *Ka Hikitia – Accelerating Success 2013-2017, The Māori Education Strategy* (Te Kāwanatanga o Aotearoa), at 17.

²⁶⁸ See *Ka Hikitia – Accelerating Success 2013-2017, The Māori Education Strategy* (Te Kāwanatanga o Aotearoa), page 28.

- (3) All Māori students must have access to high quality Māori language in education.

236. An important component of Ka Hikitia is Tau Mai Te Reo. It is **the** Ministry of Education strategy for implementing Māori language programmes and it carries with it its own discrete set of principles, although there is considerable overlap with the principles of Ka Hikitia. With Crown acknowledgement in Ka Hikitia and Tau Mai Te Reo of how vital te reo is to Māori and to New Zealand as a whole, we query why the teaching of the Māori language in schools remains demand driven.²⁶⁹ The following evidence was provided by an education official in the Te Paparahi o Te Raki inquiry (Wai 1040):²⁷⁰

The system is demand driven, so if a parent comes to a school with their child and...says that they want [their child] to learn te reo then the school is obligated to find an opportunity for that to occur.

And then:²⁷¹

The system that we run is driven by funding, so if a parent decides that they want te reo taught at their schools the funding will come.

237. It is clear that the capacity and willingness of members of Māori communities could affect the level of demand for te reo or an ability to engage with schools. There is also the problem of communities and schools within which Māori comprise a small minority. Whilst dealing in a hypothetical situation, would a school with 200 pupils bend to the will of one or two Māori parents who wished to implement a te reo Māori programme? In what way would the Ministry intervene in such circumstances?

238. In addition to the demand driven approach to teaching te reo Māori, the Crown emphasised the following in Ka Hikitia:²⁷²

²⁶⁹ It does appear however that the demand driven approach to receiving instruction in te reo Māori may have been terminated—see *Supporting all schools to succeed: Reform of the Tomorrow's Schools system*, Ministry of Education, November 2019, at 25. This document is the government's response to the Taskforce's recommendations.

²⁷⁰ Kim Shannon, Waitangi Tribunal, *Transcript, Hearing Week 22*, Wai 1040, #4.1.27, page 438.

²⁷¹ Kim Shannon, Waitangi Tribunal, *Transcript, Hearing Week 22*, Wai 1040, #4.1.27, page 438.

Ambitions for the Māori language will only be achieved when education is coupled with active intergenerational language transmission, in homes and communities.

and in *Tau Mai Te Reo*.²⁷³

The engagement of parents, whānau, iwi and communities play a significant role in Māori language in education...

239. Again, we have the Crown expecting Māori parents to contribute to the education process. Whilst a commendable objective and laudable in some respects, we submit that the capacity and even the willingness of Māori parents to assist in any real and tangible way can be questioned. Furthermore, there is no accompanying policy initiative to ensure that participating parents are suitably resourced so that they can properly assist with the required effort. In such circumstances and given the years of education mis-delivery by the Crown to Māori, it is appropriate for the Crown to fund Māori parents in this regard.
240. As we have submitted above, the systematic administration of corporal punishment alienated generations of Māori from the school system leading thus to educational apathy, chronic under-performance and failure. Surely any education fix-it programme and those involved with it should be cognisant of why Māori have failed, or, more particularly, the manner in which they have been let down by the Crown. With such knowledge at hand, the effectiveness of community involvement policies in te reo Māori revitalisation programmes instituted by the Crown will be enhanced.
241. Ka Hikitia is acknowledged by most to be a worthy, Māori education development policy, but it is flawed as well. There is too much reliance on involvement by the Māori community, school teachers have not embraced it and sufficient training has not been provided in order to ensure its proper implementation. There is no provisioning for growing Māori language teacher numbers. Accordingly, it cannot be said that Ka Hikitia actively protects te reo Rangatira.

²⁷² *Ka Hikitia – Accelerating Success 2013-2017, The Māori Education Strategy*, at 30.

²⁷³ Ministry of Education, *Tau Mai Te Reo – The Māori Language in Education Strategy 2013-2017*, at 10.

Kōhanga Reo Urgency

242. The Kōhanga Reo report considered the actions and omissions of the Crown with respect to Kōhanga Reo language nests and the ability of Kōhanga Reo to operate effectively in ensuring the transmission of Te Reo Māori and tikanga Māori.²⁷⁴ As discussed, there are two operational Kōhanga Reo in the Taihape inquiry district. The issues raised in the Kōhanga Reo urgency and the determinations made by the Waitangi Tribunal are of direct relevance to them.

Protecting Te Reo Māori

243. The Tribunal in the Kōhanga Reo report held that Crown early childhood education (“ECE”) related policies failed to ensure the participation of Māori children into te reo Māori immersion programmes, including Kōhanga Reo.²⁷⁵ The reasons for this are that Crown policies were not focussed on the active protection and transmission of te reo Māori through Kōhanga Reo,²⁷⁶ given that they:

- (1) relegated Kōhanga Reo to the status of other ‘marginal’ ECE centres;²⁷⁷ and
- (2) failed to promote or incentivise Kōhanga Reo programmes through not supporting them as a priority for Māori education.²⁷⁸

Māori participation in ECE

244. Participation rates of mokopuna in Kōhanga Reo programmes showed a considerable decline within the last decade. The Kōhanga Reo share of total Māori enrolment dropped from 33% in 2002 to 26% in 2007, and then

²⁷⁴ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 2 at 15.

²⁷⁵ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 4.6 at 92.

²⁷⁶ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 4.6 at 92.

²⁷⁷ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 4.6 at 92.

²⁷⁸ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 4.6 at 92.

to 22% in 2011.²⁷⁹ Meanwhile, the proportion of mokopuna enrolled in education and care centres rose from 32% to 47% over the decade.²⁸⁰

245. The Tribunal found that Crown policies directly contributed to this decline in participation rates, give that such policies had not appropriately targeted or sufficiently prioritised te reo Māori immersion.²⁸¹ The Tribunal summarised this as being due to:

- (1) the lack of a te reo Māori education policy framework for ECE; and
- (2) the general failure to specifically address participation rates in immersion education, particularly in Kōhanga Reo.

246. The Crown should have found some way to counter the trend away from te reo immersion preschool and incentivise a recovery in the Kōhanga Reo movement's market share in fulfilling its duty of active protection.²⁸² It should also have done so because of the likely greater cognitive advantages and educational success of school leavers who have attended Māori-medium education.²⁸³

Funding of Kōhanga Reo

247. When conducting reforms on its ECE funding policy, the Crown placed Kōhanga Reo services on a lower two band funding scale versus the higher four band funding scale for other ECE services.²⁸⁴ In order to achieve greater funding, Crown policy compelled Kōhanga Reo providers to employ registered teachers, contrary to the movement's kaupapa, or to seek Teachers Council recognition of the Tohu Whakapakari qualification for teacher registration purposes.²⁸⁵ The Tribunal considered these

²⁷⁹ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 2.4.1 at 26.

²⁸⁰ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 2.4.1 at 26.

²⁸¹ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 5.4.2 at 103.

²⁸² Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 5.4.2 at 103.

²⁸³ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 5.4.2 at 103.

²⁸⁴ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 6.3.3(4) at 119.

²⁸⁵ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 6.3.3(4) at 119.

requirements as unfair barriers that were likely to have led to inequitable outcomes in terms of available funding.²⁸⁶

248. The Tribunal found that the Crown's funding policy failed to maintain the purchasing power of its funding to Kōhanga Reo providers; and raise the funding to a level sufficient to perform the Trust's core functions fully, as was recommended in two previous funding reviews.²⁸⁷ As a consequence, these failures reduced the capability of Kōhanga Reo providers to fulfil their mission and the Kōhanga Reo kaupapa.
249. In addition to the lower base funding levels, Kōhanga Reo employed kaiako received lower rates of pay when compared to teachers in other ECE centres.²⁸⁸ The insufficiency of kaiako rates of pay was evident given that salary rates for Kōhanga Reo employed kaiako amounted to only 70 to 75% of the overall service costs.²⁸⁹
250. Pursuant to this, the Tribunal concluded that the Crown failed to adequately fulfil its duty of active protection given that:²⁹⁰
- (1) the Crown's funding regime was not attuned to or specifically targeted at Kōhanga Reo; and
 - (2) the Crown's funding policy failed to ensure that Kōhanga Reo have adequate resources to maintain, upgrade and replace their building stock to comply with the Crown's regulatory framework and relicensing criteria.
251. The Tribunal recommended that the Crown should have undertaken a significant amount of work at an official level, with a considerable amount of

²⁸⁶ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 6.3.3(4) at 119.

²⁸⁷ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 8.7 at 186.

²⁸⁸ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 6.3.3(4) at 119.

²⁸⁹ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 11.6 at 238.

²⁹⁰ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 8.7 at 186.

genuine consultation with Kōhanga Reo providers, when considering funding requirements for kaiako working within Kōhanga Reo immersion.²⁹¹

252. Crown evidence in this inquiry suggests that Kōhanga Reo will receive a \$32 million funding boost and an additional investment amount of \$54,500 as a result of the Waitangi Tribunal's Kōhanga Reo report.²⁹² This figure must be put into context, given that a total of \$1,641 million was spent on the ECE sector in 2013.²⁹³ The sufficiency of the funding boost is called into question. Furthermore, while the increase in funding is welcomed and although it will provide some assistance to the inquiry district's Kōhanga Reo, questions are raised as to why there was a delay of six years since the release of the report for the Crown to act and whether this policy change was done so in consultation with Kōhanga Reo providers.

Numbers of qualified kaiako

253. Kōhanga Reo providers found it increasingly difficult to hire qualified kaiako.²⁹⁴ Only 49 per cent of 471 Kōhanga Reo employed one fully-qualified kaiako, 17 per cent employed two, and less than 3 per cent employed three or more, while 31 per cent had none.²⁹⁵ Research commissioned by the Ministry of Education found that Kōhanga Reo providers were finding it increasingly difficult to recruit and retain fluent kaiako unless they were able to offer a competitive salary.²⁹⁶ As mentioned above, the disparity in salary levels caused by Crown funding policies has meant that many teachers have chosen to work for other ECE providers, given that working for Kōhanga Reo providers would mean sacrificing market salary rates.²⁹⁷

²⁹¹ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 6.3.3(6) at 121.

²⁹² Crown Law, Supplementary Brief of Evidence of Iona Holsted and Jann Marshall on behalf of the Ministry of Education dated 7 October 2019, #Wai 2180, #M27(c), at 22.

²⁹³ Ministry of Education, Public expenditure on early childhood education (ECE), accessed at <https://www.educationcounts.govt.nz/__data/assets/pdf_file/0019/115660/Public-ECE-expenditure-indicator-report.pdf>.

²⁹⁴ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 7.4.3 at 144.

²⁹⁵ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 8.3.4(4) at 169.

²⁹⁶ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 8.3.4(4) at 169.

²⁹⁷ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 8.3.4(4) at 170.

254. The Tribunal held that the disparity of the numbers of qualified kaiako in Kōhanga Reo providers compared to other ECE providers was the result of an unacceptable limitation built into the structure of the Crown's funding regime,²⁹⁸ which failed to cover the extra cost of those Kōhanga Reo wanting to employ additional qualified staff.²⁹⁹
255. The Tribunal recommended that a policy response is required by the Crown to increase the number of teachers with recognised qualifications working within Kōhanga Reo providers, ensuring that children enrolled with these providers receive a quality education.³⁰⁰ This response should be done so in conjunction with Kōhanga Reo providers to develop a better quality assessment policy for kaiako and to recognise the Tohu Whakapakari qualification.³⁰¹

Māori Language Strategy 2014

256. The Māori Language Strategy 2014 ("the MLS strategy") was implemented to address the fragile state of the Māori language. It was designed to:³⁰²
- (1) support iwi and Māori leadership in Māori language revitalisation;
 - (2) strengthen Crown-iwi and Crown-Māori relationships; and
 - (3) support whānau, hapū and iwi language development.
257. The Crown has acknowledged that the education system in the Taihape inquiry district has not met the needs of all Māori language learners.³⁰³ This acknowledgement was provided in February 2019, 5 years after the Crown implemented the MLS strategy. The Crown acknowledgement is confirmation that the MLS strategy has failed to revitalise te reo Māori in the region.

²⁹⁸ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 8.3.4(4) at 170.

²⁹⁹ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 8.3.4(4) at 170.

³⁰⁰ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 7.4.3 at 144.

³⁰¹ Waitangi Tribunal, Wai 2336, *Matua Rautia: The Report on the Kōhanga Reo Claim* (Wellington, 2013), paragraph 7.4.3 at 144.

³⁰² Te Puni Kokiri, *Te Rautaki Reo Māori, Māori Language Strategy 2014*, <https://www.tpk.govt.nz/en/a-matou-mohiotanga/language/Māori-language-strategy-2014>

³⁰³ Ministry of Education, *Brief of Evidence of Iona Holsted and Jann Marshall*, Wai 2180, #M27, at [103].

258. The Crown confirmed that there is limited Māori language learning in the Taihape inquiry district, despite Māori students making up nearly half of the school student population.³⁰⁴ In fact there are currently no Māori immersion or bilingual education schooling options in the Taihape Inquiry district.³⁰⁵ This is despite the Crown acknowledging that it is obligated to actively protect Māori language as a *tāonga* guaranteed under the Treaty of Waitangi.³⁰⁶
259. Under the MLS strategy, the Ministry of Education set out various measures of success for Māori language in education:³⁰⁷
- (1) Promotion of language issues and strategies for language use;
 - (2) Local Māori language being used in learning environments;
 - (3) Teacher recruitment and supply; and
 - (4) Whānau learning te reo Māori.

We consider the evidence on the Taihape inquiry district's record of inquiry and evaluate whether the measures of success have been achieved.

Promotion of language issues and strategies for language use

260. The evidence in Taihape shows a clear failure on the Crown's part to successfully promote language issues and strategies for language use. The Māori Language Immersion Levels (MLIL) are based on the amount of time learners are being taught in te reo Māori.³⁰⁸ MLIL 1 involves the use of Māori language in learning for more than 80% of the time whereas at the other end of the scale, MLIL 6 has students learning Māori songs, greetings and simple words.³⁰⁹ Funding is provided to schools that provide MLIL 1 to 4. Of the 9 schools in the inquiry district,³¹⁰ Taihape Area School receives funding for Māori language in education.³¹¹ Taihape Area School provides Māori language learning and this is at MLIL 4. In 2019,

³⁰⁴ Ministry of Education, *Brief of Evidence of Iona Holsted and Jann Marshall*, Wai 2180, #M27, at [85].

³⁰⁵ Ministry of Education, *Brief of Evidence of Iona Holsted and Jann Marshall*, Wai 2180, #M27, at [59].

³⁰⁶ Ministry of Education, *Brief of Evidence of Iona Holsted and Jann Marshall*, Wai 2180, #M27, at [82].

³⁰⁷ Ministry of Education, *Tau Mai Te Reo: The Māori language in education strategy 2013-2017*, <http://www.education.govt.nz/our-work/overall-strategies-and-policies/tau-mai-te-reo-the-Māori-language-in-education-strategy-2013-2017/>

³⁰⁸ Ministry of Education, *Brief of Evidence of Iona Holsted and Jann Marshall*, Wai 2180, #M27, at [83].

³⁰⁹ Ministry of Education, *Brief of Evidence of Iona Holsted and Jann Marshall*, Wai 2180, #M27, Table 3, at 23.

Table 3 provides a useful explanation of the Māori Language Immersion Levels.

³¹⁰ Ministry of Education, *Brief of Evidence of Iona Holsted and Jann Marshall*, Wai 2180, #M27, at [59].

³¹¹ Ministry of Education, *Brief of Evidence of Iona Holsted and Jann Marshall*, Wai 2180, #M27, at [85].

Moawhango school began to receive funding for 12 MLIL 2 pupils.³¹² Although there is learning in the Māori medium in the region, it lacks student involvement, depth or it is latent. We submit that this language learning outcome cannot be seen as being the result of a successful strategy for language use in the Mokai Patea region.

Local Māori language being used in learning environments

261. In their evidence, Awhina Twomey, Kiriana Winiata and Jordan Winiata stated that only a handful of fluent speaking hapū members remain and that the reo which they use has been learnt “from kaumatua from other iwi, or iwi institutions outside of our own rohe”.³¹³ When presenting his evidence to the Waitangi Tribunal. Jordan Winiata-Haines stated with frankness that “I did not get my language from here. It was fed to me by my Ngati Awa kuia of Rangitaiki.”³¹⁴ On the basis of this evidence, we submit that the local dialect is not being used in language learning environments in the Taihape inquiry district.

Teacher recruitment and supply

262. We address the topic of Māori language teacher recruitment below. It is concluded below that the Crown’s teacher recruitment policies do not actively protect the health and wellbeing of te reo Māori.

263. The Crown had an opportunity to invest in teacher recruitment and supply in the 2019 budget but that opportunity was not taken. We note that the Te Kōhanga Reo Contingency Fund was allocated \$32 million that year. However, the \$32 million support package was for improving ICT capacity (\$2.5million), for the maintenance of kōhanga reo buildings (\$8.5 million) and \$21.4 million to meet the costs of existing staff.³¹⁵

Whānau learning te reo Māori

264. It is difficult to gauge the level of whānau learning that is occurring. However, based on the evidence of limited fluency in te reo Māori in the region (see above) and the evidence of limited learning of te reo Māori in

³¹² Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 84-5, per Iona Holsted.

³¹³ *Joint Brief of Evidence of Awhina Twomey, Kiriana Winiata and Jordan Winiata*, Wai 2180, #K9, at 14.

³¹⁴ Waitangi Tribunal, *Transcript, Hearing Week 15*, Wai 2180, #4.1.15, at 660, per Jordan Winiata-Haines.

³¹⁵ <https://www.education.govt.nz/our-work/publications/budget-2019/te-kohanga-reo-contingency-fund-budget-2019/>

Taihape schools (see above), it is difficult to see how this particular measure is being met.

Conclusion

265. Despite strong criticism by the Waitangi Tribunal in the Te Reo Māori report (Wai 11) and the *Ko Aotearoa Tenei* report (Wai 262) of the Crown's failure to arrest language decline, the Crown has not actively protected the use and retention of te reo Māori in the Mokai-Patea region. By all measures, the MLS strategy has been a failure.

Teacher Recruitment

266. We referred earlier in these submissions to the surge in Māori language learning during the 1980s and 1990s. Unfortunately, the growth in language use was not sustained and by the early 2000s, the numbers were falling away. In determining why the resurgence was not maintained, the Wai 262 Tribunal identified the Crown's failure to produce enough qualified teachers.³¹⁶ It was revealed to that Tribunal that the Crown was aware *in 1987* of a chronic teacher shortage.³¹⁷ The need for language teachers went unmet then and it remains unmet to this day, over 30 years later. The Crown's ongoing failure to recruit Māori language teachers in sufficient number and quality has contributed significantly to language decline; that failure culminates in a breach of the treaty principle of active protection. It is imperative that teacher recruitment is properly addressed. The survival of te reo Māori is heavily, if not wholly, dependent on it. In May 2019, Sir Timoti Karetu emphasised the importance of teacher recruitment:³¹⁸

For a long time, I have been saying that we need to use money on teachers. Why? Firstly, so that the language levels of teachers can be improved. Secondly, so they are better at teaching.

(emphasis added)

³¹⁶ Waitangi Tribunal, *Ko Aotearoa Tenei – A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, Legislation Direct, Volume 1, at 165.

³¹⁷ Waitangi Tribunal, *Ko Aotearoa Tenei – A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, Legislation Direct, Volume 1, at 164.

³¹⁸ Te Ao Māori News, *Invest in teachers – Sir Timoti Karetu*, 30 May 2019— <https://www.teaoMāori.news/invest-teachers-sir-timoti-karetu>.

He went further:

At the moment it's very difficult to find teachers for Māori-medium schools, so, how are we going to service all schools? Should he provide the funds for training, then yes, it's achievable.

267. The responsibility for teacher recruitment lies with the Crown. Before this Tribunal Ms Holsted stated that “the main thing that this Ministry can do to support the claim for te reo teaching is to recruit and train te reo teachers.”³¹⁹ Although it accepts its responsibility in this regard, the Crown’s performance to date casts significant doubt on its ability to achieve the recruitment goals. It didn’t help in this respect when, immediately after accepting responsibility for teacher recruitment, Ms Holsted appeared to wipe the Crown’s hands of it:³²⁰

If we do not have, for want of a better term, a pipeline of people to do that, we’re not going to make progress.

It is somewhat trite for the Crown to claim it cannot now recruit enough teachers on the basis that “a pipeline” of teacher recruits is not available to it. Had the 1,000 teachers been recruited in 1987 and soon thereafter (see above), the pupils of those teacher recruits would be filling the job vacancies that are available (and more Māori would be engaged in meaningful and relevant vocation). Had the Crown not engaged so determinedly in linguisticide for more than a century, the need for Māori language teachers would not be as great as it is and there would be more candidates for the roles.

268. Further, it was alarming to hear evidence that for “the last 30-odd years”, according to Ms Holsted, “the teaching workforce has been left up to market forces” and that “[t]here was no incentive or requirement to find people with [a] particular disposition. There was no expectation of the numbers of people that they would take into teaching, they would get funding anyway”.³²¹ Despite knowledge in 1987 that 1,000 te reo Māori teachers were required to meet then demand, securing this essential

³¹⁹ Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 110, per Iona Holsted.

³²⁰ Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 110, per Iona Holsted.

³²¹ Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 65, per Iona Holsted.

ingredient for arresting language decline was left to “market forces”. There was no targeted effort to seek out Māori language teachers. Given the fragile state of te reo Māori, a much more determined and calculated approach to Māori language teacher recruitment should have been executed. Additionally, according to Ms Holsted there was no “incentive” *for the Crown* to “find particular people with [a] particular disposition”. We submit that this is because loss of te reo isn’t the rallying cry for the Crown that it is for Taihape Māori. The Crown’s relative level of interest in teacher recruitment was fully revealed by this evidence from the Secretary for Education and it is this level of interest that foments perennial under-performance.

269. In response to questioning by Professor Temara, Ms Holsted advised of “a new strategic objective of increasing rangai Māori by 30% in 30 years, . . . ”.³²² This bold claim was not accompanied by any further detail at that point in the witness’s testimony. However, later in the witness’s presentation, Judge Harvey asked about “the Ministries (sic) approach to remedying deficien[cies] where teachers are [a] concern, . . . [W]e need a plan to boost up our numbers? How do you do that?”³²³ Ms Holsted stated in reply, *inter alia*, that the Teaching Council had essential information that the Ministry could not access.³²⁴ The inference seemed to be that the Teaching Council was holding the planning phase up. This was followed by a stark admission that teacher recruitment is “. . . an area that’s been seriously under invested in for a very long time, so we’re starting from the ground up”.³²⁵ This evidence of under-investment in preventing language death is disturbing, as is knowledge that the Crown teacher recruitment plan is fledgling at best. The latent effort on the Crown’s part to recruit Māori language teachers confirmed similar evidence given earlier in the witness’s presentation (and which was discussed above). The Tribunal was then advised that the “30% in 30 years” statement provided to Professor Temara was a reference to a recruitment target of 3000 additional teachers by 2030. Had Judge Harvey not questioned the witness about teacher recruitment planning, the evidence provided to Professor Temara would

³²² Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 65, per Iona Holsted.

³²³ Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 133, per Judge Harvey.

³²⁴ Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 133, per Iona Holsted.

³²⁵ Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 133, per Iona Holsted.

have made it appear as if the Crown had Māori language teacher recruitment planning in hand. Other Crown evidence **about teacher recruitment** had a surreptitious element to it as well. Ms Holsted provided the following evidence in response to questions from Dr Soutar:³²⁶

Q. . . . going back to the recruitment of Te Reo Māori student/teachers. I mean its great to hear 270, but you still aren't able to fill the scholarships that you put out?

A. That's correct. We're oversubscribed in some and not undersubscribed but we don't fill others, and the reason for that is about the quality of te reo. So, we will not give scholarships unless they meet a particular threshold.

Q. I see, So, doesn't that suggest already that we're at crisis point?

A. The – it's a question of how deep the crisis [is] because we are better than we have been in the past.

It appears to be agreed that there is a crisis but because the Crown is "better than we have been in the past", the inference is that the crisis isn't as bad as it once was. The attempt to deflect attention from the seriousness of the situation is not tenable. The language's future remains in crisis and yet the Crown's performance with regard to teacher recruitment remains a significant concern.

270. Whilst 3000 teachers by 2030 is an admirable target, it was soon made clear that planning to achieve this target was formative, at best. It was not clear "if that's how many we need", "[t]he plan is not fully formed and it's at the moment a bit of a patch work, it's a patchwork of scholarships, of drawing people back into the system". And then:³²⁷

If you asked me am I 100 percent confident we're going to do it, as at today I'd have to say, no we're still working on it. That's why I remain very, very open to suggestions from any quarter, as to how we may boost the number and keep quality.

³²⁶ Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 58, per Iona Holsted.

³²⁷ Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 134, per Iona Holsted.

Again, once the surface is scratched away at, the actual situation was revealed. It was revealed that a “patchwork” level of organisation exists. It is unsettling for the Claimants to know that it is in these hands, those of the Ministry of Education, that the fate of te reo Māori is held. Notably, the absence of a vetted teacher recruitment plan *was not* the subject of discussion in any of the Crown witnesses’ pre-hearing evidential filings. This information only came to light as a result of Tribunal panel questioning.

271. At hearing, the following exchange then unfolded between Ms Holsted and Judge Harvey:

Q. . . . surely to incentivise our young people to go into Māori medium teaching, if they knew that they would be fully funded throughout their degree and have no student loan. Is that not one of the ways to incentivise that?

A. But that’s certainly a policy option, it’s not currently under consideration.

Q. That there tells me that it is not being taken seriously.

A. No, I think what its saying is, is that we’ll work out what’s working. So, growing scholarships is a way to help people through that the fees free policy that the Government introduce help to address that. Teacher[s] of te reo are [paid] an additional allowance, other things and I probably answered the questions incorrectly . . . Your suggestion is one that’s certainly been discussed before and is in the mix.

Q. Sure, because surely the death of Māori language . . . was known long before today and that your predecessors ought to have been aware of that and should have come up with a plan before now.

A. One might think so, but in fact when the first couple of weeks I was in this job, it was when I discovered that there was a large – nobody seemed to know how many teachers we needed anywhere let alone down

to the specificity of te reo. So, we have had a history of poor data gathering and poor systems to give us insight into what to do.

Q. I mean, surely that must strike you as appalling.

A. I was surprised.

Only when pressed about the integrity of the Crown's commitment to arresting language decline did Judge Harvey's incentive suggestion become a possible solution to teacher recruitment. A curious turn-around. The other evidence confirmed a lack of planning and organisation by the Crown around te reo-related teacher recruitment; a state of affairs alluded to earlier. These developments in the Crown's case do not augur well for the language's future. Although a target of 3000 teachers may have been set, there is very little confidence in the Crown's ability to achieve this recruitment goal. The claimants are not the only party to express their lack of faith. The Tomorrow's Schools Independent Taskforce also expressed little confidence in the provision of Māori medium education, citing "scarcity of staffing" in particular.³²⁸ Given the Crown's poor track record with recruiting Māori language teachers, it is appropriate to consider the merit of the Crown's continued role in this endeavour.

No teacher recruitment strategy

272. At the end of the Crown's education evidence presentation, Judge Harvey requested a copy of the Crown's teacher recruitment strategy. It was made clear as well that the information was wanted immediately.³²⁹ The Crown did not object to the short timeframe given. Data on scholarship uptake and course completion rates was also sought by the Tribunal.³³⁰ On 29 November 2019, the Crown filed a document in response entitled *Increasing the Number of Te Reo Māori Teachers in Schools* ("the Crown document").³³¹ We have analysed the document. It raises numerous concerns. In our submission, it is not a teacher recruitment strategy *per se*.

³²⁸ *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow's Schools Independent Taskforce*, Ministry of Education, November 2018, at 58. We discuss the Tomorrow's Schools Independent Taskforce's report below and the Minister's response to their report.

³²⁹ Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 136, per Judge Harvey.

³³⁰ Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 136, per Judge Harvey.

³³¹ *Increasing the Number of Te Reo Māori Teachers in Schools*, Wai 2180, #M27(h).

The Crown document merely lists current teacher supply initiatives and so, in effect, the Crown failed to comply with Judge Harvey's request for a recruitment strategy. A list of teacher supply initiatives is not a strategy. We highlight the failure to comply with the information request for the reason that language retention in the Taihape region is at a crisis point. In this context, the Crown's inability to produce a recruitment strategy serves to worsen the crisis. It appears that there is no sense of urgency here and that the Crown is not taking the situation seriously.

273. Furthermore, not long into the document we learn that the teacher recruitment strategy is a work in progress and that the work will not now be completed until 2020 and possibly not until 2021. There is patent vagary around the date of production and it should not go unnoticed. As at the date of preparing these closing submissions, the Crown has not yet filed a teacher recruitment strategy. The Crown's response to the Tribunal's attempt to address the teacher recruitment issue is highly unsatisfactory. The unsatisfactory nature of the Crown's response is heightened by the Crown's historical role in language death and by the Crown's ongoing failure since the Te Reo Māori Report in 1986 to furnish a sufficient number of Māori medium teachers. The Crown's inability (or unwillingness) to execute the relatively straightforward task of teacher recruitment defies understanding. In this ongoing and unfortunate situation, the lack of progress by the Crown gives rise to the spectre of linguicide once again—a purposefully applied Crown policy to bring about language death.
274. It should be noted that the words "NOT GOVERNMENT POLICY" are featured at the top of each of the Crown document's 13 pages. This is an unusual and confusing development. If we are not dealing with government policy, it is difficult to take the Crown document seriously. In fact, given that it is not government policy, any submissions on the content or substance of the material contained within are somewhat pointless because the Crown is not committed to any of the Crown document's content.

Te Ture mo te Reo Act 2016

275. Te Ture mo te Reo Act 2016³³² (“the 2016 Act”) replaced the Māori Language Act 1987. It also amended the Broadcasting Act 1989 and the Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003. We discuss the provisions of the 2016 Act and we conclude that it will not prevent language extinction. It is deficient in many, unfortunate ways.
276. Under section 4, the language is recognised as a taonga of Māori, iwi and Māori are the kaitiaki of te reo Māori and the Crown’s responsibilities in relation to the language are otherwise unaffected by section 4. Section 5 makes te reo Māori an official language of New Zealand. We set out and discussed section 6 earlier in these submissions. Section 7 of the 2016 Act confers the right to speak te reo Māori in legal proceedings. Section 7 is word for word equivalent to section 4 of the Māori Language Act 1987. Submissions were made above in relation to section 4 of the Māori Language Act 1987 and so no submissions need be made in relation to section 7 of the 2016 Act. But they apply to section 7 as well. That said, we briefly outline below various High Court and District Court Rules that are relevant to the operation of section 7 and that were not previously discussed in these closing submissions.
277. District Court Rule 1.15(2) states that any person wishing to speak Māori in a proceeding or at the hearing of an interlocutory application must file and serve on every other party to the proceeding a notice of his or her intention to speak Māori. District Court Rule 1.15(3) requires that the notice, which must be in a prescribed form, states that the person intends to speak Māori at:
- (a) all conferences and hearings; or
 - (b) all conferences and hearings held after a specified conference or hearing; or
 - (c) a specified conference or hearing.

³³² Also, the Māori Language Act 2016.

In accordance with District Court Rule 1.15(5), notice must be filed not less than 10 working days before the first conference or hearing at which the person intends to speak Māori.

278. In the High Court, High Court Rule 1.11(3) requires that notice must be given not less than 10 working days before any case management conference and/or hearing at which the person intends to speak Māori. Notice must be in the prescribed form. Failure to inform the court does not defeat the right to speak Māori. However, the court may adjourn a conference or hearing to arrange an interpreter if an individual demands to speak Māori without having provided notice. In accordance with High Court Rule 1.13, the court may treat failure to provide advance notice as a relevant consideration in an award of costs.
279. High Court Rule 1.12 and District Court Rule 1.16 stipulate that a person upon whom a court document is served may be entitled to receive a translation of that document into te reo Māori provided certain conditions are met
280. Section 9(1) of Te Ture mo te Reo Act 2016 states as follows:
- (1) As far as is reasonably practicable, a department of State should, when exercising its powers and performing its functions, be guided by the following principles:
 - (a) iwi and Māori should be consulted on matters relating to the Māori language (including, for example, the promotion of the use of the language):
 - (b) the Māori language should be used in the promotion to the public of government services and in the provision of information to the public:
 - (c) government services and information should be made accessible to iwi and Māori through the use of appropriate means (including the use of the Māori language).

Section 9(2) reads as follows.³³³

- (2) This guidance does not confer on any person any legal right that is enforceable in a court of law.

281. In terms of substantive or actual outcomes, section 9(1) provides for consultation with iwi and Māori on language matters (section 9(1)(a)), the use of te reo Māori in State department promotional material (section 9(1)(b)) and access to government services and information through the use of the Māori language (section 9(1)(c)). In measurable terms, section 9(1)(c) **should mean that:**

- (1) government information will be translated into te reo Māori;
- (2) translation services will be provided upon request when government services are being accessed by Māori; and,
- (3) Māori language speaking State department representatives will attend to the matters of iwi and Māori when approached.

(“the government language measures”)

282. In the words of the Wai 262 Tribunal, the government language measures would make the Crown “more Māori speaking”.³³⁴ For the sake of clarity to State departments and to iwi and Māori alike, the government language measures should be set out in the legislation.³³⁵ It stands to reason. However, it will be noted that section 9(1) includes the phrase “[a]s far as is reasonably practicable”. Thus, the lengths to which departments of State go in order to comply with section 9 can be qualified **by the State departments themselves** and they may do so on the basis of, for instance, budgetary constraints and/or human resourcing issues and/or because, according to the State departments, there are greater priorities to address. Furthermore, State departments are merely “guided” by “the principles” in section 9. The level of obligation to institute the section 9

³³³ Section 9(2), Te Ture mo te Reo Act 2016.

³³⁴ Waitangi Tribunal, *Ko Aotearoa Tēnei – A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, Legislation Direct, Volume 1, at 169. The Waitangi Tribunal found that there was a failure by the government to “become more Māori-speaking”.

³³⁵ The Claimants have sought a recommendation from this Tribunal for their inclusion in section 9(1)(c). The recommendation is included in the Recommendation section of these closing submissions.

provisioning is further minimised as a result. These features of section 9 caused Dr Richard Benton, a long-time language revitalisation advocate, to revile at its tokenism and at its unenforceability:³³⁶

Clause 7(1) sets out some principles, carefully qualified, governing the responsibilities of government departments in relation to the Māori language. These as stated in the Bill are already merely token, but their potential effect in practice is negated by 7(2), which states that they convey no rights enforceable in a court of law. This makes the provisions of the clause meaningless, and I would suggest, contravenes the Crown's Treaty responsibilities. It underlines the privatization agenda implicit in this bill.

Not only is section 9 mere tokenism, State departments cannot be made to account for any failure to adhere to the provision's guidance. This makes the provision pointless endeavour. It is a breach of the treaty principle of good faith, in counsel's submission, for there to be requirements on the Crown, no matter how weak, to revitalise te reo Māori but none of those requirements are enforceable in court, in circumstances where the emergency situation with regard to the state of te reo Māori is the result of Crown acts and omissions, both historic and recent, and where the Crown's revitalisation efforts to date have been so utterly ineffective. When,³³⁷ and not if, State departments do not follow the guiding principles of section 9, there will be nothing that iwi and Māori can do about it. What appears on its face to be a step in the right direction for the Crown and language revitalisation is no more than duplicitous conduct in reality.

³³⁶ Dr Richard Benton, *Submission to the Māori Affairs Select Committee on Te Pire mo Te Reo Māori Language Bill*, 26 November 2014, at 2. Dr Benton critiques clause 7 of the Bill. It eventually became section 9 of the 2016 Act.

³³⁷ Waitangi Tribunal, *Ko Aotearoa Tēnei – A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, Legislation Direct, Volume 1, at 167-8. The Wai 262 Tribunal made the finding that is set out below. Although it concerned the deficiency of State department Māori-language plans in 2001, there is little reason to believe that the sense of responsibility that government agencies should have towards revitalising te reo Māori has improved since 2001 to the point where, say, 100 percent of government agencies have Māori-language plans, let alone effective ones:

Of the 100 Government agencies surveyed by Te Puni Kokiri in 2001, 18 said they had Māori language plans. Four of these agencies provided their plans for assessment but Te Puni Kokiri only approved two of them. That is, 2 per cent of Government agencies in 2001 were able to demonstrate that they had acceptable Māori-language plans. We presume that the overwhelming majority had taken no Māori-language planning steps at all.

Section 9 fails to actively protect te reo Māori from extinction and it is inconsistent with the treaty principle of good faith.

283. We submitted earlier in these closing submissions about substantive or actual legitimisation of the language's official status by way of legal institutionalisation—"the process by which a language becomes adopted by a state as it carried out its law-making and administrative functions".³³⁸ Clearly, section 9(1) does not provide for legal institutionalisation or indeed any approximation of it.
284. In continuing with our brief overview of the 2016 Act, in section 10 the Minister for Māori Development is compelled to issue a Maihi Karauna strategy that sets out the Government's objectives and policies relevant to the revitalization of the te reo Māori language. There must be appropriate consultation with Māori before issuing a Maihi Karauna strategy. We discuss Maihi Karauna further below.
285. Pursuant to section 17, Te Mātāwai is established as an independent statutory entity with the key role of representing the language revitalisation interests of iwi and Māori. Te Mātāwai must develop a Maihi Māori strategy to revitalize te reo Māori.³³⁹ Te Mātāwai should provide language revitalisation leadership, support and inform Crown initiatives to protect the language, give effect to the Crown-Māori relationship on language matters and provide oversight of and direction to the Māori Television Service.³⁴⁰ Te Mātāwai has many tasks. It is to provide services and administer programmes that contribute to the implementation of the Maihi Māori strategy, inform the Maihi Karauna strategy, assist Ministers with the provision of advice to public sector agencies on Māori language matters, advise Crown agencies on the development of Māori language strategies, assist with appointments to Te Taura Whiri i te Reo Māori, to Te Reo Whakapuaki Irirangi and to the Māori Television Service, work jointly with Ministers on leadership viz a viz the Māori Television Service, manage

³³⁸ Ahu, Tai. *Te Reo Māori as a Language of New Zealand Law: The Attainment of Civic Status*, LLM Dissertation, Faculty of Law, Victoria University, 2012, at 7. See above.

³³⁹ Section 11, Te Ture mo te Reo Māori 2016.

³⁴⁰ Section 18, Te Ture mo te Reo Māori 2016.

spectrum management rights under the Māori Television Service Act 2003 and perform the functions formerly undertaken by Te Pūtahi Pāoho.³⁴¹

286. By way of section 37, Te Taura Whiri i te Reo Māori is continued as an autonomous Crown entity. By section 38, Te Reo Whakapuaki Irirangi is continued as an autonomous Crown entity. Under section 39, Te Pūtahi Pāoho was disestablished.

Maihi Karauna

287. The Crown published a Maihi Karauna strategy for Māori language revitalisation in February 2019. In the strategy's introduction section, it is acknowledged that te reo Māori is a UNESCO deemed vulnerable language and that the number of those who can hold an everyday conversation in te reo Māori is declining. The Maihi Karauna strategy sets out a vision for the future of the language and it prioritises government action over the next few years.³⁴² Pursuant to Te Ture mo te Reo Act 2016, the Crown and Māori are in an active partnership to promote the knowledge and use of te reo Māori. The partnership is expressed through the metaphor of Te Whare o Te Reo Mauri Ora. The two sides of the partnership are represented by the maihi (bargeboards) on each side of the whare. Te Ture mo te Reo Act 2016 established Te Mātāwai to represent "iwi, hapū, whānau, Māori and communities" in the relationship.³⁴³ They are depicted on the left side of the whare, with the Crown on the right side. Under the 2016 Act, the Minister for Māori Development is required to issue a Maihi Karauna strategy on behalf of the Crown, and Te Mātāwai is required to issue a Maihi Māori strategy.
288. The overarching vision set out in Maihi Karauna is that New Zealanders use, learn and value te reo Māori. There are 3 key outcomes from this vision.³⁴⁴

³⁴¹ Section 19, Te Ture mo te Reo Māori 2016.

³⁴² *Maihi Karauna: The Crown's Strategy for Māori Language Revitalisation 2019-2023*, Te Puni Kokiri, February 2019, at 5.

³⁴³ *Maihi Karauna: The Crown's Strategy for Māori Language Revitalisation 2019-2023*, Te Puni Kokiri, February 2019, at 6.

³⁴⁴ *Maihi Karauna: The Crown's Strategy for Māori Language Revitalisation 2019-2023*, Te Puni Kokiri, February 2019, at 10.

- (1) Te Reo Māori is valued by Aotearoa whanui as a central part of the country's national identity;
- (2) Aotearoa whanui has increased levels of knowledge, skill and proficiency in te reo Māori; and
- (3) Aotearoa whanui is able to engage with te reo Māori.

289. 3 specific language goals were set:

- (1) By 2040, 85 per cent of New Zealanders (or more) will value te reo Māori as a key element of national identity;³⁴⁵
- (2) By 2040, one million New Zealanders (or more) will have the ability and confidence to talk about at least basic things in te reo Māori;³⁴⁶ and
- (3) By 2040, 150,000 Māori aged 15 and over will use te reo Māori as much as English.³⁴⁷

290. Maihi Karauna has been criticised. As discussed, the proposed distribution in Maihi Karauna of teachers across the population of New Zealand as a whole is a concern “because the limited pool of teachers is spread too thinly”.³⁴⁸ Where teacher capacity is limited, it was thought that the emphasis should be on learning among Māori. The Tomorrow's Schools Independent Taskforce also expressed a concern with “the strain on proficient Māori language teachers/Kaiako” as a result of the growth of the teaching of Māori language in the English-medium state schooling sector.³⁴⁹ Likewise, Sir Timoti Karetu has publicly stated that teaching the “real” Māori learners should be the emphasis at this stage in the revitalisation programme. It is respectfully submitted that it is imperative

³⁴⁵ *Maihi Karauna: The Crown's Strategy for Māori Language Revitalisation 2019-2023*, Te Puni Kokiri, February 2019, at 11.

³⁴⁶ *Maihi Karauna: The Crown's Strategy for Māori Language Revitalisation 2019-2023*, Te Puni Kokiri, February 2019, at 12.

³⁴⁷ *Maihi Karauna: The Crown's Strategy for Māori Language Revitalisation 2019-2023*, Te Puni Kokiri, February 2019, at 14.

³⁴⁸ Barrett Walker, T., Plank, M.J., Ka'ai-Mahuta, R., Hikuroa, D. and James, A., *Kia kua te reo e kite ki te moa, ka ngaro: do not let the language suffer the same fate as the moa*, 8 January 2020, *The Royal Society Publishing*— <https://royalsocietypublishing.org/doi/10.1098/rsif.2019.0526#d3e417>

³⁴⁹ *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow's Schools Independent Taskforce*, Ministry of Education, November 2018, at 58.

that the Taihape Waitangi Tribunal evaluate the utility of the approach to teacher spread that is advocated for in Maihi Karauna.

291. As discussed earlier in these submissions, it is mathematically unlikely that 150,000 Māori will be using te reo Māori as much as English by 2040 *at the present learning rates*.

292. The following is stated in Maihi Karauna under the heading *Priorities for Crown action*.³⁵⁰

83. The education system is government's most powerful lever for the acquisition of te reo Māori. . . .

84. We will require the number of children learning reo Māori to continue and to increase. . . .

85. We are currently looking at opportunities to achieve this priority outcome as part of government's commitment to ensure every child has access to te reo Māori throughout the education system. Government effort is likely to include:

- a. integrating te reo Māori across the education pathway, into every ECE, primary school and intermediate schools by 2025
- b. growing the supply and capability of te reo Māori teachers for a future-focussed workforce.

When prioritising language growth activity, Maihi Karauna relies on New Zealand's education system, and, in particular, on "growing the supply and capability of te reo Māori teachers". No information is provided in the Maihi

³⁵⁰ *Maihi Karauna: The Crown's Strategy for Māori Language Revitalisation 2019-2023*, Te Puni Kokiri, February 2019, at 28.

Karauna strategy as to how the supply of te reo Māori teachers will be grown. Since New Zealand's education system is the "government's most powerful lever for the acquisition of te reo Māori", it must be that the Maihi Karauna strategy will look to the Ministry of Education to fulfil this requirement of the strategy. But, as we have discussed above, the Crown Māori language teacher recruitment strategy is a work in progress. Rather incredibly, it does not yet exist. Furthermore, no proper attention has been paid to it for 30 years according to Crown witnesses in this inquiry. When asked for the teacher recruitment strategy by the Taihape Waitangi Tribunal, none was produced. And one is not likely to be produced until 2021 (perhaps). Meanwhile, the language falls into further dis-use.

293. Although Maihi Karauna is well presented and well-intended, its reliance on the Ministry of Education to grow the supply of te reo Māori teachers is misplaced. Thus, a lynchpin component to its effectiveness as a language revitalisation strategy is missing. The limited pool of te reo Māori teachers will be spread too thinly and the goal of 150,000 competent Māori language speakers by 2040 will not happen at the present rate of development. Overall then, Maihi Karauna will not deliver. It will fail to actively protect te reo Rangatira.

Review of *Tomorrow's Schools*

294. In April 2018, the Tomorrow's Schools Independent Taskforce was appointed by the Minister of Education. It was asked "to consider if the schooling system is fit for purpose, and to focus on developing a system that promotes equity and excellence and ensures that every learner achieves educational success".³⁵¹ A review entitled *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini* was produced ("the Taskforce review"). Diverse views, experiences of and information about the schooling system were gathered in a wide consultation with the people of New Zealand. In a damning review of *Tomorrow's Schools*, it was found that although many students are achieving, the "system is not working well for the most disadvantaged children and young people".³⁵² There was no

³⁵¹ *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow's Schools Independent Taskforce*, Ministry of Education, November 2018, at 10.

³⁵² *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow's Schools Independent Taskforce*, Ministry of Education, November 2018, at 11.

evidence that self-governing schools raised student achievement or improved equity. It was found that the current system does not provide the capacity to collectively improve outcomes for all children because it has been designed for autonomous self-governing schools. The Taskforce made recommendations in relation to:

- (1) Governance;
- (2) School provisioning;
- (3) Competition and choice;
- (4) Disability and learning support;
- (5) Teaching;
- (6) School leadership;
- (7) School resourcing; and
- (8) Central Education Agencies.

The Minister of Education has responded to the Taskforce's recommendations³⁵³ and that response has been published. The Minister's response is considered later in these submissions.

295. It was recommended that Education Hubs be formed to replace current Ministry of Education regional offices. They would assume many of the "business" governance responsibilities currently held by school boards, while also providing specialist educational support. The role of school boards would be re-oriented so that their core responsibilities are the School Strategic and Annual Plan, student success and wellbeing, localised curriculum and assessment. Education Hubs would assume all the legal responsibilities and liabilities currently held by school boards. They would administer operational grants, staffing entitlements and recruitment.³⁵⁴ A national Education Hub dedicated to Kaupapa Māori settings was suggested. A centralised mechanism would be created

³⁵³ *Supporting all schools to succeed: Reform of the Tomorrow's Schools system*, Ministry of Education, November 2019, per Minister Hipkins.

³⁵⁴ *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow's Schools Independent Taskforce*, Ministry of Education, November 2018, at 12.

through which teachers, principals, boards of trustees, iwi and communities would work.³⁵⁵

296. It is interesting that the Taskforce should find that students in kaupapa Māori education settings achieve NCEA on par with Pākehā students in English-medium settings, while the results of their Māori peers in English-medium education continue to reveal their ongoing disadvantage.³⁵⁶ Earlier in these closing submissions we discussed higher achievement rates in Native Schools resulting from the use of bilingualism in junior school between 1880 and 1902. Also relevant to the Taihape inquiry district was the Taskforce finding that schools that are small, in rural or isolated areas and that have recently faced leadership changes, and those serving lower socio-economic communities are likely to be in the ERO one to two year cycle. Small, rural schools find it harder to attract principals, or keep them.³⁵⁷
297. In a relentless critique of *Tomorrow's Schools*, the Taskforce advised that provision to allow students to learn in te reo Māori is inadequate to meet Māori aspirations.³⁵⁸ This was due to **the lack of proficient Māori language teachers**, resources and a coherent long-term plan. Other identified barriers included bureaucratic hurdles, a lack of government investment and limited capacity among existing kura to expand. The language learning options for many Māori children are unfairly limited, forcing them to transition from one setting to another. The growth of the teaching of te reo Māori in the English-medium state schooling sector has added to the strain on proficient Māori language teachers. Māori language pathways from early childhood education to tertiary are still not clearly

³⁵⁵ *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow's Schools Independent Taskforce*, Ministry of Education, November 2018, at 133.

³⁵⁶ *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow's Schools Independent Taskforce*, Ministry of Education, November 2018, at 30.

³⁵⁷ *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow's Schools Independent Taskforce*, Ministry of Education, November 2018, at 30.

³⁵⁸ In 2017, 25 percent of the total school population, 192,430 students, identified as Māori. In 2017, 2.4 percent of all school students were enrolled in Levels 1-2 Māori medium. In English medium schools, 34 percent of Māori students received Levels 3-5 Māori language immersion. 18,994 (9.9 percent) of these Māori students were in Māori medium education (they were taught the curriculum in te reo Māori for at least 51 percent of the time (Māori language levels 1-2). 5,930 of these students were attending the 62 Kura Kaupapa Māori, and 3,371 were attending the 27 Ngā Kura a Iwi. 58.7 percent (11,149) of Māori students in Māori medium education were in Māori medium schools (schools in which all students were involved in Māori medium)—see *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow's Schools Independent Taskforce*, Ministry of Education, November 2018, at 140, footnote 45.

visible across the country.³⁵⁹ According to the Taskforce review, Māori language provision is fragile, often administered by a small unit within a school, with scarce staffing and resources “and a variable approach to pedagogy and learning”. Schools have had to close their bilingual units due to inadequate staffing. It was concluded that the teaching of te reo Māori needs to be better supported.³⁶⁰

We have heard that the schooling system needs teachers/kaiako with specific language and teaching expertise so that students have their language skills extended from one year to the next, and so that the languages are well taught. As an additional challenge, resources that were once being produced are no longer readily available. Teachers/kaiako in these settings require guidance, planning and national networks. In our view, low levels of kura and te reo Māori language provision (including kura auraki and kura reo rua) do not match the Crown’s commitments to action on Te Tiriti o Waitangi.

298. The critical failures in the teaching of te reo Māori lead to a recommendation by the Taskforce that a Te Tiriti o Waitangi-led planning strategy be developed by the Ministry in consultation with iwi, rūnanga and Urban Māori Authorities, as well as with early learning services, kura, tertiary organisations, regional development organisations and local government.³⁶¹ It was recommended that a national Education Hub dedicated to kaupapa Māori settings be formed to provide “a strong and coherent parallel pathway within the overall network”.³⁶² National guidelines should be developed for schools to become full-service sites that offer extensive wrap-around services in socio-economically disadvantaged communities.³⁶³

³⁵⁹ *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow's Schools Independent Taskforce*, Ministry of Education, November 2018, at 58.

³⁶⁰ *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow's Schools Independent Taskforce*, Ministry of Education, November 2018, at 59.

³⁶¹ *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow's Schools Independent Taskforce*, Ministry of Education, November 2018, at 61.

³⁶² *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow's Schools Independent Taskforce*, Ministry of Education, November 2018, at 66.

³⁶³ *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow's Schools Independent Taskforce*, Ministry of Education, November 2018, at 67.

299. The efforts made to recruit new teachers and to attract former teachers to the profession as a whole were acknowledged. Despite the efforts made however, it was observed that there are not enough teachers to fill shortage areas such as Māori-medium teaching and the teaching of te reo Māori in general. Furthermore, induction and mentoring are of variable quality. Up to a quarter of beginning teachers leave the profession after 5 years. The leaving rate is higher for Māori teacher graduates, who are often required to provide te reo Māori learning for the wider community and carry out their own classroom responsibilities out as well. When they start work, new kaupapa Māori teachers face larger responsibilities than is desirable for new teachers.³⁶⁴ In light of these concerns, it was recommended that the Ministry work with the Teaching Council of Aotearoa New Zealand to ensure that there is a coherent workforce strategy. Initial Teacher Education provision should be future-focused and fit for purpose. A curriculum, learning, assessment and pedagogy unit should be formed at the Ministry of Education. More flexible guidelines for teacher appraisal should be developed. Although the Taskforce's teaching recommendations are applicable to teacher requirements in the Māori-medium sphere and although the Taskforce was highly critical of Ministry efforts to recruit te reo Māori teachers, no specific recommendations in this respect were made. For instance, no Māori language teacher recruitment targets were set.
300. There are 3 funding streams through which schools receive government funding:
- (1) An operational grant which is paid to schools in cash;
 - (2) A staffing entitlement that entitles schools to employ a number of teachers/kaiako whose salaries are paid by the Crown.
 - (3) Property provision.

According to the Taskforce, funding is mainly based on the number of students in a school and the students' year levels. The level of wealth in a neighbourhood is used as an indication of a school's funding need. The characteristics and particular needs of the students are not taken into

³⁶⁴ *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow's Schools Independent Taskforce*, Ministry of Education, November 2018, at 89.

account.³⁶⁵ An equity index was proposed as a solution. It is based on considering measures of disadvantage *per student* (in anonymity) enrolled at a given school.³⁶⁶

Ministerial response

301. Minister Hipkins responded to the Taskforce review in November 2019 (“the Minister’s response”).³⁶⁷ There are no **specific** plans for recruiting Māori language teachers in the Minister’s foreword,³⁶⁸ the executive summary³⁶⁹ or in the principles for redesign.³⁷⁰ In the section entitled “*Providing instruction on te Reo Māori and Tikanga Māori*”, there is acknowledgement that “[t]here are currently insufficient numbers of te reo Māori teachers to ensure that every child can learn te reo Māori at school” and “current funding is insufficient to support all Māori educational institutions to meet potential demand.”³⁷¹ The Minister’s response was to encourage the shared use of virtual learning networks and correspondence school. A “culturally capable workforce” will be grown with “existing programmes, and other supports under development”. What the “supports under development” consist of is not discussed or elaborated upon in this section or later in the document. This is a concern. As discussed, the “existing programmes” are inadequate and there are concerns with the effectiveness of virtual learning and correspondence when young children and teenagers are attempting to acquire a second language. The following

³⁶⁵ *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow's Schools Independent Taskforce*, Ministry of Education, November 2018, at 108.

³⁶⁶ *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow's Schools Independent Taskforce*, Ministry of Education, November 2018, at 110.

³⁶⁷ *Supporting all schools to succeed: Reform of the Tomorrow's Schools system*, Ministry of Education, November 2019, per Minister Hipkins.

³⁶⁸ *Supporting all schools to succeed: Reform of the Tomorrow's Schools system*, Ministry of Education, November 2019, per Minister Hipkins, at 3.

³⁶⁹ *Supporting all schools to succeed: Reform of the Tomorrow's Schools system*, Ministry of Education, November 2019, per Minister Hipkins, at 4.

³⁷⁰ *Supporting all schools to succeed: Reform of the Tomorrow's Schools system*, Ministry of Education, November 2019, per Minister Hipkins, at 14. The redesign principles that *may* provide for te reo teacher recruitment are:

1. A strong focus on working with and supporting education providers (early learning services, kura, schools, wharekura, including transitions between these and tertiary), with an emphasis on teaching and learning; and
2. Consistency with the Māori-Crown relationship will be designed into both the ESA and the redesigned centre of the Ministry. Resources will pivot to the delivery of front-line services relevant to achieving equity and excellence of learning outcomes.

³⁷¹ *Supporting all schools to succeed: Reform of the Tomorrow's Schools system*, Ministry of Education, November 2019, per Minister Hipkins, at 24.

evidence was provided to the Te Reo Māori Tribunal in 1986 by Mrs June Te Rina Mead, a teacher of Māori in the New Zealand Correspondence School. There is no reason to think that Ms Mead's evidence doesn't hold true in today's circumstances.³⁷²

If the Principal sees no need to include Māori in the syllabus, any child who wants to study the language must do it by correspondence course from the Correspondence School. She gave us plenty of examples to show how difficult it can be for a pupil to learn Māori trying to do pencil and paper exercises at the back of a classroom while some other subject is being taught in the same room at the same time. Such a task would require considerable effort from a mature adult pupil—for a child it must be unusually difficult. and that is all the more so when it is remembered that Māori is traditionally a spoken language best learned in conjunction with the culture and history of which it is an integral part, rather than as a “pencil and paper” test as described by one of the education department officials who gave evidence later.

We are advised that there will be legislative impetus to effect the necessary changes. The legislative reference is to the Education and Training Bill.³⁷³

302. Later in the Minister's response we are advised that a plan for “[s]trengthening the Māori medium pathway” will be developed. It must involve a partnership with Māori and be considered in the wider context of refreshing Ka Hikitia and Tau Mai Te Reo. It is disconcerting that a formulated plan does not already exist, some 30-plus years after the Te Reo Māori report of the Waitangi Tribunal and after numerous complaints by Māori, linguists, educationalists, academics and jurists about imminent language death. Not only is it patently obvious that no formulated plan exists for “[s]trengthening the Māori medium pathway” but heavy reliance will be placed on the maligned Ka Hikitia policy. Even the Taskforce observed how “the ten year old” strategy “had not been able to achieve the

³⁷² *Report of the Waitangi Tribunal on The Te Reo Māori Claim*, Wai 11, April 1986, Brookers (Wellington), at 30.

³⁷³ *Supporting all schools to succeed: Reform of the Tomorrow's Schools system*, Ministry of Education, November 2019, per Minister Hipkins, at 24. We have not discussed the relevant clauses of the Education and Training Bill to the Claimants' te reo Māori-related claim issues in these closing submissions because of the Waitangi Tribunal's jurisdictional limits with regard to Bills before the House of Representatives—see section 6(6) of the Treaty of Waitangi Act 1975.

desired step-change”.³⁷⁴ It may be recalled that the Auditor-General critiqued Ka Hikitia’s reliance on “goodwill and devolved responsibility”.³⁷⁵ Its use and implementation were poorly monitored,³⁷⁶ teacher training on its use was insufficient and its integration into the policy fora that abounds in New Zealand’s schools could not be achieved.³⁷⁷ Even if we assume that the planned for “refresh” might address, to a degree at least, the deficiencies with training and monitoring, the problems with integration and devolution may be irresolvable. But in any event, the proposal to re-hash an already tried and failed education policy as the Crown’s main stratagem does not augur well for arresting language decline. It is wholly disappointing actually.

303. The following is stated in the Minister’s response:³⁷⁸

Prioritising te reo Māori: The Government fully endorses the Taskforce proposal to prioritise te reo Māori. The recent budget announcement of \$42 million additional funding through Te Hurihanganui to support better engagement between schools and whānau, and teacher development reflects this priority. Other initiatives in place that also support giving greater priority to te reo Māori in PLD include Te Ahu o te Reo and guidelines for the use of PLD funding.

The intention to prioritise the learning of te reo Māori is laudable of course but the claim that budget support for Te Hurihanganui “reflects this priority” is not convincing. Te Hurihanganui “supports educational achievement for Māori learners by testing out what works to address cultural bias and racism in the education system.”³⁷⁹ In an article by Te Ao Māori News on 11 February 2020, Rose Jamieson of the Ministry of Education confirmed that the \$42m for Te Hurihanganui was to address “critical

³⁷⁴ *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow’s Schools Independent Taskforce*, Ministry of Education, November 2018, at 29.

³⁷⁵ *Parliamentary Paper, Controller and Auditor General, ‘Summary of our Education for Māori reports’*, at 19—www.oag.govt.nz

³⁷⁶ Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 100, per Iona Holsted.

³⁷⁷ Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 42-3, per Iona Holsted.

³⁷⁸ *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow’s Schools Independent Taskforce*, Ministry of Education, November 2018, at 34.

³⁷⁹ *Restarting Te Kotahitanga (Te Hurihanganui)*—<https://www.education.govt.nz/our-work/publications/budget-2019/restarting-te-kotahitanga-te-hurihanganui/>

consciousness”.³⁸⁰ Whilst cultural bias and racism should be addressed, the immediate fire to put out is language decline. Teacher recruitment better reflects prioritisation of te reo Māori than addressing cultural bias and racism and yet there’s no stated intention to grow teacher numbers.

304. In *Appendix 2* to the Minister’s response, the Minister addresses the Taskforce action points.³⁸¹ Recommendation 3 in the Taskforce Review is about supporting and developing teachers/kaiako. There is no reference to supporting teacher recruits. It is not a teacher recruitment strategy. In recommendation 3a, priority will be given “to ensuring that the diversity of the learner/ākonga population is reflected in the workforce”.³⁸² The intention is to achieve a suitable cultural or racial ratio between teachers and students. This is not an intention to grow the te reo Māori teacher resource. Recommendation 3d provides resourcing to “improve the pathway from Initial Teacher Education to fully certified teacher/kaiako”.³⁸³ The Minister is giving further analysis to this recommendation. It has not yet been agreed by the Minister to “progress further”. Recommendation 3e provides that additional resources will be employed to support and mentor beginning teachers.³⁸⁴ Recommendation 3 provides laudable teacher support, of course, but there is no support in it for teacher recruitment.
305. The Taskforce’s recommendation 5 is designed to bring about more equitable access to schooling. Recommendation 5b reads as follows:³⁸⁵

The Ministry of Education’s workforce strategy and PLD funding prioritize a step-change plan to progress the capability and confidence of teachers/kaiako and paraprofessionals working with learners/ākonga to use te reo Māori in their work.

³⁸⁰ *\$42m Anti-Racism Education Reform stalls for eight months*, Te Ao Māori News, 11 February 2020—<https://www.teaomāori.news/42m-anti-racism-education-reform-stalls-eight-months>, per Rose Jamieson, Deputy Secretary (Acting), Parent Information & Community Intelligence, Ministry of Education.

³⁸¹ *Supporting all schools to succeed: Reform of the Tomorrow’s Schools system*, Ministry of Education, November 2019, per Minister Hipkins, at 38 to 49.

³⁸² *Supporting all schools to succeed: Reform of the Tomorrow’s Schools system*, Ministry of Education, November 2019, per Minister Hipkins, at 42, recommendation 3a.

³⁸³ *Supporting all schools to succeed: Reform of the Tomorrow’s Schools system*, Ministry of Education, November 2019, per Minister Hipkins, at 42, recommendation 3d.

³⁸⁴ *Supporting all schools to succeed: Reform of the Tomorrow’s Schools system*, Ministry of Education, November 2019, per Minister Hipkins, at 42, recommendation 3e.

³⁸⁵ *Supporting all schools to succeed: Reform of the Tomorrow’s Schools system*, Ministry of Education, November 2019, per Minister Hipkins, at 45, recommendation 5b.

The Minister agreed to progress recommendation 5b further within the next 18-24 months. However, it too is **not** about teacher recruitment. Rather, it entails a strategy and funding for teachers and paraprofessionals who are already working with te reo Māori students.

306. Despite awareness of the precarious state of te reo Māori by both the Taskforce and the Minister, neither party furnished concrete policy drivers to develop the stock of Māori language teachers. Given the pivotal role that increased teacher numbers play in arresting language decline, the Minister's failure to ensure teacher recruitment culminates in a breach of the treaty principle of active protection.

Lack of Te Reo Māori provisions in education

307. It is Counsel's submission that the current Crown policies towards the survival of Te reo Māori is inadequate in schools within the Taihape inquiry district. The Crown has failed to ensure that Taihape Māori have the ability to improve and revitalise Te Reo Māori in their rohe and in doing so, has failed to actively protect Te Reo Māori within Taihape.
308. Māori learners thrive in education settings that reflect their identity, language and culture.³⁸⁶ Furthermore, Te Reo Māori in education provides significant opportunities to revitalize Te Reo Māori and support Māori educational wellbeing and achievement.³⁸⁷
309. Most of the achievements that have been made to revitalise and promote Te Reo Māori have been as a result of the work of whānau, hapū and communities within Taihape, and is not attributable to the Crown.
310. Kōhanga reo, kura Kaupapa, kura ā iwi, wharekura and whare wānanga were established as a result of hard-fought battles by Māori the Crown to ensure the survival of their reo. The benefits of these institutions have been highlighted by many. A child would be able to be immersed in a learning environment that values a Te Ao Māori worldview. They are also able to be taught practices which underpin Māori principles which would open the

³⁸⁶ Wai 2180, #4.1.19 at 35.

³⁸⁷ Wai 2180, #M27(c) at [15].

child up to the opportunities of having those same principles seeded into them through daily practice, thus embedding them into their social fabric.

311. Wharekura are also associated with better education outcomes for Māori than English Medium schools.³⁸⁸ Unfortunately, the Ministry do not have data on Kura kaupapa but acknowledge that Māori children who go all the way through to Wharekura and sit NCEA, have better outcomes.³⁸⁹
312. Currently, there are only two Kōhanga Reo in this district. Furthermore, despite the fact that Māori make up nearly 46% of the schooling population, there are currently no Māori medium immersion or bilingual education schooling options in the Taihape district which includes kura kaupapa or wharekura. That means that there are no schools in the district that provide Level 1 option on the Māori Language Immersion Level.
313. Tamariki within the rohe who complete their pre-schooling learning through Kōhanga reo which aims to provide an environment that is immersed in Te Ao Māori, are forced to attend a Pākehā education system which is totally foreign to them.
314. During cross examination, Dr Soutar asked whether it was possible for a child in this district to be educated fully in Te Reo Māori right through to the end of secondary school without leaving the district. The response was: “No, that’s not the case. There is no Te Reo Māori provision in eight of the schools.”³⁹⁰
315. This situation creates further problems for tamariki Māori in that it forces tamariki to have to adjust to or manoeuvre through two different systems of learning at such a young age and in doing so, it sets the child up for failure. These failures are reflected in the inequitable outcomes being experienced by Taihape Māori as discussed above.
316. Neville Lomax presented evidence on this issue:³⁹¹

³⁸⁸ Wai 2180, #4.1.19 at 87.

³⁸⁹ Wai 2180, #4.1.19 at 87.

³⁹⁰ Wai 2180, #4.1.19 at 53.

³⁹¹ Wai 2180, #H10 at [25] and [27].

By the early 1980's Kōhanga Reo had been established and I was determined that my youngest of six children would receive the learning opportunity that had been denied me. He was enrolled in our local Kōhanga Reo at aged one year, where he came under the care of several kuia tino ataahua who were fluent in te reo Māori...

Unfortunately, by the time he reached school age the provision of te reo in mainstream schools was not yet available, and there was no Kura Reo available in the area for him to attend. When he started mainstream school at aged five years, he was confident in his use of te reo. However, none of the other children in his class were required to speak in the Māori language which made him feel that te reo was not valued in mainstream learning, and that he was the odd one out. He subsequently refused to respond to me when I spoke to him in te reo Māori.

317. The Te Reo Māori Report gave recommendations which require the Crown to urgently inquire into the teaching of te reo Māori and Māori culture and 'to ensure that all children who wish to learn Māori should be able to do so'.³⁹² Despite this recommendation and the recommendations made in the Wai 262 Report, the claimants say that the Crowns' protective duty to take such action as it is reasonable in the prevailing circumstances has not gone far enough. In applying the *Broadcasting Assets* test, Counsel argues that the lack of access to Te Reo Māori education mediums in Taihape means that for this region, the Crowns duty to Taihape Māori is wanting.
318. Te Mātāwai recognises the protective duty of the Crown to take such action as it is reasonable in the prevailing circumstances. Te Mātāwai was an initiative established under the Māori Language Act to promote the health and well-being of te reo Māori. The vision is "Te reo Māori is restored as a nurturing first language" which connects to the Māori language strategy called the Maihi Māori Strategy that was developed by and for iwi, Māori and Māori language communities. Early in 2017, Te Mātāwai met with all stakeholders nationwide to gather feedback on Māori language initiatives in

³⁹² Waitangi Tribunal, *The Te Reo Māori Claim* (Wai 11, 1986) at 6.3.7.

homes and communities, their aspirations for te reo Māori and the role of Te Mātāwai in realising these aspirations. The feedback informed the development of the Maihi Māori 2017-2040 Strategy.³⁹³

319. Te Whare o Te Reo Mauriora is new public policy developed as part of Te Ture Mō Te Reo Māori 2016. Te Whare o Te Reo Mauriora acknowledges the distinctive and complementary roles both the Crown and iwi/Māori have for the revitalisation of the Māori language, providing assurances around responsibilities and iwi Māori independence in respect of our language. The 'whare' recognises these two roles with the Maihi Māori being represented on the left side of the whare – the Taraiti where, traditionally, tangata whenua (the host party) is situated; and the Maihi Karauna being on the right-hand side of the whare – the Taranui which is a much larger space offered to manuhiri (guest).
320. In the Te Reo Māori Inquiry, claimants made criticisms in relation to the structures within the education system. It was stated that the organisation and structures of the school are mono-cultural. They are designed for, and run by middle-class pākeha. One of the greatest difficulties a Māori teacher has to overcome is that of the attitudes of those in authority.³⁹⁴ Taihape Māori say that this has been the case in Taihape.
321. The pathway to learn Te Reo in this rohe is full of gaps. This is highlighted by Ms Nicola Chase.³⁹⁵

Learning Te Reo:

9.1 Is at the whim of the teacher / principal of the day;

9.2 Has always had to stand in line behind mainstream priorities;

9.3 Has never had the luxury of being guaranteed every year, and subsequently progression is not scaffolded;

Is capped by the ability of the teacher;

Has no learning pathway at home from.

³⁹³ Te Matawai Retrieved from < <https://www.tematawai.Māori.nz/maihi-Māori>>.

³⁹⁴ Waitangi Tribunal, *The Te Reo Māori Claim* (Wai 11, 1986) at 30.

³⁹⁵ Wai 2180, #G9 at [9].

322. Taihape Māori have made it known to the Ministry about their desire to establish a kura kaupapa. Ngā Iwi ō Mōkai Patea services previously put a *tono* forward to the Ministry of Education to establish a kura kaupapa Māori in the district.³⁹⁶ The Minister of Education at the time acknowledged the call for a kura kaupapa Māori, but indicated that for Taihape at that time, the risks probably outweighed the potential benefits.³⁹⁷ Unfortunately, this request was denied and in 2004, the Ministry recommended that the reorganised network of schools meet the needs of Māori within their schools. For instance, the Ministry supported the board of the newly established Taihape Area School to continue with the Reo Rua unit that Taihape Primary School operated. This would support the continuation of Māori language education (and extend it through to secondary levels).³⁹⁸
323. During cross examination, Dr Soutar discussed with Mr Jordan Winiata-Haines and Ms Āwhina Twomey the idea of establishing a kura kaupapa in the district. Dr Soutar asked why they didn't consider the idea of a kura kaupapa Māori here and why isn't the rohe trying to drive together to create a critical mass?³⁹⁹ The response provided by Mr Winiata-Haines was that a hui took place over 8 years ago in which Kauika Stephens was able to present the requests to the Education Department and the Minister of Education at the time. There were 10 families present in support. The desire was to consider the establishment of a kura kaupapa Māori or a *wharekura* (total immersion Māori school) to ensure the language could be imbedded again. This was declined by the Minister. The idea of bilingual schools being introduced was then raised. It was also highlighted to the Ministry that adequate funding and resourcing would be needed to assist the idea. Mr Winiata-Haines said that the Minister was more open to this idea. Therefore, the claimants moved in this pathway because there was reassurance provided by the Minister that the Principle of the school would support the idea. Unfortunately, this Principal was not supportive of the idea nor the funding that it would subsequently require.⁴⁰⁰

³⁹⁶ Wai 2180, #M27 at [92].

³⁹⁷ Wai 2180, #M27 at [97].

³⁹⁸ Wai 2180, #M27 at [101].

³⁹⁹ Wai 2180, #4.4.15 at 707.

⁴⁰⁰ Wai 2180, #4.4.15 at 710.

324. Ms Beatty presented evidence on the Reo-Rua unit that was established at Taihape Primary school.⁴⁰¹ She was employed in 2007 as a Kaiawhina and a Provisional Teacher (Teacher's Aide / 1 Day Teacher) in the Reo-Rua unit, alongside Whaea Avis Hawira Pickering. There were 8 tamariki in this Reo-Rua class when she started which grew to 23 tamariki by 2011. Te Reo Māori was not spoken 100% of the time because tamariki and kaiako weren't able to understand. Ms Beatty shared how Tikanga was displayed in the classroom, around school and on the marae at all times. However, when she questioned the operations of the school in relation to Tikanga Māori, she was frowned upon. During her time teaching in the unit, the confidence of Tamariki in the unit had strengthened every day. The tamariki were being noticed and spoke highly of by the community.⁴⁰²
325. Unfortunately, in 2011, the Principal, Richard McMillan, terminated Ms Beatty's position and that the Reo-Rua unit would be closed due to a drop in numbers despite the roll being at its peak.⁴⁰³ Ms Holsted responded to a question raised by Professor Temara regarding the closure of the Reo-Rua unit and said that the Principal at the time made a decision to discontinue because it was felt that they had sufficient expertise across the staff within the school to broaden it.⁴⁰⁴
326. The claimants argue that a Principal should not be permitted to have a veto power over subjects which meet the educational and psychological needs of Māori students. Further to this, a Principal should not have a veto power over Māori requests to add an official language of New Zealand to the curriculum.
327. Following on from this, the Principal informed the parents of the closure by calling each of them and telling them their children had been put into mainstream classes for the following year. Despite the fact that there were Māori representatives on the school Board of Trustees, this happened to be the first times any of the whānau had heard anything about a closure.

⁴⁰¹ Wai 2180, #K12.

⁴⁰² Wai 2180, #K12 at [34]-[40].

⁴⁰³ Wai 2180, #K12 at [41].

⁴⁰⁴ Wai 2180, #4.1.19 at 67.

There was no consultation between the Board of Trustees, the Kaiako, whānau, iwi or hapū.

328. Furthermore, the lack of accessibility to learning Te Reo Māori in schools within the district has not improved or progressed since then.⁴⁰⁵
329. Due to the lack of provisions to be taught in te reo Māori in schools within the rohe and the impacts of urbanisation, many Taihape Māori have had to move away from the district and be subject to the teachings of those who are from another iwi. This factor highlights the failure of the Crown to ensure Te Reo o Ngā Hapū o Taihape is also being protected and strengthened. Jordan Winiata-Haines highlights that he had to relocate to Palmerston North under the umbrella of Ngāti Rangitāne in order to raise his daughter in a community fully conversant in Te Reo Māori. He further states that:⁴⁰⁶

I feel sympathy for our other children living at home that if it wasn't for Kohanga Reo, there would be no opportunity at all for our children to learn Māori so that they may one day serve on the paepae at the marae or to be the first voice calling from the marae on behalf of our people.

330. Te Rina Warren also expressed that in order to sustain her desire to inter-generationally transmit te reo Māori, she required a Māori language community to support her efforts. Therefore, she relocated with her daughter to the Rangitāne people of Palmerston North. She stated that:⁴⁰⁷

Even though there are Kōhanga Reo within Mōkai Pātea, there is no Kura Kaupapa established here (to progress the language in an education space). In saying this, we are not the only whānau who have left Mōkai Pātea to seek out te reo Māori. It could be said that the Māori language speaking children of our district, have attained te reo Māori externally to our home. It is indeed difficult to live away from home as an immigrant, or perhaps more adequately, it is a necessary evil that we have undertaken for the sake of the survival of our language.

⁴⁰⁵ Wai 2180, #K12 at [42]-[43].

⁴⁰⁶ Wai 2180, #C6.

⁴⁰⁷ Wai 2180, #G8(a) at [10].

331. The other option available to Taihape Māori is to remain living on their mana whenua which would ultimately subject their children to an education system which fails to provide for Māori values and the opportunities that can be obtained through total immersion reo Māori learning. This scenario would indicate a clear lack of protection by the Crown to ensure Te reo Māori and te reo o Taihape is safeguarded.
332. Currently there is no tertiary institution located in this district that offers a course in learning Te reo Māori. The only tertiary institution in close proximity to Taihape which provides for Te reo Māori learning is Te Wānanga o Raukawa which is an institution largely developed by Māori as a response for the lack of support by the Crown to revitalise Te Reo Māori me ōna tikanga. Te Wānanga o Raukawa is predominantly located in Ōtaki. In order to attend this institution to allow for total immersion learning, Taihape Māori (located in the district) would need to relocate or make the travel. This is an unfair expectation to put on Taihape Māori as it further restricts them in their desire to ensure Te reo Māori is revived and strengthened in their rohe. As well as this, Taihape Māori would likely be subject to the teachings of those who are from another iwi. This factor highlights the failure of the Crown to ensure Te Reo o Ngā Hapū o Taihape is also being protected and strengthened.
333. Dr Soutar stressed the fact that the quality of Māori language isn't sufficient. He further asked:⁴⁰⁸
- How much more desperate it must be here to try and recover Te Reo Māori? When do we wake up and really put some proper investment into it? Because as I can see, the sort of sense I get is this Government is as complicit as other Governments who allowed Māori to be – kids to be punished for speaking Māori by not doing something seriously about it. And the impression I get from reading all of this is no matter what you're doing at the moment, it's not enough.
334. The decline in te reo Māori in this district is significant. The current state of despair requires more support from the Crown.

⁴⁰⁸ Wai 2180, #4.1.19 at 54.

One size fits all approach

335. Counsel argues that the Crown developed policies and strategies have been unsuccessful and instead, shows that the Crown focuses on a 'one size fits all' approach.
336. During cross examination of Ms Holsted and Ms Marshall, there was discussion around current education policies. The policies had been developed by the Ministry of Education who worked with Māori to respond to bias and to grow capability, so that the system was more effective. The examples provided were Te Kotahitanga, He Ōhua, Ka Hikitia, Te Whāriki, The New Zealand Curriculum. All of these policies were intended to make the system responsive to identity, language and culture.⁴⁰⁹ The Crown witnesses acknowledged that despite there being 'pockets of excellence' supporting Māori to succeed as Māori, this was not the norm. Ka Hikitia had not been implemented as intended across-the-board and this will be a focus in the refresh of the strategy in 2019.⁴¹⁰
337. It was acknowledged by the Ministry of Education witnesses that there are some schooling initiatives that aren't currently available in this district.⁴¹¹ Three examples were provided including:
- (1) the Tātaiako;
 - (2) the Cultural Competencies for Teachers of Māori Learners, Ka Hikitia; and
 - (3) the Māori Education Strategy, and the Best Evidence Synthesis Iterations.
338. The issue here is that there has been no involvement or consultation with Taihape Māori in the designing of these initiatives. They are initiatives designed to cover all Māori learners which may work for other districts. When looking at the statistics and evidence above, Counsel argue that this

⁴⁰⁹ Wai 2180, #4.1.19 at 32.

⁴¹⁰ Wai 2180, #M27 at [27].

⁴¹¹ Wai 2180, #M27 at [78].

district faces peculiar circumstances in the decline of their reo and should be involved in co-designing initiatives that are specific to this district.

339. In the evidence presented by the Ministry of Education, it is stated that since 2008, national levels of Māori participation and achievement in education have shown some improvement due to a greater focus from across the education sector to improve Māori educational outcomes. At the same time however, Māori continue to experience inequitable educational outcomes in relation to non-Māori. There has been no change in the percentage of Māori learners participating in :Māori Language in Education (Māori Immersion Levels 1- 4b), or enrolments in tertiary education within three years of leaving school since 2009, and there has been a decrease in the percentage of tamariki and rangatahi Māori attending school regularly since 2011 (56% to 50%).⁴¹²
340. These statistics further highlights how ineffective the “one size fits all” approach really is. There has been no positive change created for tamariki Māori in this district. There has been no increase in the in the provisions of Te Reo within any education medium in the district. Furthermore, there has been a decrease in tamariki and rangatahi Māori attending school which emphasises the fact that the current Crown policies towards Te Reo Māori are unsuccessful and inadequate in this district.

Crown-Iwi Relations

341. The Crown argues that it has sought to improve education outcomes for Māori by working in partnership with iwi. The Ministry witnesses state that partnership, founded on quality relationships, will enable iwi to design, develop and implement programmes with whānau in ways that are culturally authentic, enriching and affirming. Such relationships will facilitate greater whānau involvement in the education of their tamariki and support their demand for improved educational outcomes for Māori learners.⁴¹³
342. Since 2011, Crown witnesses stated that they have maintained a strong working relationship with Ngā Iwi o Mōkai Pātea Services. Each year, Ngā

⁴¹² Wai 2180, #M27 at [28].

⁴¹³ Wai 2180, #M27 at [37].

Iwi o Mōkai Pātea Services have been contracted to many services. More recently, they provided support to Year 1 to 8 students in the area at school to improve their literacy and numeracy. In 2019, they are mentoring 10 students as they work towards the NCEA Level 2. They have also involved them in co-designing our regional approach to build sustainable relationships with iwi. The aim of this work was to ensure that iwi, whānau, and Māori organisations participate in initiatives and develop initiatives that can contribute to strengthening educationally powerful connections with early learning services in schools.⁴¹⁴

343. Over that time, Ngā Iwi o Mōkai Pātea Services have received nearly \$950,000 from Ministry contracts. The outcomes sought from the agreements have changed over time and have included the development of a language strategy to support priorities for te reo-a-iwi, the development of cultural standards to improve the education provision for Ngā Iwi o Mōkai Pātea learners and whānau, increasing early learning participation rates and NCEA level 2 achievement rates, and more recently, a focus on improving the educational outcomes of young people who are at risk of not succeeding in education.⁴¹⁵

Lack of ability to participate

344. In the current system, it was highlighted by Crown witnesses that the role of the Ministry is to design the Crown policies and make recommendations to the Government for the adoption of those policies. If the Government chooses to adopt the policy, then the key role of the Ministry is to make that policy available to the system that it is directed at. The Ministry will also need to consider the resources that will be attached to the policy that will be needed. This approach is a relatively hands-off approach which has not proved to be very successful.
345. The implementation of policies is, largely the responsibility of school boards of trustees, principals and teachers. Every school is a Crown entity, every board is accountable for their school, every principal and teacher, is an employee of the Board. The Ministry can provide guidance, information and

⁴¹⁴ Wai 2180, #4.1.19 at 38.

⁴¹⁵ Wai 2180, #M27 at [42].

support, but ultimately our system is purposely designed to give the elected board the right to make decisions. Within that context, the support available to schools to implement new policies or change practices is limited by resourcing decisions made by the Government of the day.⁴¹⁶

346. Ms Holsted stated that the board of trustees is the employer, and they are accountable for the performance of the school. Therefore, they are also responsible for the selection of quality staff. She further went on to say that boards must consult with their whānau to identify what is important to their community and to determine what Māori enjoying success looks like for their school.⁴¹⁷

Eight of the nine schools have Māori representation on the board. While this is a start, we need to do more to better support principles to engage with iwi, hapū and whānau to encourage greater participation by the community to carry out this very important role.

347. The Board of Trustees' selection process takes place every three years and it is the responsibility of the school to elect. The school is also responsible for encouraging participation of their whānau.⁴¹⁸ Ngā Iwi o Mōkai Pātea Services independently selects two Iwi representatives who are appointed onto the Taihape Area School Board of Trustees. This process is supposed to acknowledge the Iwi as mana whenua within this catchment.⁴¹⁹ The Ministry does not have a specific role as such in the selection of board members.

348. School Boards of Trustees are typically comprised of the school principal and between three and seven parent representatives elected by parents of students at the school. There is also a staff representative and, in schools with year 9 students and above, a student representative and a number of co-opted and appointed trustees. The decentralised schooling system is intended for schools and school leaders to work closely with their local

⁴¹⁶ Wai 2180, #4.1.19 at 33.

⁴¹⁷ Wai 2180, #4.1.19 at 36.

⁴¹⁸ Wai 2180, #4.1.19 at 44.

⁴¹⁹ Wai 2180, #M27 at [46].

community, which allows them to respond directly to local priorities and needs.⁴²⁰

349. There is a lack of representation of Taihape Māori on school boards in the Taihape district. The population of Māori students in education mediums in the district make up 50%. Despite this, there is no encouragement of a co-opting arrangement where 50% of the board is made up of Māori representation.⁴²¹ Instead, Ngā Iwi o Mōkai Pātea Services independently selects two Iwi representatives who are appointed onto the Taihape Area School Board of Trustees. This process is supposed to acknowledge the Iwi as mana whenua within this catchment.⁴²² Taihape Māori argue that this does not adequately represent the proportion of Māori students in all schools within the district.

CONCLUSION

350. In conclusion, we emphasise the following submissions:

- (1) Prior knowledge of the destructive effect of monolingualism on an indigenous language and its culture and the resultant destruction places a higher onus on the Crown to arrest Māori language decline. The parlous state of te reo o Mokai-Patea is clearly the result of Crown legislation, policy and practices. Furthermore, the engagement with linguicide modifies what “is reasonable in the prevailing circumstances”⁴²³ for the Crown to do. The ability to quantify the level of activity and resourcing that the Crown commits to language revitalisation is diminished. Te reo Māori is in need of “life support” according to the Wai 262 Tribunal.⁴²⁴ The emergency situation that the language is in also diminishes any qualification by the Crown of its support for language revitalisation. Thus, for instance, it is appropriate that a Kura Kaupapa Māori be

⁴²⁰ Wai 2180, #M27 at [19].

⁴²¹ Wai 2180, #4.1.19 at 44.

⁴²² Wai 2180, #M27 at [46].

⁴²³ Crown Memorandum Contributing to the Preparation of a Draft Statement of Issues, Wai 2180, #1.3.002, at [93].

⁴²⁴ Waitangi Tribunal, *Ko Aotearoa Tēnei – A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, vol 2 at [xxv].

established. Its establishment should occur as a matter of priority given the particularly parlous state of te reo o Mokai Patea.

- (2) It is clear that te reo Māori is a dying language. It is generally agreed that sufficient Māori language teachers could prevent its demise but the Crown does not yet have a formulated teacher recruitment strategy. It would appear that it never has. It is incumbent upon the Crown to do all it can to formulate a teacher recruitment strategy as soon as is practicable and then successfully implement the strategy. At the same time, due consideration should be given to divesting the Crown of the responsibility of Māori language teacher recruitment. Too much is at stake and the Crown's sub-standard teacher recruitment performance of the recent and not so recent past means it would be imprudent of the Claimants to leave this important task in the Crown's hands any longer. A recommendation is sought from the Tribunal for the Crown to consider, when formulating its teacher recruitment, the prospect of a Māori managed teacher recruitment programme with a view to the establishment of a Māori managed teacher recruitment programme. Any such consideration by the Crown of a Māori managed recruitment strategy should be done in conjunction with Te Mātāwai and other appropriate interest groups.

PREJUDICE

351. The Claimants further state that the ordinances, Acts, regulations, orders, proclamations, notices, other statutory instruments, policies, practices and any actions taken, omitted or adopted by or on behalf of the Crown that led to, caused or otherwise effected the demise of the use and retention of te reo Māori me ona tikanga by the Claimants and which are the subject of submission above were, are and/or remain, inconsistent with the terms and/or the principles of Te Tiriti o Waitangi including, in particular, the guarantee set out in article 2 of Te Tiriti o Waitangi and the principle of active protection. Specifically, the Claimants have been prejudicially affected by:

- (1) the extinction or near extinction of te reo Māori o Mokai-Patea;
- (2) the near extinction of te reo Māori o nga iwi o Aotearoa;
- (3) a significant decline in the use and retention of te reo Māori among Taihape Māori;
- (4) a concomitant loss or diminution of, inter alia, their:
 - i. Tino rangatiratanga;
 - ii. Culture;
 - iii. Identity;
 - iv. Wairua;
 - v. Mana;
 - vi. Self-worth;
 - vii. Mātauranga Māori; and
 - viii. Tikanga Māori,as a result of language loss.
- (5) inequitable educational outcomes as a result of being educated in an English-only medium;
- (6) the administration of corporal punishment for speaking te reo Māori in Native and public schools whereby the Claimants were violently assaulted;
- (7) alienation from the education process as a result of being violently assaulted by teaching staff at school on a regular and systemic basis;

- (8) the denial of the right to speak te reo Māori in the schools of the Mokai-Patea region for many years from the 1890s on as a result of the English-only rule in New Zealand's education system;
- (9) the establishment of Moawhango Native School 60 years after the school was first requested;
- (10) the closure of Moawhango Native School less than 25 years after the school was opened;
- (11) the ban on speaking te reo Māori in the courts of New Zealand;
- (12) the Minister of Education's decision in 2003 to decline the Claimants request for a Kura Kaupapa Māori;
- (13) the absence of a bilingual and/or full immersion Māori language school in the Taihape region;
- (14) the Crown's unwillingness and/or inability to implement education policy for revitalising the use and retention of te reo Māori;
- (15) the Crown's unwillingness and/or inability to formulate a suitable te reo Māori education policy framework for Early Childhood Education in Kōhanga Reo of the Taihape region;
- (16) the Crown's unwillingness and/or inability to properly fund Kōhanga Reo of the Taihape region; and
- (17) the Crown's unwillingness and/or inability to recruit sufficient te reo Māori teachers to meet the demands of language learners and to foster and grow the use and retention of te reo Māori.

RELIEF

352. The Claimants seek the following relief from the Waitangi Tribunal as a result of the prejudice the Claimants have suffered from the Crown's breaches of the terms and principles of Te Tiriti o Waitangi viz a viz the

demise of the Claimants' use and retention of te reo Rangatira me ona tikanga:

Findings

- (1) a finding that the Claimants' claims concerning the demise of te reo Māori me ona tikanga are well founded;
- (2) a finding that pursuant to Article 2 of Te Tiriti o Waitangi, the Crown is under a guarantee to revitalise te reo Māori ("the Crown guarantee");
- (3) a finding that the Crown must actively protect the use and retention of te reo Māori in the Mokai Patea region;
- (4) a finding that the Crown instituted a policy of linguicide in the schools of Taihape to effect the death of te reo Māori me ona tikanga;
- (5) a finding that the Crown instituted a policy of linguicide in the schools of Taihape with the knowledge and expectation that it would effect the death of te reo Māori me ona tikanga;
- (6) a finding that as a result of the Crown's assimilation policy and the English-only rule that was applied in the schools of Taihape, the Crown caused the demise of the use and retention of te reo Māori in the Taihape region;
- (7) a finding that the policies of linguicide and of assimilation were instituted by the Crown to:
 - i. pacify the Claimants and their forebears;
 - ii. create a monolingual society in Aotearoa New Zealand;
and

- iii. create a homogenous, Pākehā society in Aotearoa New Zealand;
- (8) a finding that as a result of the Crown policy of assimilation, the inter-generational transmission of te reo Māori was halted;
- (9) a finding that learning in a Māori language medium enhances the educational performance of Māori pupils;
- (10) a finding that the establishment of Moawhango Native School was unreasonably delayed;
- (11) a finding that as opposed to it being abolished by 1969, the Crown should have converted Moawhango Native Schools into a bilingual or immersion school;
- (12) a finding that the Minister of Education's decision in 2003 to refuse the Claimants request for the establishment of a Kura Kaupapa Māori in the Taihape region was a breach of the Crown guarantee and of the treaty principle of active protection;
- (13) a finding that the implementation of Crown education policies such as Ka Hikitia are not being monitored and evaluated;
- (14) a finding that the Crown education policy of *Ka Hikitia* was overly devolved and too reliant on input and assistance from the Taihape Māori community for it to be effective;
- (15) a finding that the Crown has failed to recruit sufficient, suitably qualified Māori language teachers to provide learning instruction in Taihape schools in te reo Māori;
- (16) a finding that the Minister of Education's response in *Supporting all schools to succeed: Reform of the Tomorrow's Schools system* to the Tomorrow's Schools Independent Taskforce's review of

Tomorrow's Schools is bereft of an appropriate and effective Māori language teacher recruitment policy;

Recommendations

- (17) a recommendation that the Crown apologise publicly to the Claimants for causing the loss or diminution of the use and retention of te reo Māori;
- (18) a recommendation that the Crown apologise publicly to the Claimants for causing, as a result of the loss or diminution of the use and retention of te reo Māori, the loss or diminution of the Claimants':
 - i. Tino rangatiratanga;
 - ii. Culture;
 - iii. Identity;
 - iv. Wairua;
 - v. Mana;
 - vi. Self-worth;
 - vii. Mātauranga Māori; and
 - viii. Tikanga Māori.
- (19) a recommendation that the Crown guarantee the revitalisation of te reo Māori me ona tikanga;
- (20) a recommendation that the Crown establish a Kura Kaupapa Māori in the Mokai-Patea region as a matter of priority;

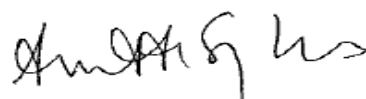
- (21) a recommendation that the Crown adequately fund and resource the Kōhanga Reo of the Mokai Patea region;
- (22) a recommendation that te reo Māori be institutionalised in New Zealand's legal system so that it becomes one of the two languages of the courts of New Zealand;
- (23) a recommendation that section 9(1)(c) of Te Ture mo te Reo Act 2016 be amended to include specific reference to the translation of government information, the provision of translation services and the provision of Māori language speaking State department representatives to attend to the matters of iwi and Māori when approached;
- (24) a recommendation that the Crown monitor and evaluate the implementation and effectiveness of any Crown policy that is designed to assist with the revitalisation of te reo Rangatira in the Taihape region;
- (25) a recommendation that the Crown report publicly on an annual basis with regard to its monitoring and evaluation of the implementation of any Crown policy that is designed to assist with the revitalisation of te reo Rangatira in the Taihape region;
- (26) a recommendation that the Crown recruit a sufficient number of suitably qualified Māori language teacher trainees;
- (27) a recommendation that the Crown design and implement a Māori language teacher recruitment strategy as an immediate matter of priority;
- (28) a recommendation that during the Waitangi Tribunal's report writing phase, the Crown keeps the Taihape Waitangi Tribunal abreast of developments with the design and implementation of a Māori language teacher recruitment strategy;

- (29) a recommendation that formal consideration be given by the Crown, Te Mātāwai and other appropriate representative and interest groups, to the establishment of an independent, Crown-resourced Māori-managed teacher recruitment entity whose perennial task is to devise teacher recruitment strategies and then implement them in order to recruit a sufficient number of suitably qualified Māori language teacher trainees;
- (30) Any other recommendation that the Tribunal considers to be appropriate.

DATED at Auckland this 19th day of May 2020



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