

**IN THE WAITANGI TRIBUNAL
TAIHAPE - RANGITĪKEI KI RANGIPŌ INQUIRY****WAI 2180****IN THE MATTER** of the Treaty of Waitangi Act 1975**AND****IN THE MATTER** of Taihape - Rangitīkei ki Rangipō Inquiry**RECEIVED**

Waitangi Tribunal

21 Sep 2020Ministry of Justice
WELLINGTON

**GENERIC CLAIMANT CLOSING SUBMISSIONS REGARDING EDUCATION,
HEALTH AND OTHER SOCIAL SERVICES****Dated: this 21st day of September 2020**

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1. INTRODUCTION

- 1.1 The experience of Taihape Māori in relation to education, health and other social services has been characterised by disempowerment, missed opportunities, and inequity.
- 1.2 Kāwanatanga has run roughshod over tino rangatiratanga, leaving little to no space for Taihape Māori to chart their own paths or to provide meaningful input into matters affecting their socioeconomic wellbeing. Inequities are widespread; from access, to the standards of services, to outcomes.
- 1.3 Much of the responsibility for this lies squarely with the Crown, whose acts and omissions in the Taihape – Rangitīkei ki Rangipō inquiry district (“**inquiry district**”), have contributed significantly to the issues faced.

2. PRELIMINARY MATTERS

- 2.1 These generic claimant closing submissions regarding education, health and other social services are filed for the benefit of all claimants within the inquiry district (“**closing submissions**”). For the avoidance of doubt, this is not to prevent claimants from taking their own positions in respect of any of these issues.
- 2.2 Following the outline of Crown duties under the Treaty of Waitangi / Te Tiriti o Waitangi (referred to hereafter as “**Te Tiriti**”), the relevant Crown position and evidence, and technical evidence, these closing submissions will be structured in the three levels set out in directions of his Honour Judge L R Harvey.
- 2.3 The three levels are as follows: detailed answers to Tribunal Statement of Issues (“**TSOI**”) questions, an overview of particular themes or issues in the inquiry, and a presentation summary.¹ The presentation summary will be filed as a separate document in due course.

3. CROWN DUTIES – TE TIRITI

Tino rangatiratanga and kāwanatanga

- 3.1 The overarching interplay between tino rangatiratanga and kāwanatanga and what these terms mean in practice pervade all aspects of Crown-Taihape Māori

¹ Directions of Judge L R Harvey: Forward Hearing Programme, dated 1 November 2019 (Wai 2180, #2.6.85) at [15(e)].

engagement. This includes the nature and extent of the Crown's role and responsibilities when it comes to education, health and other social services.

- 3.2 Counsel refer to the generic claimant closing submissions regarding tino rangatiratanga and constitutional claims for detailed submissions in this regard.
- 3.3 For the purpose of these closing submissions, counsel highlight the Tribunal's conclusions in *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims*:²

Kāwanatanga was an authority to govern and make laws for the explicit purpose of controlling settlers and preventing the harm that might otherwise arise to Māori from uncontrolled settlement or foreign intervention. The guarantee of tino rangatiratanga was for the existing autonomy and authority of Māori communities in relation to their lands, resources, and all other valued things to continue, whilst Māori also enjoyed the same rights as British subjects. ...

To summarise, the Treaty recognised two distinct spheres of authority, each with distinct functions. While each party had a duty to acknowledge the other's sphere of interest, and while the Treaty granted the Crown kāwanatanga powers, it also specifically provided for Māori to retain their tino rangatiratanga, and therefore their rights of autonomy and self-determination. As the Central North Island Tribunal put it, the Treaty provided for 'two authorities, two systems of law, and two overlapping spheres of population and interest'. From this are derived the principles of kāwanatanga and rangatiratanga, including Māori autonomy or self-government [underline added].

- 3.4 The interplay of tino rangatiratanga and kāwanatanga envisaged in Te Tiriti will not function without provision for the exercise of tino rangatiratanga in all matters affecting Māori, including the development and provision of social services for Māori, and any other issue affecting the socioeconomic wellbeing of Māori.
- 3.5 The interplay of tino rangatiratanga and kāwanatanga must, among other things, provide for the ability of Māori to:
 - (a) Exercise decision-making power over their affairs.³

² See excerpts from Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims* - Part I (Wai 898, 2018) at 180-182.

³ Waitangi Tribunal *Hauora: Report on Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019) at 30-33: "The Treaty guarantee of tino rangatiratanga affords Māori, through their iwi, hapū or other organisations of their choice, the right to decision-making power over their affairs".

(b) Choose how to organise themselves, and how or through what organisations they express their tino rangatiratanga. This means the Crown:

- (i) Needs to be willing to work through the structures Māori prefer, whether through iwi, hapū and whānau, or any other organisation.⁴
- (ii) Must adequately protect the availability and viability of kaupapa Māori solutions in the social sector as well as so-called “mainstream services” in such a way that Māori are not disadvantaged by their choice.⁵

3.6 It is the Crown’s responsibility to maintain the equilibrium in the Te Tiriti partnership through its protection of rangatiratanga, because the power imbalance between Te Tiriti partners lies in the Crown’s favour.⁶

3.7 The interplay of tino rangatiratanga and kāwanatanga demands that the Crown not only consult, but partner with Māori genuinely in the design and provision of social services.⁷

3.8 The Crown is unable to avoid its Te Tiriti obligations by delegating functions to non-Crown entities.⁸ It must also ensure its agents are performing well and, where they are not, the Crown must make a reasonable effort to improve performance.⁹

3.9 Further, the requirement for the Crown to partner with Māori is heightened where inequities in outcomes exist.¹⁰ Where inequities arise, the Crown may be obliged to target more resources according to need ‘in order to reduce structural

⁴ Waitangi Tribunal *Hauora: Report on Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019) at 27-30.

⁵ Waitangi Tribunal *Hauora: Report on Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019) at 35 – the principle of options.

⁶ Waitangi Tribunal *Tū Mai te Rangi: Report on the Crown and Disproportionate Reoffending Rates* (Wai 2540, 2017) at 22.

⁷ Waitangi Tribunal *Hauora: Report on Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019) at 27-30, Waitangi Tribunal *Te Whanau o Waipareira Report* (Wai 414, 1998) at 232, Waitangi Tribunal *The Napier Hospital and Health Services Report* (Wai 692, 2001) at 59, Waitangi Tribunal *Te Urewera* (Wai 894, 2017) at 3783, Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (Wai 262, 2011) at 559.

⁸ Waitangi Tribunal *The Napier Hospital and Health Services Report* (Wai 692, 2001) at xxiv, Waitangi Tribunal *Tū Mai te Rangi: Report on the Crown and Disproportionate Reoffending Rates* (Wai 2540, 2017) at 22.

⁹ Waitangi Tribunal *Hauora: Report on Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019) at 32.

¹⁰ Waitangi Tribunal *Hauora: Report on Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019) at 27-30, Waitangi Tribunal *Tū Mai te Rangi: Report on the Crown and Disproportionate Reoffending Rates* (Wai 2540, 2017) at 62-63.

or historical disadvantage'.¹¹ When it comes to socioeconomic inequities, the principle of equity applies regardless of the cause.¹²

3.10 Counsel now turn to more specific application of Te Tiriti principles to health, education and other social services.

Health

3.11 The Crown's Te Tiriti duties in relation to health include the following:

- (a) A duty to protect Taihape Māori against the adverse health impacts of settlement.¹³
- (b) A duty to actively protect the health of Taihape Māori as Māori.¹⁴ This includes taking those steps necessary (such as affirmative action)¹⁵ to address the inequities in health outcomes as between Māori and non-Māori.
- (c) A duty to engage (including through consultation) with Māori, including Taihape Māori, in relation to health care. This includes taking Te Tiriti-compliant steps to:¹⁶
 - (i) Empower Māori to design and provide health services for Māori. This includes adequately supporting Māori entities and organisations that influence the design and implementation of health care policy or who are involved in health care provision, particularly through resourcing.
 - (ii) Ensure that Māori voices are adequately heard.
- (d) A duty to enable Taihape Māori to have available the options of Māori or "mainstream" providers as they wish. Both pathways should be

¹¹ Waitangi Tribunal *Tū Mai te Rangi: Report on the Crown and Disproportionate Reoffending Rates* (Wai 2540, 2017) at 27, 54.

¹² Waitangi Tribunal *Te Urewera* (Wai 894, 2017) at 3773, arising from the principle of equity.

¹³ Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims – Part V* (Wai 898, 2020) at 126-127, Waitangi Tribunal *Napier Hospital and Health Services report* (Wai 692, 2001) at xxv-xxvii, 64.

¹⁴ Waitangi Tribunal *Napier Hospital and Health Services report* (Wai 692, 2001) at xxv, xxvi.

¹⁵ Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims – Part V* (Wai 898, 2020) at 60-61. Here, the Tribunal observed "[E]qual standards of care were the bare minimum of the Crown's responsibilities arising from article 3 and the related principle of equity. Full Treaty compliance required the Crown to make additional provision for Māori needs when Māori health outcomes were demonstrably worse (especially, we might add, where those outcomes had been worsened by prior Crown Treaty breaches, such as the failure to safeguard a sufficient endowment of quality land)."

¹⁶ Waitangi Tribunal *Napier Hospital and Health Services report* (Wai 692, 2001) at xxvi, xxviii, 170-171.

sufficiently supported by the Crown, meaning that each option offers a genuine, well-supported choice for Māori.¹⁷

- (e) A duty to actively protect:
 - (i) Various components of customary health knowledge and healing practices of Māori including Taihape Māori, such as associations of place, access to materials used for rongoā, and specialist knowledge of healing.¹⁸
 - (ii) The ability of Taihape Māori to promote the wellbeing of their people, including their care and welfare,¹⁹ either through the mainstream healthcare system or by utilising their own customary health knowledge and healing practices.
- (f) A duty to actively protect Māori culture in health care. This includes taking Te Tiriti-compliant steps to:²⁰
 - (i) Ensure health services are culturally appropriate.²¹
 - (ii) Ensure the respect of Māori culture by medical professionals and within medical institutions such as hospitals, subject to the limits of practicality, reasonable cost and clinical safety.²²
 - (iii) Allow Māori perspectives to influence the type of health services delivered to Māori people and the way in which they are delivered.
- (g) A duty to ensure Māori (including Taihape Māori) receive equal standards of healthcare,²³ and equitable access to that healthcare.²⁴

¹⁷ Waitangi Tribunal *Hauora: Report on Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019) at 35-36, Waitangi Tribunal *Te Tau Ihu O Te Waka A Maui: Report on Northern South Island Claims – Vol I* (Wai 785, 2008) at 6.

¹⁸ Waitangi Tribunal *Napier Hospital and Health Services report* (Wai 692, 2001) at xxv.

¹⁹ Waitangi Tribunal *Napier Hospital and Health Services report* (Wai 692, 2001) at xxv, xxvi.

²⁰ Waitangi Tribunal *Napier Hospital and Health Services report* (Wai 692, 2001) at xxvi, xxviii.

²¹ Waitangi Tribunal *Hauora: Report on Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019) at 31.

²² Waitangi Tribunal *Napier Hospital and Health Services report* (Wai 692, 2001) at xxvi, xxviii.

²³ Waitangi Tribunal *Napier Hospital and Health Services report* (Wai 692, 2001) at xxvii, Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims – Part V* (Wai 898, 2020) at 60-61.

²⁴ Waitangi Tribunal *Te Urewera Report* (Wai 894, 2017) Vol VIII at 3774-3777, 3783. See also Waitangi Tribunal *Hauora: Report on Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019) at 33-35: “The Treaty principles of equity and active protection “require the Crown to make every reasonable effort to eliminate barriers to services that may contribute to inequitable health outcomes”.

- (h) A duty to take Te Tiriti-compliant steps to prevent discrimination against Taihape Māori in health, whether unconscious or conscious.²⁵
- (i) A duty to ensure a general equity of health outcomes for Māori as a whole (including Taihape Māori) as compared with non-Māori.²⁶ This includes taking Te Tiriti-compliant steps to address other factors (such as those arising or contributed to by Crown acts and omissions) that impact on the health and wellbeing of Māori, such as socioeconomic status, housing, and educational attainment.

Education

3.12 The Crown's Te Tiriti duties in relation to education include the following:

- (a) A duty to actively protect Taihape Māori as Māori in the provision of education.²⁷ This includes by taking those steps necessary (such as affirmative action) to address inequities in education outcomes as between Māori and non-Māori.²⁸
- (b) A duty to actively protect, in education:
 - (i) Mātauranga Māori as a taonga;²⁹ and
 - (ii) Te reo Māori as a taonga.³⁰
- (c) A duty to adequately engage (including through consultation) with Māori (including Taihape Māori) in relation to education. This includes taking Te Tiriti-compliant steps to:
 - (i) Empower Māori to design and provide education services for Māori, including by providing sufficient resourcing and support to initiatives to teach te reo Māori.³¹

²⁵ Waitangi Tribunal *Hauora: Report on Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019) at 33-35. This arises from the principle of equity.

²⁶ Waitangi Tribunal *Napier Hospital and Health Services report* (Wai 692, 2001) at xxvii.

²⁷ Waitangi Tribunal *Wairarapa ki Tararua report* (Wai 863, 2010) at 1049.

²⁸ Waitangi Tribunal *Te Urewera Report* (Wai 894, 2017) Vol VIII Chapter 23 at 3773-3777, 3783.

²⁹ Waitangi Tribunal *Wananga Capital Establishment report* (Wai 718, 1999) at xii. The Tribunal observed that mātauranga Māori was "systematically dismissed and erased by the English derived education system as being worthless" at 47.

³⁰ Waitangi Tribunal *Te Reo Maori Claim* (Wai 11, 1986) at 20, Waitangi Tribunal *Wananga Capital Establishment Report* (Wai 718, 1999) at xii.

³¹ For kōrero regarding the principle of options, see Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims – Part V* (Wai 898, 2020) at 197.

- (ii) Enable Māori voices to be heard and their perspectives to influence the education delivered to Māori. This includes through ensuring Māori have avenues for input into the education of their tamariki, and fair representation on school bodies.³²
- (d) A duty to ensure Māori (including Taihape Māori) receive equal standards of education, and equitable access to that education.³³
- (e) A duty to take Te Tiriti-compliant steps to prevent discrimination against Taihape Māori in education, whether unconscious or conscious.³⁴
- (f) A duty to ensure a general equity of education outcomes for Māori as a whole (including Taihape Māori) as compared with non-Māori. This duty applies regardless of the cause of inequity³⁵ and includes taking Te Tiriti-compliant steps to address other factors (such as those arising or contributed to by Crown acts and omissions) that impact on the educational outcomes of Māori, such as socioeconomic status.

Other social services (including housing)

3.13 The Crown's Te Tiriti duties in relation to housing include the following:

- (a) A duty to provide equitable access to housing assistance for Māori including Taihape Māori, as compared to non-Māori;³⁶
- (b) A duty to provide sufficient and appropriate housing assistance to Māori, including Taihape Māori, in circumstances where Crown acts and omissions have negatively impacted on the adequacy of housing for Māori,³⁷ or where this has been necessary to address housing disparities and other disparities (such as health inequities);³⁸ and

³² Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims* – Part V (Wai 898, 2020) at 208, 243: “Crown did not uphold its Treaty obligations in failing to ensure Te Rohe Pōtae Māori had avenues for input into their children’s education or fair representation at the local school, district, and national levels”.

³³ Waitangi Tribunal *Te Urewera Report* (Wai 894, 2017) Vol VIII at 3774-3777, 3783, Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims* – Part V (Wai 898, 2020) at 168.

³⁴ Waitangi Tribunal *Hauora: Report on Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019) at 33-35. This arises from the principle of equity. This particular finding was made in the context of health, but counsel submit it should have equal applicability in the context of education, particularly taking into consideration the Crown’s obligations of active protection.

³⁵ Waitangi Tribunal *Te Urewera Report* (Wai 894, 2017) at 3773, arising from the principle of equity.

³⁶ Waitangi Tribunal *Te Urewera Report* (Wai 894, 2017) Vol VIII at 3783 regarding the principle of equity.

³⁷ This includes acts and omissions which have impacted on the ability of Māori to build adequate housing (for example due to economic position, availability of land).

³⁸ See for example Waitangi Tribunal *He Whiritauokaka: The Whanganui Land Report* (Wai 903, 2015) at 1153 where it is observed that “Poor housing persists as one of the key reasons for continued health disparity between Māori and non-Māori”.

- (c) Where the housing standards of Māori, including Taihape Māori, have been disproportionately lower than that of non-Māori, a duty to take steps to address this.³⁹

3.14 The Crown's Te Tiriti duties in relation to other social services include:

- (a) A duty to provide equitable access to aid and social services.⁴⁰
- (b) A duty to take Te Tiriti-compliant steps to prevent discrimination against Māori in provision of social services, whether unconscious or conscious.⁴¹

3.15 It is evident the Crown also has a duty to address socioeconomic inequities generally.⁴²

4. CROWN EVIDENCE AND POSITION

4.1 The Crown has chosen not to lead evidence in respect of health, housing or other socioeconomic issues.

4.2 The Crown has led evidence from Ministry of Education ("MOE") officials, Secretary for Education, Iona Holsted, and Jann Marshall, Director of Education, Taranaki-Whanganui-Manawatū. This evidence did not address historical education delivery (despite this being the primary focus of the inquiry). Rather, this evidence focussed on contemporary education policy and delivery.⁴³

4.3 The Crown has made some concessions or acknowledgments in this inquiry district, which were made in the context of the presentation of evidence by MOE officials. These relate to the contribution of the state education system to inequities in education outcomes between Māori and non-Māori and the failure to protect te reo Māori. These read, in Crown counsel's opening submissions, as follows:⁴⁴

³⁹ Waitangi Tribunal *Te Urewera Report* Vol VIII (Wai 894, 2017) at 3773-3777, 3783.

⁴⁰ Waitangi Tribunal *Te Urewera Report* Vol VIII (Wai 894, 2017) at 3776-3777.

⁴¹ Waitangi Tribunal *Haurua: Report on Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, 2019) at 33-35. This arises from the principle of equity. This particular finding was made in the context of health, but counsel submit it should have equal applicability in the context of other social services, particularly taking into consideration the Crown's obligations of active protection.

⁴² Waitangi Tribunal *Te Urewera Report* (Wai 894, 2017) at 3774.

⁴³ Joint Brief of Evidence of Iona Holsted and Jann Marshall for the Ministry of Education, dated 18 February 2019 (Wai 2180, #M27) at [11]. Evidence hereafter referred to as "#M27 Ministry of Education evidence".

⁴⁴ Crown Opening Submissions for Evidence (Part Two) Hearing Week 11, dated 29 October 2019 (Wai 2180, #3.3.31) at [12]-[14].

The Crown acknowledges, through this evidence [for the Ministry of Education], that Maori learners have consistently experienced inequitable outcomes in education, and that the state education system has been a contributing factor to these disparities. ...

What is being said at this point is that, as a matter of fact, education outcomes for Maori in the Taihape Inquiry district (whilst on several metrics better than those of Maori elsewhere) are different to, and worse than, those of non-Maori, and that situation is not equitable.

The Crown has also acknowledged in previous inquiries, and continues to acknowledge in this inquiry, that it failed to protect Te Reo Maori and encourage its use by iwi and Maori. This was in breach of the Treaty, and has had longstanding and ongoing detrimental effects on the acquisition and use of the Maori language, and on the tikanga and matauranga of Maori, including for those within the Taihape Inquiry district.

4.4 In the MOE evidence itself, key concessions or acknowledgements include the following:⁴⁵

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

The state education system has not sufficiently valued Maori cultural understandings and has had consistently low expectations of tamariki and rangatahi Maori. The failure to respond to the identity, language and culture of Maori has harmed Maori 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 whanau and their ancestors.

... Maori education outcomes are gradually improving but these outcomes still do not match those of other learners.

We recognise the existence and impact of unconscious cultural biases.

⁴⁵ #M27 Ministry of Education evidence at [12], [13], [14], [15], [28], [31], [103].

Since 2008, national levels of Maori participation and achievement in education have shown some improvement due to a greater focus from across the education sector to improve Maori educational outcomes. ... At the same time however, Maori continue to experience inequitable educational outcomes in relation to non-Maori.

We know that the education system is still not producing equitable outcomes for Maori students in the Inquiry district, and across Aotearoa. There are a number of challenges that we need to address. For instance, we know that low expectations and bias exists in the education system which has a negative impact on Maori student outcomes. We also recognise that te reo Maori and Maori medium provision and pathways are limited in some areas including the Taihape Inquiry district (see paragraphs 81-87). The relatively small number of school students and the remoteness of the Inquiry district also present challenges to the provision of high quality education.

We acknowledge that education in the Inquiry district has not met the needs of all Maori learners.

4.5 The Crown earlier made the following comments of relevance in a memorandum filed regarding the TSOI:⁴⁶

The Crown considers that health, education and socio-economic issues are interrelated, and so it is difficult to consider each in isolation. In addition, there are a range of complex variables that can affect these matters. The Crown considers that it is therefore important that claims of Treaty breach in respect of these issues are assessed on a case-by-case basis, in light of the prevailing circumstances of the time.

In Te Rohe Potae closings the Crown said “[s]ocial and cultural issues are intimately connected and cannot be considered in isolation”, and in particular in relation to te reo Maori “The Crown recognises te reo Maori as a taonga of Maori, including Te Rohe Potae Maori, and it accepts it has a duty to protect and sustain the language. However the Crown’s duty is not absolute and unqualified; the Crown is required to take “such action 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

⁴⁶ Crown memorandum contributing to the preparation of a draft statement of issues, dated 2 September 2016 (Wai 2180, #1.3.2) at [89], [93], [95].

reasonable for the Crown to take change depending on the situation which exists at any particular time.

- 4.6 Counsel understand the Crown is yet to make any concession or acknowledgement regarding the impact of land loss on the social, cultural and economic wellbeing of Taihape Māori.
- 4.7 The Crown's position and the evidence it relies on will be addressed in more detail as necessary in the pages that follow.

5. TECHNICAL EVIDENCE AND TĀNGATA WHENUA EVIDENCE

- 5.1 The technical evidence of particular relevance to these closing submissions is Dr Paul Christoffel's report *Education, health, and housing in the Taihape Inquiry District, 1880-2013* (Wai 2180, #A41). Dr Christoffel identified some methodological difficulties for assessing evidence specific to this inquiry district.⁴⁷
- 5.2 In these circumstances, tāngata whenua evidence assumes further significance for the Tribunal in assessing education, health and other services within the inquiry district. Issues relating to education, health and other social services are dealt with in the evidence of many of the tāngata whenua of this rohe, and will be drawn upon as appropriate throughout these closing submissions.

6. RESPONSE TO TRIBUNAL STATEMENT OF ISSUES

- 6.1 The TSOI questions addressed in this section are taken from Question 18 "Education and Social Services", parts one to 13.

Social service delivery – roles for Māori and their concerns and preferences

Question 18(1): In the establishment and management of education, health and other social services, what role(s), if any, did the Crown enable Taihape Māori to play within the institutions and processes it established?

Question 18(2): What role did Taihape Māori expect to play in the organisation and management of social service delivery? To what extent were these expectations satisfied?

⁴⁷ See for example Christoffel, *Education, health, and housing in the Taihape Inquiry District, 1880-2013* (Wai 2180, #A41) at 3 – 16. Hereafter referred to as "#A41".

Question 18(3): Did Taihape Māori express particular concerns or preferences concerning social service delivery that the Crown failed or was reluctant to recognise? If so, what were these concerns or preferences, how were they expressed, and to what extent, if any, has the situation changed over time?

6.2 The response to the TSOI in this regard is split into health, education, and housing.

Health

6.3 For an extended period of time:

- (a) The evidence indicates little to no role was provided by the Crown for Taihape Māori in relation to provision of health services.
- (b) The evidence available about the role Taihape Māori expected to play in the organisation and management of health service delivery is relatively limited. This appears to be due in large part to the lack of consultation or involvement provided for by the Crown or its agents.
- (c) Notwithstanding this, the evidence does indicate that Taihape Māori have consistently sought to engage in matters affecting them, including health and health services. Counsel have not located any evidence to suggest expectations, such as they were, were satisfied.
- (d) There is little to no evidence of meaningful consultation or engagement by the Crown with Taihape Māori about their concerns or preferences when it comes to health and health services.

6.4 To elaborate:

- (a) Before 1900, there was no provision for Māori consultation or participation in the provision of health services.⁴⁸
- (b) In the early 1900s, Māori councils provided an opportunity for Māori to assist in improving health and sanitation within their rohe. Taihape Māori were involved through the Kurahaupo Maori Council. While such councils were reported to have effected some improvement, greater

⁴⁸ #A41 at 254.

improvements were hampered by a lack of government funding, which can be contrasted with the considerable increase in government health expenditure overall after 1900.⁴⁹ Instead, it appears these were primarily reliant on being funded by Māori themselves.⁵⁰ As Dr Christoffel observed under cross-examination:⁵¹

Government did provide some money but it really wasn't very much given how many councils there were once you spread it across up to 19 different Māori councils, the money was quite unsatisfactory...

- (c) From the 1920s, with the exception of typhoid inoculations, there does not appear to be any evidence that decision-making regarding provision of health services in the inquiry district involved Taihape Māori or the identification of their needs. The main consideration of healthcare provision, as in the case of Taihape hospital, appears to have been the needs of settlers, which was a consistent pattern throughout most of the 20th century.⁵²
- (d) In the late 1940s, tribal committees (three of which were established in the inquiry district) were formed under the Maori Social and Economic Advancement Act 1945, and performed some health-related functions. It appears this was particularly in relation to typhoid inoculations.⁵³
- (e) In more recent times, it appears that there has been effort made to increase consultation or involvement of Taihape Māori in health services. Since approximately the early 1990s, it appears there has been some consultation or involvement of Taihape Māori regarding decision-making on matters affecting Māori health and on aspects of the provision of health services, for example through the Otaihape Māori

⁴⁹ #A41 at 251.

⁵⁰ #A41 at 305.

⁵¹ Hearing week seven transcript (Wai 2180, #4.1.15) – cross-examination of Dr Christoffel at 448. Transcript referred to hereafter as “#4.1.15 – hearing week seven transcript”. Counsel also highlight the findings of the Tribunal in *Te Mana Whatu Ahuru*: “[W]e find that from 1900 to 1938, the Māori health initiatives delivered by the Department of Public Health and the health work of the Māori councils were important opportunities for enabling Māori self-government and management of their own health. However, these initiatives lacked sufficient Crown funding and support. In particular, the failure to adequately resource the Māori councils to carry out their responsibilities was inconsistent with the principles of partnership and reciprocity as well as the guarantee of rangatiratanga in article 2, and amounted to a failure in the Crown’s duty to actively protect Te Rohe Pōtae Māori rangatiratanga and autonomy over their health”; Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims* – Part V (Wai 898, 2020) at 61-62.

⁵² #A41 at 254.

⁵³ #A41 at 254.

Komiti.⁵⁴ It is evident from tāngata whenua evidence that from the 1980s, the Otaihape Māori Komiti⁵⁵ became a vehicle for whānau, hapū and iwi to develop social services.⁵⁶

- (f) Tāngata whenua evidence sheds light on the barriers to Taihape Māori being involved in the health workforce and contributing towards the health of their people. This includes issues with racism, lack of pay equity when working for Māori health providers as compared with non-Māori “mainstream” providers, financial barriers to pursuing studies, and the lack of gender pay equity.⁵⁷
- (g) Tāngata whenua evidence also indicates there are issues with the lack of Māori health services and limited Māori representation on health boards (with a single iwi representative on the Whanganui Health Network Board) in the rohe.⁵⁸

6.5 To conclude, the evidence indicates Taihape Māori have:

- (a) Generally been constrained to exercising very limited decision-making power over their health and wellbeing.
- (b) Been unable to choose how to organise themselves, and how or through what organisations they express their tino rangatiratanga when it comes to health services for an extended period of time.
- (c) Not been afforded the opportunity to truly partner with the Crown in the provision of health services, although there appears to have been some improvement in ability to be involved in health service provision in more recent times.
- (d) Generally been limited in their ability to influence the health services provided to them.

⁵⁴ #A41 at 243, 254. Now, Mōkai Pātea Services Trust. From #A41 at 254 it is apparent that the Whanganui District Health Board has a memorandum of understanding with Hauora A Iwi, an inter-tribal forum that includes Otaihape Iwi. Counsel have not located any information on the record about the extent to which this has resulted in involvement of Taihape Māori in decision-making regarding health services. See also Brief of evidence of Barbara Ball, dated 18 September 2017 (Wai 2180, #G7).

⁵⁵ Counsel understand from tāngata whenua evidence that this was established under the Maori Community Development Act 1962.

⁵⁶ See for example Brief of Evidence of Barbara Ball, dated 18 September 2017 (Wai 2180, #G7) at [7]-[14].

⁵⁷ See for example: Brief of evidence of Waiharakeke Winiata dated 30 April 2018 (Wai 2180, #K4) at [10], Brief of evidence of Raewyn Iosia-Sipeli dated 30 April 2018 (Wai 2180, #K7) at [10], [14].

⁵⁸ See for example: Brief of evidence of Waiharakeke Winiata dated 30 April 2018 (Wai 2180, #K4) at [17], Brief of evidence of Maurini Haines-Winiata dated 3 May 2018 (Wai 2180, #K6) at [37].

Education

6.6 For an extended period of time:

- (a) The evidence indicates that there have been extremely limited roles provided by the Crown for Taihape Māori in relation to provision of education. In recent years a group representing iwi in the area has been able to become involved in the education of tamariki of Taihape Māori to a degree, but it is evident that this engagement has been within the strictures of Crown models and that their aspirations stretch much further than this.
- (b) The evidence is very clear that Taihape Māori expected to play a significant role in the organisation and management of education delivery for their tamariki and have placed a high importance on their tamariki receiving an appropriate education from the 1840s to the present day. The precise roles Taihape Māori hoped to play are less clear at certain points in history, which appears to be due to the fact that limited, if any, opportunities have been provided to them by the Crown to explicate or develop these further. The evidence demonstrates that:
 - (i) Taihape Māori were and continue to be very interested in the education of their tamariki.
 - (ii) Taihape Māori have on a number of occasions sought to be involved or to have input into the education of their tamariki, generally with limited or no success.
 - (iii) While Crown engagement with iwi and hapū in relation to education may be improving at a national level in the present day, there is still significant improvement needed in this inquiry district; and
 - (iv) Significant issues remain with working within the strictures of a system that has historically failed to acknowledge the value of te reo and the culture of Taihape Māori.

- (c) Counsel have not located any evidence to suggest the expectations of Taihape Māori were satisfied.
- (d) There is limited evidence of meaningful consultation or engagement by the Crown with Taihape Māori about their concerns or preferences when it comes to education.

6.7 To elaborate:

- (a) On the evidence available, it appears that role provided by the Crown for Taihape Māori, or the consultation it engaged in with Taihape Māori regarding the institutions and processes it established in relation to education has been extremely limited for an extended period of time.⁵⁹
 - (i) To the extent that the evidence can establish with any degree of certainty that there might have been some role provided prior to the 2000s, was through the Moawhango school committee, which was active between 1944 and 1969, and through members of a whānau being involved in the school committee at Utiku school.⁶⁰ It is noted, however, that Native school committees, such as that of Moawhango, had more limited powers and responsibilities.⁶¹
 - (i) Taihape Māori do not have any role in substantive decision-making about the education their tamariki receive.⁶² There has been some engagement with, and role provided for, Ngā Iwi o Mōkai Pātea Services in education in recent years, although it is evident that this has occurred within the strictures of Crown models and views on education. It is patently clear that aspirations of such groups stretch well beyond the role that has been afforded to them to date. Counsel will leave further elaboration on this to specific claimant counsel.
 - (ii) Despite the significant proportion of ākonga Māori in the inquiry district, there are limited opportunities provided to Taihape Māori

⁵⁹ See discussion in #A41 at 152-153.

⁶⁰ See discussion in #A41 at 26-27, 152-153.

⁶¹ #A41 at 81.

⁶² See discussion about decision-making control being held elsewhere in Brief of evidence of Barbara Thomason dated 12 February 2018 (Wai 2180, #112) at [23].

to be involved on boards of trustees. Ngā Iwi o Mōkai Pātea Services selects two iwi representatives to the Board of Trustees for Taihape Area school, which has occurred since June 2004. Of the other eight schools in the inquiry district, only *one* other (Moawhango) enables Taihape Māori to select iwi or hapū representatives for Board of Trustees, which has occurred since October 2018.⁶³ Tāngata whenua evidence illustrates how Taihape Māori have sought to be involved on school boards, to no avail; despite Otamakapua school having a role made of approximately 50% Māori tamariki, attempts of whānau to become members of the school board on a number of occasions have been unsuccessful.⁶⁴

- (iii) This experience seems to mirror the experience of Māori nationally. The MOE advised that an Independent Taskforce review in 2018 identified that nationally:

*58% of schools do not have enough Māori on their boards to adequately represent the proportion of Māori students at the school. Therefore, the majority of schools do not have Māori engaged in decision making at the school governance level. The Taskforce considered that to give effect to Te Tiriti in school governance, we need to think about how schools can work better with iwi.*⁶⁵

*There is a need for more diversity in those who hold principal roles (only 15% of principals are Māori, compared to 25% of the ākonga population) so that students from all communities are able to see themselves reflected in the leadership of our schools.*⁶⁶

- (b) Taihape Māori have sought to engage with the education system since the establishment of schools within the inquiry district:
 - (i) The mid to late 1800s saw repeated requests by Taihape Māori for a school at Moawhango, in which they indicated that as their

⁶³ Responses from the Ministry of Education to questions of clarification (Wai 2180 #M27(g)) at 19.

⁶⁴ Brief of evidence of Barbara Thomason dated 12 February 2018 (Wai 2180, #12) at [19]-[22], see in particular [16].

⁶⁵ Responses from the Ministry of Education to questions of clarification (Wai 2180 #M27(g)) at 26-29.

⁶⁶ Responses from the Ministry of Education to questions of clarification (Wai 2180 #M27(g)) at 26-29.

lands decreased in quantity, they viewed education as a means by which they could provide for their future.⁶⁷ As Dr Christoffel agreed under cross-examination:⁶⁸

“Our lands are decreasing in quantity and we are extremely desirous that our children may be in a position to attend schools so that they may be enabled thereby to provide for their own living in the future.”

Q. Thank you. So this is an important point and I think it is for a number of reasons. For one you’d agree that it shows that Māori in this inquiry district knew that education was important in light of those decreasing landholdings, that would be fair?

A. That would be fair, yes.

Q. Yes. It is also an example of Taihape Māori being aware of the value of education in providing for those present and future generations, that would be fair also?

A. Yes.

- (ii) Tāngata whenua evidence illustrates the significant efforts Taihape Māori have gone to, almost to the point of exhaustion, to engage with the education system, to provide their input, and to advocate for the needs of their tamariki.⁶⁹ This includes efforts to start a kura kaupapa in the inquiry district. In the face of an often unwilling and unhelpful Te Tiriti partner, these efforts have generally been to no avail.
- (iii) Even where initiatives have been commenced by the Crown that Taihape Māori have invested time and effort in, these have often been stopped with no replacement. For example, Taihape Area School had been involved with Te Kauhua, a pilot programme that aimed to enhance teacher effectiveness in working the Maori students in English medium settings. MOE evidence indicated that *“School leaders, teachers, students, parents, whanau and iwi*

⁶⁷ #A41 at 59.

⁶⁸ #4.1.15 – hearing week seven transcript at 401.

⁶⁹ See for example: Brief of evidence of Nicola Chase dated 18 September 2017 (Wai 2180, #G9) at [6]-[42].

worked collaboratively to undertake a programme of change".⁷⁰

This programme does not appear to have been followed up with a substantive programme of a similar or improved nature in the inquiry district.⁷¹

- (c) The evidence indicates that the concerns and preferences of Taihape Māori have been largely rendered invisible in education. To the extent that they have been acknowledged, such as with the request and push for a kura kaupapa, in 2003-2004,⁷² their preferences generally appear to have fallen on unlistening ears. To the extent that Māori views more generally have been heard, key issues that have been identified persist. To illustrate, MOE evidence emphasised the importance of a wānanga held in 2018 regarding education and Māori aspirations in education, to *"ensure that Maori voices inform the future of Maori education"*.⁷³ Despite this emphasis, under cross-examination, MOE officials accepted that:⁷⁴
 - (i) Although Taihape Māori ought to be involved in conversations about the future of Māori education, there were not any wānanga held in the Taihape inquiry district, with the closest wānanga being held some distance away, in locations including Palmerston North, Whanganui, and Te Tai Rāwhiti.
 - (ii) The desires expressed by Māori at these wānanga, like being involved in education, wanting their language and culture recognised, being free from racism, discrimination and stigma, were not new issues for Māori.⁷⁵
 - (iii) Given the context of the Te Tiriti and the principle of partnership, it was certainly unsurprising that Māori wanted to continue taking a leading role in the education of their people up to the present day.

⁷⁰ #M27 Ministry of Education evidence at [45].

⁷¹ Responses from the Ministry of Education to questions of clarification (Wai 2180 #M27(g)) at 12.

⁷² The matter of the kura kaupapa is dealt with elsewhere in these closing submissions in the subsection "Consistent failure to provide a Te Reo Māori pathway" at [7.41]-[7.45].

⁷³ #M27 Ministry of Education evidence at [36].

⁷⁴ Hearing week eleven transcript (Wai 2180, #4.1.19) – Tribunal questions and cross-examination of Ministry of Education officials at 79-81. Transcript referred to hereafter as "#4.1.19 – hearing week eleven transcript".

⁷⁵ For more information about the views expressed, see for example Supplementary Brief of Evidence of Iona Holsted and Jann Marshall for the Ministry of Education, dated 7 October 2019 (Wai 2180, #M27(c)) at [36].

- 6.8 To conclude, despite the fact MOE education strategies “*Ka Hikitia and Tau Mai Te Reo highlight the importance of the contribution of whanau, hapu and iwi to the educational success of Maori students*”,⁷⁶ the experience of Taihape Māori indicates that in practice, the space for contributing has been extremely limited.
- 6.9 The lack of visibility of Taihape Māori in roles in education, or of their concerns or preferences when it comes to education, comes down to kāwanatanga running roughshod over tino rangatiratanga. In summary, the evidence indicates that:
- (a) Taihape Māori have been extremely limited in their ability to exercise decision-making power over the education of their tamariki. The nature of the education their tamariki receive is almost exclusively at the will of the Crown.
 - (b) Taihape Māori have been unable to choose how to organise themselves or how or through what organisations they express their tino rangatiratanga when it comes to education of their tamariki. The Crown has:
 - (i) Shown itself unwilling to work through structures Taihape Māori have expressed a preference for. Taihape Māori are limited to roles designed within the Crown’s accepted ways of operating.
 - (ii) Failed to protect the availability and viability of kaupapa Māori solutions to education, alongside “mainstream” education.
 - (c) Taihape Māori have not been afforded the opportunity to truly partner with the Crown in the provision of education.
 - (d) Taihape Māori have generally been very limited in their ability to influence education services provided to their tamariki.
- 6.10 It appears from the evidence that the best Taihape Māori can hope for at this stage, is that, if they are ‘lucky’, they might get asked their views, their concerns might be acknowledged (although whether anything is done to address them is

⁷⁶ #M27 Ministry of Education evidence at [26].

a separate matter) or they might be offered roles designed within the strictures of the Crown's accepted ways of educating.

- 6.11 The flow-on effects this has had on the nature of the education Taihape Māori receive and their educational success, is dealt with later in this submission.

Housing

- 6.12 For an extended period of time:

- (a) The evidence indicates that there has been little to no role provided for Taihape Māori in relation to provision of housing assistance.
- (b) The evidence available regarding Taihape Māori expectations about the role they expected to play in the organisation and management of housing is limited. It is suggested that the lack of consultation or involvement provided for by the Crown or its agents is a key reason for this. Notwithstanding this, the evidence does indicate that Taihape Māori generally sought to engage in matters affecting them, including housing.⁷⁷ Counsel have not located any evidence to suggest expectations, such as they were, were satisfied.
- (c) The evidence indicates that there has been little to no meaningful consultation with Taihape Māori in relation to housing. Indeed, it appears Taihape Māori have rarely been consulted on programmes to assist with housing and have participated only to a small extent in such programmes, for example through the Kuruhaupo Māori Council,⁷⁸ and through the grant of funds by the Board of Māori Affairs to build four kaumātua flats in 1984 at Winiata Marae.⁷⁹

Education

Assimilation

Question 18(4): To what extent has cultural assimilation guided state-run education? To what extent has the delivery of state-run education effected cultural assimilation?

⁷⁷ See for example Brief of Evidence of Barbara Ball, dated 18 September 2017 (Wai 2180, #G7) at [6. In the 1950s, the Ngāti Whiti Tribal Committee formed to address issues around health, social, housing, education, justice and whenua.

⁷⁸ Which, as noted above, as a Council, was hampered by a lack of government funding.

⁷⁹ #A41 at 284-285, 307-308, Summary of Education, Health, Housing in the Taihape Inquiry District, 1880-2013 (Wai 2180, #A41(c)) at 8.

6.13 For an extended period of time, assimilation formed part of state-run education provided to Māori, including Taihape Māori. The evidence indicates that:

- (a) State-run education has played a significant role in seeking to effect cultural assimilation, with extensive negative effects on Taihape Māori. It is evident that the education system the Crown provided acted to assimilate many important aspects of the culture of Taihape Māori, and to replace these with Pākehā values. This included the manner in which the system:
 - (i) In native schools (of which there was one in the inquiry district), aimed to ‘civilise’ tamariki, and in general schools, generally ignored them altogether;
 - (ii) Excluded te reo Māori from the classroom (except as a tool for teaching English) for an extended period of time, and, during certain periods, saw corporal punishment for speaking te reo.
 - (iii) Failed to provide for, and further, often denigrated Māori and their history and culture.
- (b) While there have been some improvements, the education system in the inquiry district to this day has failed to address the effects of this, and continues to have an assimilationist effect, including by:
 - (i) Consistently ignoring or generally at best, placing an often tokenistic emphasis on key aspects of Māori culture, including te reo Māori me ōna tikanga.
 - (ii) Failing to address issues of racism and unconscious cultural bias, of which not an insignificant proportion has arisen due to the attitudes of the Crown and educators and the failure to accurately portray the history of Aotearoa.

6.14 To elaborate:

- (a) As Dr Christoffel stated during cross examination:⁸⁰

I think it's hard to dispute that you know the whole colonial enterprise had a strongly assimilationist agenda behind it and even before 1840 the missionaries were keen to impose you know what they saw as civilised values on Māori.

- (b) With respect to schooling in particular, Dr Christoffel responded under cross-examination:⁸¹

... There was already a system of Māori education established under the Native Schools Act and that did have a lot of overtly assimilationist aspects to it. 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.

- (c) The education system the Crown provided acted to assimilate many important aspects of Taihape Māori culture, and to replace these with Pākehā values. This included through acting to create and reinforce the notion that many important aspects of the Māori culture, including their reo, was inferior to that of western / Pākehā culture. The assimilationist attitudes and objectives encapsulated in the provision of education for Māori are exemplified by the circular accompanying the 1880 Native Schools Code, which included comments such as:⁸²

"...teachers will be expected to exercise a beneficial influence on the Natives, old and young; to show by their own conduct that it is possible to live a useful and blameless life... to set the Maoris an example they may advantageously imitate... It is highly necessary that teacher should be on their guard against allowing their own habits to degenerate under the influence of surrounding negligence. They ought rather to exert a steady influence tending to the elevation of the people among whom they live".

- (d) Consistent with this, counsel refer to the following finding of the Tribunal in the Te Rohe Pōtae Inquiry:

⁸⁰ #4.1.15 – hearing week seven transcript at 456.

⁸¹ #4.1.15 – hearing week seven transcript at 425.

⁸² 1880 Native Schools Code, referred to in #A41 at 58. This particular circular related to native schools specifically, but nonetheless provides an illustration of the attitude of the Crown and education officials to Māori, as well as some of the perceived benefits their being provided education.

When Te Rohe Pōtae Māori children entered the school system, whether native or board-controlled, during the first half of the twentieth century, they were taught that the language, culture, and mātauranga Māori that they brought with them to school were, at worst, inferior, or at best, irrelevant to them in the modern world. This belief in Māori cultural inferiority had a profound impact upon the self-belief and educational experiences of Te Rohe Pōtae Māori school children.⁸³

- (e) A key aspect of this assimilation was the extended period in which te reo Māori and tikanga were actively discouraged or excluded from the education system. In a similar vein, official encouragement for Māori cultural activities was generally limited to Māori schools, of which there was only one in the inquiry district. Other than this, there appears to have been only very occasional inclusion of language or culture in the education system later on in the 20th century within the inquiry district.⁸⁴
- (f) Tāngata whenua evidence assumes further significance in light of the limited technical evidence dealing with assimilation and the associated issue of treatment of te reo Māori and tikanga. In this regard, Dr Christoffel's responses under cross-examination are highlighted:⁸⁵

So in terms of the practical experiences of tāngata whenua who receive this education, that wasn't your primary focus, was it? It was really on the education policy and how that was rolled out, that would be fair?

A. Well, it was in the hope that it would cast some light on the practical experiences and also I mean there are, I think, well there are occasional examples from the schools but in general, yes.

Q. Yes, yes, and so of course when it comes to those practical experiences those will be something for the tāngata whenua and that's something you'd defer to them on in terms of how they've experienced those schooling systems of course?

A. Absolutely, yes.

⁸³ Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims* – Part V (Wai 898, 2020) at 229.

⁸⁴ #A41 at 152-153.

⁸⁵ #4.1.15 – hearing week seven transcript at 400.

- 6.15 Counsel now address the history, experiences, and effects of assimilation for Taihape Māori in more detail, centred on te reo Māori and racism and unconscious cultural biases. There is a connection in this regard with the generic claimant closing submissions on Te Reo Rangatira me ōna Tikanga. Counsel refer to those closing submissions for more detailed submissions on te reo, but highlight some crucial aspects necessary to address the issue of assimilation below.

Te reo Māori in education

- 6.16 A fundamental pillar of the approach to assimilation in the education system was the treatment of te reo Māori and Māori culture in schools.
- 6.17 In the early 20th century, native schools shifted to an immersion approach for teaching English.⁸⁶ As a consequence, the use of te reo Māori was increasingly suppressed in the native schools.
- 6.18 Despite it contravening the Native Schools Code,⁸⁷ it is evident that doling out punishment for speaking te reo Māori became a widespread practice throughout Aotearoa,⁸⁸ whether that school was a general or native school. Counsel are unaware of any evidence to indicate that the case was materially different in this inquiry district. As observed by Dr Christoffel under cross-examination:⁸⁹

Well I think it's fairly clear, as I've said before, from a lot of the tangata whenua evidence that's been provided over many decades that there must have been a policy, even if it wasn't formally spelt out, that Māori ought to be discouraged within all schools.

- 6.19 Indeed, as with throughout the motu, tāngata whenua kōrero of Taihape Māori provides clear evidence of corporal punishment being meted out to tamariki speaking te reo.⁹⁰
- 6.20 It is also evident that this punishment was often not recorded. Under cross-examination, Dr Christoffel observed that while corporal punishment ought to

⁸⁶ See for example Summary of Education, Health, Housing in the Taihape Inquiry District, 1880-2013 (Wai 2180, #A41(c)) at 3.

⁸⁷ No evidence has been located as to whether general schools (of which all in the inquiry district were with the exclusion of Moawhango from 1944) prohibited corporal punishment for speaking te reo.

⁸⁸ See for example statements in Waitangi Tribunal Te Reo Maori Claim (Wai 11, 1986) at 9.

⁸⁹ #4.1.15 – hearing week seven transcript at 428.

⁹⁰ See for example: Brief of evidence of Patricia Cross dated 15 June 2016 (Wai 2180, #C2) at [11], Brief of evidence of Nicola Chase dated 18 September 2017 (Wai 2180, #G9) at [16], Brief of evidence of Hineaka Winiata dated 27 November 2017 (Wai 2180, #H3) at [11], Brief of evidence of Greg and Rhonda Toatoa dated 19 March 2018 (Wai 2180, #J9) at [23].

have been recorded in school logbooks, very few have survived for the inquiry district, and there was no reference to any corporal punishment. Under cross-examination, Dr Christoffel agreed that this was not only a failure on the part of the teachers but also a failure on the part of the Department of Education (as it was at that time) to check that logbooks were being administered appropriately.⁹¹

- 6.21 Even where punishment was not used, te reo was systematically excluded by the Crown from the education system for an extended period of time. There was no evidence located in the available reports to indicate that te reo was offered as a subject in schools in the inquiry district until the 2000s, with the exception of the possibility of studying this by correspondence at Taihape school.⁹²
- 6.22 The Crown's approach to te reo and Māori culture resulted an erosion of their perceived value. Counsel highlight the comments made in *He Whiritaunoka: The Whanganui Land report*, where the Tribunal stated that:⁹³

The [English only] policy was certainly wrong-headed and regrettable in all sorts of ways, not least because of how it made Māori children feel about themselves and the experience of learning in school. However, the policy did not operate alone. It occurred in a context where the dominant society's messages to Māori consistently lacked respect for their language and culture. Parents imbibed these messages, and lost confidence themselves in the ability of mātauranga Māori (Māori knowledge) to enrich and advance their children's lives.

As well as being fearful of punishment, many parents had come to believe that te reo Maori and tikanga Maori were useless knowledge, whereas familiarity with the English language and European knowledge would help their children advance.

- 6.23 The evidence available specific to this inquiry district, particularly tāngata whenua evidence, supports this conclusion and illustrates the significant negative impacts of the treatment of te reo on Taihape Māori. Tāngata whenua evidence makes it clear that:

⁹¹ #4.1.15 – hearing week seven transcript at 434.

⁹² #4.1.15 – hearing week seven transcript at 414-416. It is noted that Dr Christoffel indicated he “would be surprised if there wasn’t some taught in at least the 1990s” at Hunterville School, but accepted there was no mention of this in his report until the 2000s.

⁹³ Waitangi Tribunal *He Whiritaunoka: The Whanganui Land Report* (Wai 903, 2015) at 1174, 1147.

- (a) Treatment of te reo in the education system and negative experiences of speaking te reo at school impacted on the transmission of te reo through generations, with parents and older generations refusing to pass te reo on.⁹⁴
- (b) Treatment of te reo in the education system played a significant role in the erosion of the perceived value of the reo for successive generations of Taihape Māori.⁹⁵

6.24 While it was not uncommon that Māori parents desired that their children learn English, there is a very important distinction between a desire to learn English, and learning this at the expense of, or belittling of, te reo and tikanga, a point accepted by Dr Christoffel under cross-examination.⁹⁶ This distinction was seemingly not one that was recognised or provided for by the Crown.

6.25 Even when it became apparent that levels of fluency in te reo Māori were declining, insufficient action was taken by the Crown to address this, a problem that has plagued Taihape Māori to the present day. Counsel refer in these respects to the generic claimant closing submissions on Te Reo Rangatira me ōna Tikanga.

Racism and unconscious cultural biases

6.26 The manner in which Māori (including Taihape Māori), their reo, their culture, and their history has been treated in the education system has been another key aspect of the assimilationist effect of the education system.

6.27 Tāngata whenua evidence demonstrated the Eurocentric nature of the education provided to Māori, which beyond focusing on the English language, also focused on English narratives of history, and did not provide for mātauranga Māori, history or stories. Tāngata whenua evidence:

⁹⁴ See for example: Brief of evidence of Te Rina Warren dated 18 September 2017 (Wai 2180, #G8(a)) at [4], [5], [14], Brief of evidence of Neville Lomax dated (Wai 2180, #H10) at [20], [23], [28], [30], Brief of evidence of Peter Fraser dated 12 February 2018 (Wai 2180, #I6) at [25].

⁹⁵ See for example: Brief of evidence of Carol Walker dated 18 September 2017 (Wai 2180, #G2) at [3], Brief of evidence of Te Rina Warren dated 18 September 2017 (Wai 2180, #G8(a)) at [14], Brief of evidence of Neville Lomax dated (Wai 2180, #H10) at [20], [23], [28], [30], Brief of evidence of Te Rangiangoa Hawira dated 29 November 2017 (Wai 2180, #H11) at [12]-[15], Brief of evidence of Peter Fraser dated 12 February 2018 (Wai 2180, #I6) at [25], Brief of evidence of Adrian Wagner dated 12 February 2018 (Wai 2180, #I15) at [12], Brief of evidence of Ngaire Anne Kauika-Stevens dated 19 March 2018 (Wai 2180, #J5) at [26], [27].

⁹⁶ #4.1.15 – hearing week seven transcript at 412-415.

- (a) Provides examples of names of tamariki being changed by teachers to be easier to pronounce.⁹⁷
- (b) Discussed the negative impacts of the lack of space provided to Māori culture and Taihape Māori history in school.⁹⁸

6.28 However, more than simply not focusing on Māori history, Māori were also often depicted negatively and their history was often ignored, or disregarded as incorrect. Sources cited in Dr John Barrington's report for another inquiry district illustrated how reading materials provided to young tamariki fed into the idea of the superiority of the colonisers. Counsel highlight the follow excerpts by way of example in this regard:⁹⁹

The stories in the most commonly used history and geography texts in common usage in both Native and Board schools, and in The New Zealand School Journal which was distributed to all schools, presented a 'pecking order' approach to race which:

Automatically placed the white race first...there was general agreement, amongst both British New Zealand writers, that they (Māori) were members of a lesser race or racial sub-group but very 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 enjoyed but for their coming to settle amongst us"

Māori boy, speaking in a story in the Sixth Imperial Reader.

- 6.29 Counsel have not located any evidence to suggest the experience for Taihape Māori was materially different.
- 6.30 The education received had a negative impact on Māori, but also on Pākehā children's attitudes towards Māori and on the way that Pākehā children

⁹⁷ See for example: Brief of evidence of Hari Benevides dated 18 March 2018 (Wai 2180, #J13) at [10].

⁹⁸ See for example: Brief of evidence of Barbara Thomason dated 12 February 2018 (Wai 2180, #I12) at [18].

⁹⁹ Bundle of documents filed by Rainey Collins for cross-examination of Dr Christoffel (Wai 2180, #A41(e)) at 86, citing excerpt from Dr Barrington's report *Northland Language, Culture and Education Part One: Education* (Wai 1040, #A2) at 63.

understood Aotearoa's history. Indeed, it is difficult to see how this could not have been the consequence of the education provided, with analysis of the School Journal cited in Dr Barrington's report revealing how:¹⁰⁰

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 discreditable 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.

The author also points out that history was virtually non-existent outside the context of British imperialism; the Journal reinforced the notion that New Zealand's history began with European arrival.

- 6.31 Also evident from Dr Barrington's work, is that racial antipathy became an issue from early on in Crown-Māori relations; in the Department of Education's Annual Report to Parliament for 1914, the Senior Inspector of Native Schools reported that there had been an "[i]ntensification of the racial antipathy and prejudice exhibited towards the Māori in many parts of the North Island" which had "led in some cases to an attempt on the part of the local authorities to turn the Māori children out of school, which has in some places actually been accomplished".¹⁰¹ In the same year, it was observed in a memorandum to the Minister of Education that it was:¹⁰²

Impossible to fail to realise the pronounced racial antipathy and prejudice that are exhibited towards the Maori. In many parts they are spoken of as dogs, and are even treated as such; they are regarded as cucumbers of the ground, and their rights and privileges as British subjects are trampled on and disregarded. I repeatedly hear them characterized as 'dagos' and 'niggers'...determined

¹⁰⁰ Bundle of cross-examination documents for #A41 report filed by Rainey Collins (Wai 2180, #A41(e)), at 86-87, citing excerpts from Barrington, *Northland Language, Culture and Education Part One: Education* (Wai 1040, #A2) at 63-74.

¹⁰¹ Bundle of cross-examination documents for #A41 report filed by Rainey Collins (Wai 2180, #A41(e)), containing excerpts from Barrington, *Northland Language, Culture and Education Part One: Education* (Wai 1040, #A2) at 63-74, 96-97, 345-352, 410-412.

¹⁰² Bundle of documents for cross-examination of Ministry of Education witnesses filed by Rainey Collins (Wai 2180, #M27(f)) at 304, excerpts from Dr J Barrington *Northland Language, Culture and Education Part One: Education* (Wai 1040, #A2).

efforts have been made to eject their children from the public schools and instances could be given of attempts to bring about segregation of the races. The Maori is elbowed out and given the cold shoulder, and instances have occurred where the parents of Maori children have been denied the right of voting at the school annual meetings held to appoint committees for public schools; they were simply bluffed and told they had no right to vote. Is it any wonder that the Maoris view with alarm proposals to hand their schools over to the boards?

6.32 It is equally evident that racism and unconscious cultural biases against Māori continue to be an issue within the education system to the present day. For example:

- (a) In its evidence, the MOE advised there are some “major issues” to be addressed in the education system, including “unconscious cultural biases”.¹⁰³ As acknowledged by MOE:¹⁰⁴

The state education system has not sufficiently valued Maori cultural understandings and has had consistently low expectations of tamariki and rangatahi Maori.

- (b) The MOE is aware that Māori, along with Samoan and other Pacific students, are far more likely to report discrimination in schools on the basis of their ethnicity from adults than from their peers, with unfair teacher behaviour the most frequently reported issue.¹⁰⁵
- (c) Work by the Office of the Children’s Commissioner and New Zealand School Trustees Association released in 2018 set out that:¹⁰⁶

Many tamariki and rangatahi Māori shared their experiences of racism in school. When tamariki and rangatahi feel undervalued or underrated because of their culture, this has a negative impact on their experiences in education and their identity. We heard from many rangatahi who felt that because they were Māori, they had not been treated equally. This

¹⁰³ #M27 Ministry of Education evidence at [118].

¹⁰⁴ #M27 Ministry of Education evidence at [12], [13], [14], [15], [28], [31], [103].

¹⁰⁵ Bundle of documents for cross-examination of Ministry of Education witnesses filed by Rainey Collins (Wai 2180, #M27(f)) at 299, McGregor and A Webber *He Whakaaro, Education Insights: What do we know about discrimination in schools* (Ministry of Education, 2019) at 1

¹⁰⁶ Bundle of documents for cross-examination of Ministry of Education witnesses filed by Rainey Collins (Wai 2180, #M27(f)) at 271 onwards, Office of the Children’s Commissioner, New Zealand School Trustees Association *He manu kai matauranga: He tirohanga Māori, Experiences of Tamariki and Rangatahi Māori*, Education matters to me series (2018) (<https://www.occ.org.nz/publications/news/education-matters-to-me-six-detailed-reports-are-now-available/>)

finding of tamariki and rangatahi experiencing racism at school came predominantly from our face to face engagements with young people who are not well served by the mainstream system. Tamariki and rangatahi Māori made up most of this group. In contrast, the majority of students who completed the online survey identified themselves as New Zealand European. Very few of these students identified racism as an issue, and those who did were more likely to identify with a minority ethnic group. As we did not ask about racism in any of our engagements, all comments made by tamariki and rangatahi about racism were unprompted.

- (d) The MOE advised that an Independent Taskforce review in 2018 pointed to the impact of deficit thinking, unconscious bias and racism on expectations for success for Māori and others and the need to more effectively respond to this.¹⁰⁷

6.33 Despite racism and unconscious cultural biases clearly being an issue for an extended period of time, from the evidence available, it appears that historically there has been virtually nothing done by the Crown to address this, while in more recent times, some limited action has been taken.

6.34 However, when it comes to this inquiry district, the picture is more concerning again. To illustrate:

- (a) In its evidence, MOE officials advised that the MOE was “*actively engaged in working towards*”¹⁰⁸ addressing unconscious biases. In response to a question about MOE initiatives *currently operating* in the inquiry district to address issues of cultural biases and/or racism, the MOE set out a number of initiatives, none of which appeared to specifically relate to either issue. These were, in summary, that:¹⁰⁹
 - (i) One school in the inquiry district has been undertaking professional development with a cultural aspect aimed at strengthening their focus on honouring Te Tiriti.

¹⁰⁷ Responses from the Ministry of Education to questions of clarification (Wai 2180 #M27(g)) at 26-29.

¹⁰⁸ #M27 Ministry of Education evidence at [15].

¹⁰⁹ Responses from the Ministry of Education to questions of clarification (Wai 2180 #M27(g)) at 6.

- (ii) Ngā Iwi o Mōkai Pātea Services is contracted by the Ministry to provide Mentoring Services in Taihape Area School to Māori students sitting NCEA Level 2 who are at risk of not achieving.
 - (iii) All schools are supported by an Education Advisor, who meets with principals and Boards of Trustees and brokers support where required, including Professional Learning and Development (PLD) and education initiatives. Schools in the Inquiry district are accessing PLD to target a range of areas, including mathematics, whānau engagement, literacy, Māori boys' achievement, culturally responsive practice and digital technology.
- (b) In terms of *training provided to educators in the inquiry district* to address cultural biases and/or racism, the MOE again set out a number of initiatives that did not appear to specifically relate to addressing either racism or unconscious cultural biases. They advised:¹¹⁰
- (i) A range of resources are available to support all schools to meet the needs and aspirations of Māori learners, including Tātaiako: Cultural Competencies for Teachers of Māori Learners, *Ka Hikitia: The Māori Education Strategy* (“**Ka Hikitia**”), and the Best Evidence Synthesis Iterations.
 - (ii) In 2016 and 2017, a Student Achievement Function Practitioner supported Moawhango School with a specific focus on improving outcomes for Māori learners which involved understanding Tātaiako and how this can be implemented in practice. The school was supported to access professional learning in literacy, maths and leadership.
 - (iii) As above, one school in the inquiry district has been undertaking professional development with a cultural aspect aimed at strengthening their focus on honouring Te Tiriti o Waitangi.

¹¹⁰ Responses from the Ministry of Education to questions of clarification (Wai 2180 #M27(g)) at 6-7.

- (iv) Education Advisors discuss the achievement of Māori students with schools and broker support when requested.
 - (v) The New Zealand School Trustees Association also provides advice to Boards of Trustees, including its information booklet, *The Treaty of Waitangi and School Governance*.
- (c) The current MOE programme to address inequality and racism is Te Hurihanganui, but this is not scheduled to include any schools in this inquiry district.¹¹¹
- (d) In responses to questions of clarification, MOE officials also pointed out the initiatives that were *previously in place* to address unconscious cultural biases and racism. Before the current initiative, Te Hurihanganui, similar initiatives included Te Kotahitanga, He Kakano, Te Kauhua, Te Kākahu and Kia Eke Panuku – Building on Success.¹¹² However, as MOE officials acknowledged under cross-examination:¹¹³
- (i) Te Kotahitanga ran from 2001 to 2013 in 54 secondary schools. This did not include any schools in this inquiry district.
 - (ii) Te Kauhua ran from 2001 to 2011. From this, teachers are now able to access professional development resources at their initiative. This initiative included one school in this inquiry district from 2005 to 2011 and saw two research projects conducted. Te Kauhua does not appear to have been followed up with a substantive programme of a similar or improved nature in the inquiry district, the MOE advising that instead, “*All schools within the Inquiry district can access Professional Learning and Development to support them to deliver education that support Māori learners to enjoy and achieve in education*”.¹¹⁴

¹¹¹ #4.1.19 – hearing week eleven transcript at 89-95. This programme: “recognises the importance of a community approach to addressing inequity and racism rather than a single school or institution focus. The actions undertaken as part of Te Hurihanganui will include ākonga, whānau, iwi, community groups as well as early learning, primary and secondary schools. Actions will relate to strengthening kaupapa Māori and building critical consciousness through the provision of expert advice, coaching, resources and tools. Testing within six communities will begin in 2020”; Responses from the Ministry of Education to questions of clarification (Wai 2180 #M27(g)) at 7.

¹¹² Responses from the Ministry of Education to questions of clarification (Wai 2180 #M27(g)).

¹¹³ #4.1.19 – hearing week eleven transcript at 89-95.

¹¹⁴ Responses from the Ministry of Education to questions of clarification (Wai 2180 #M27(g)) at 12.

- (iii) He Kakano ran in a limited number of secondary schools from 2010 to 2013. This did not include any schools in this inquiry district.
- (iv) Kia Eke Panuku ran in 94 secondary schools. Te Kākahu, the project that was part of Kia Eke Panuku, was rolled out in schools solely in Whanganui. This did not include any schools in this inquiry district.

- 6.35 In short, it's been over 18 years since Te Kotahitanga, the first programme to address unconscious cultural biases and racism, started. Each of the initiatives in place have run in a limited number of schools for a limited period of time. Only one of these has ever been run in the inquiry district, for a short period. Deficit thinking and unconscious cultural biases are still affecting Māori, as the evidence for the MOE acknowledges. For Taihape Māori, it remains the case that little is being done to address this issue, with the most recent programme introduced, Te Hurihanganui, to again run in a limited number of schools and again not scheduled to include this inquiry district.
- 6.36 It is hoped that changes to the National Curriculum to ensure "*New Zealand's histories*" including about Te Tiriti and the colonisation of New Zealand, will be taught as part of the local curriculum in all schools and kura by 2022,¹¹⁵ will assist in reducing the unconscious cultural biases and racism experienced by Māori in the education system and beyond over time. How this history is taught remains to be seen, but counsel suggest that a review of the multitude of very helpful Waitangi Tribunal reports released over the years would greatly assist in guiding this process.
- 6.37 In conclusion, it cannot be disputed that there is a great deal of rhetoric these days around improving the experiences of Māori in the education system, including Taihape Māori. It is a separate question whether any of this will trickle down in the form of action to improve the experiences of Taihape Māori; on the evidence available at present, it appears unlikely, at least for some time.

¹¹⁵ Supplementary Brief of Evidence of Iona Holsted and Jann Marshall for the Ministry of Education, dated 7 October 2019 (Wai 2180, #M27(c)) at [28].

Conclusion in relation to assimilation

6.38 In conclusion, the evidence indicates that the Crown has failed to:

- (a) Actively protect Taihape Māori as Māori in the provision of education, by subjecting successive generations of tamariki to an education that is assimilationist (either in intent or in effect) in nature.
- (b) Provide an equal standard of education as between Māori and non-Māori, by providing an education that failed to protect the mana, culture and reo Taihape Māori to the same degree it protected the mana, culture and reo of Pākehā students.
- (c) Take Te Tiriti-compliant to prevent discrimination and biases against Taihape Māori in education. Instead, despite being aware of racism and biases amongst the settler population, the nature of the education provided has served to feed these prejudices, and attempts by the Crown to date to address this issue in the inquiry district have been patchy and wholly insufficient.

6.39 Counsel highlight the following finding of the Tribunal in the Te Rohe Pōtae inquiry, which it is submitted would also be appropriately made in this inquiry:¹¹⁶

In this and previous inquiries the Crown has argued that it is sufficient to provide an equal education to Māori and Pākehā students. In our view, providing Māori with equal access to an education system exclusively designed to cater for the needs of Pākehā is not sufficient. Māori had the right to expect an education system that met their needs and the Crown had a Treaty duty to provide it. We find that the overwhelmingly monocultural and monolingual character of the education system (itself a product of the Crown's earlier failure to ensure meaningful Māori input into education) posed a considerable cultural barrier to Te Rohe Pōtae Māori gaining a quality education. As such, we find the Crown's conduct was inconsistent with the principle of equity in the manner it dealt with Māori relative to Pākehā and other populations in the inquiry district.

¹¹⁶ Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims* – Part V (Wai 898, 2020) at 229.

Restricted curricula

Question 18(5): To what extent and in what ways did the Crown restrict curriculum choices for Taihape Māori?

- (a) What provisions, if any, were made for the inclusion of mātauranga Māori within Crown designed curricula?*
- (b) In what ways, if any, were Taihape Māori involved in the design of curricula and its delivery in Taihape schools?*
- (c) Did the Crown attempt to provide a consistent standard of service across education levels (pre-, primary and secondary)?*

Question Six: To what extent and in what ways did curricula imposed by the Crown encourage Taihape Māori into specific vocations?

6.40 For an extended period, the curriculum choices of Taihape Māori have been restricted, at times by design, and at others, by their effect. The short point is that Taihape Māori have consistently had limited to no role or ability to influence the design and delivery of education to their tamariki. Perceptions of successive Pākehā-dominated governments have guided the manner of the education received by Taihape Māori, bringing with them their underlying biases and mistaken presumptions regarding the educational abilities and needs of Māori. In particular:

- (a) The evidence indicates there was no inclusion of mātauranga Māori in the Crown designed curricula in the inquiry district, with very few exceptions, for an extended period of time.
- (b) The evidence indicates that there was little to no role provided by the Crown for Taihape Māori in relation to the design and delivery of curricula in schools. This lack of role in the design and delivery of curricula generally persists to the present day.
- (c) The evidence is very limited in terms of whether the Crown attempted to provide a consistent standard of service across education levels.

- (d) Curricula choices imposed by the Crown, either by design or effect, encouraged Taihape Māori into specific vocations, for an extended period of time.

6.41 With respect to the inclusion of mātauranga Māori in the curriculum, counsel refer to [6.13]-[6.39] of these closing submissions, which address assimilation and the lack of space provided for Te Ao Māori in the education system.

6.42 With respect to the role provided by the Crown for Taihape Māori in the design and delivery of curricula, counsel refer to [6.6]-[6.11] of these closing submissions. A key example of the reception Taihape Māori received when they sought to influence the manner in which their tamariki received education, was the MOE's response to the request for a kura kaupapa, a matter which is dealt with further later on this submission at [7.41]-[7.45] and in the generic claimant closing submissions for Te Reo Rangatira me ōna Tikanga. Counsel note that it appears today Taihape Māori have some ability to influence curricula at two schools in the inquiry district,¹¹⁷ but as noted earlier, it is evident that the aspirations of Taihape Māori extend well beyond this.

6.43 With respect to the curricula choices and standard of education provided, counsel refer to the evidence pointed to regarding education in response to questions 18(1) to 18(4) at [6.6]-[6.11] and [6.13]-[6.39], and further highlight the following:

- (a) There are at least two facets to the question of how the design or effect of curricula was to encourage Taihape Māori into specific vocations. The first, is the practical focus that certain schools had at times, and the second, is the issue of low expectations of teachers. These are each dealt with in turn:

- (i) First, at times, schools attended by Taihape Māori, particularly schools providing secondary education, included a more practical-based focus. In the early-mid 20th century, officials and politicians were particularly keen that secondary schools provide training in agriculture, especially in the case of district high

¹¹⁷ At Moawhango and Taihape Area schools; see #M27 Ministry of Education evidence at [61].

schools and Māori boarding schools.¹¹⁸ District high schools, such as Taihape District High School (which was the only secondary school available in the district for an extended period time) tended to emphasise practical subjects on the assumption that most rural pupils were likely to embark on rural occupations or become farmer's wives.¹¹⁹ Taihape Māori who attended secondary classes before the 1940s appear likely to have attended Māori boarding schools outside the inquiry district.¹²⁰ There is evidence that boarding schools such as Te Aute College and Turakina Māori Girls College included various practical and manual activities in their curricula,¹²¹ and that in the case of schools like Te Aute, this occurred in the face of pressure and the threat of financial penalties should such a curricula not be adopted.¹²² The evidence indicates that there was not much of an appetite for these trades amongst Māori tamariki or their parents, with very few of the trade scholarships introduced being taken up. Despite this, the Government persisted with this approach, for approximately 16 years, and at the same time, suspended university scholarships for Māori for approximately a decade.¹²³ Counsel suggest it made little sense that there was a focus by the Crown on agricultural training for Māori for a host of reasons, including because most Māori (including Taihape Māori) had suffered extensive land loss. As accepted by Dr Christoffel under cross-examination,¹²⁴ such an approach would likely constrain them, for example, to lower level jobs on farms.

- (ii) Secondly, tāngata whenua evidence suggests that not infrequently, teachers had low expectations of Taihape Māori in terms of academic achievement, and accordingly, tamariki did not receive the same degree of encouragement when compared with their non-Māori counterparts. This is supported by the

¹¹⁸ Christoffel, *The Provision of Education Services in Te Rohe Potae, 1840 – 2010* (Wai 898 #A27) at 186. Counsel note that this report cited in #A41, and is publicly available.

¹¹⁹ See for example *Summary of Education, Health, Housing in the Taihape Inquiry District, 1880-2013* (Wai 2180, #A41(c)) at 4.

¹²⁰ See for example *Summary of Education, Health, Housing in the Taihape Inquiry District, 1880-2013* (Wai 2180, #A41(c)) at 10.

¹²¹ #A41 at 112-119.

¹²² #4.1.15 – hearing week seven transcript at 386.

¹²³ #4.1.15 – hearing week seven transcript at 410-412.

¹²⁴ #4.1.15 – hearing week seven transcript at 409-412.

references above at [6.26]-[6.39] regarding racism and unconscious biases in education. Tāngata whenua kōrero provides clear evidence of the limited expectations held by teachers and how these affected tamariki. In this regard, counsel highlight, by way of example, the kōrero of Barbara Thomason:¹²⁵

The members of our family left Otamakapua feeling no sense of achievement. This was also the case for my cousins. I sincerely do believe that the racist and bigoted attitudes at the time clouded our teachers' thinking. I think he saw us as labourers, shed hands and potato pickers, without having higher aspirations for our achievement, and no understanding of our proud history.

6.44 In conclusion, the evidence indicates that the Crown has failed to:

- (a) Actively protect mātauranga Māori as a taonga in education.
- (b) Provide sufficient opportunities for Taihape Māori to truly partner with the Crown in the design and delivery of curricula.
- (c) Actively protect Taihape Māori as Māori in the provision of education, by providing an education that has either by design or effect, encouraged Taihape Māori into specific vocations for an extended period of time.
- (d) Provide an equal standard of education as between Māori and non-Māori, instead providing an education that has, at times, subjected Taihape Māori to restricted curricula to a greater degree than their non-Māori counterparts.

Contributions by Māori towards education of their tamariki

Question 18(7): In what circumstances were parents asked to contribute financial and other resources toward the education of their children? To what extent, if any, did these requests for contributions differ between Māori and Pākehā parents?

¹²⁵ Brief of evidence Barbara Thomason dated 12 February 2018 (Wai 2180, #12) at [17].

6.45 The evidence indicates that Māori seeking a native school were required to contribute land (and at times, resources too). An equivalent set of pre-requisites were not placed on non-Māori seeking a general school.

6.46 In particular:

- (a) Often schools in the inquiry district were provided by the Wanganui Education Board at the request of settlers,¹²⁶ who while sometimes choosing to contribute land or resources for a school, were not generally legislatively required to do so before a school would be established.
- (b) This was in contrast with Māori seeking a native school. The Native Schools Act 1867 required a site in extent of not less than one acre to be provided by the inhabitants of the district, as well as a financial contribution to cover a proportion of the outlay.¹²⁷ The Native Schools Act was amended by the Native Schools Act Amendment Act 1871 to reduce or waive altogether the contribution required by Māori communities,¹²⁸ but by 1880, the 1880 Native Schools Code increased the minimum requirement for land donated by Māori communities for schools to at least two acres, along with an additional contribution in money or in kind towards the cost of buildings as the Minister might require.¹²⁹ Counsel are not aware of equivalent requirements necessitating provision of land by those seeking a general school.¹³⁰
- (c) Native Schools did receive some additional resources compared with general schools, such as books and stationary, but whether these were in fact a free additional resource is questionable. In contrast to their general school committee counterparts, native school committees were required to ensure a proper supply of firewood for the school and to arrange for the cleaning of the school room every night (with a scrubbing

¹²⁶ #A41 at 151.

¹²⁷ See Native Schools Act 1867, and in particular, requirements outlined in section 8(2), (3).

¹²⁸ Native Schools Act Amendment Act 1871.

¹²⁹ 1880 Native Schools Code AJHR H-1f.

¹³⁰ Counsel note the following observations of the Tribunal in *Te Mana Whatu Ahuru*: “Under the [Education Act 1877] Act, education boards could require Pākehā communities to contribute to a school’s establishment in land, labour, or funds. The ability to make local communities contribute to the establishment and running of remote schools continued to a lesser degree under section 54(6)(a) of the 1914 Act, which allowed education boards, when schools had average yearly rolls of less than nine children, to require parents to subsidise the presence of a teacher, either with funding or by supplying lodgings. For board schools, the expectation that local communities donate their land, labour, or other resources to a school’s establishment was, however, largely dependent upon the discretion of the education board. As we noted in chapter 20, the expectation that Māori ‘gift’ land for native schools was far from discretionary or optional. It was instead very near to compulsory” [emphasis added]; see Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims* – Part V (Wai 898, 2020) at 170.

out once a month); Dr Christoffel advised under cross-examination that this cleaning was “*actually done in the main by the pupils*”.¹³¹

- 6.47 Counsel highlight the recent findings of the Tribunal in the Te Rohe Pōtae report *Te Mana Whatu Ahuru* regarding the prerequisite to provide title to land for schools:¹³²

The expectation that Māori communities gift land applied regardless of whether the school was located in a closely settled or remote area. It applied regardless of whether an equally suitable or even more suitable site existed on Crown land. It gave no regard to whether local landowners were in a position to gift land, or to the impact that the gifting might have on existing tribal land holdings. For this reason, we consider the requirement on Māori to gift land for native schools to be discriminatory, and to have placed unfair obstacles in front of Te Rohe Pōtae Māori seeking education for their children.

In following the necessary steps to petition for a school, and then providing a site, Te Rohe Pōtae Māori amply demonstrated their long-term commitment to education. It was reasonable for the Crown to expect some security of tenure in return for its investment in school buildings and improvements. Yet we see no reason why it needed to obtain permanent title over Māori-owned land to do so. ... We see no reason why the Crown could not have negotiated similar leaseholds with the Te Rohe Pōtae Māori communities who requested native schools, and whose educational needs such schools were intended to serve.

- 6.48 To conclude, the evidence indicates that the Crown failed to treat Taihape Māori equitably as compared with non-Māori, by requiring the provision of title to land before a native school could be established. The Crown also failed to actively protect Taihape Māori in requiring title to land, due to the significant land loss Taihape Māori were already being subjected to through, for example, Crown purchasing.¹³³

The role Taihape Māori expected to play in the appointment of teachers

Question 18(8): What role did Taihape Māori expect to play in the appointment of teachers in native schools? To what extent were these expectations satisfied?

¹³¹ #4.1.15 – hearing week seven transcript at 404-407.

¹³² Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims* – Part V (Wai 898, 2020) at 168-173.

¹³³ Counsel address this point regarding the situation with land titles in the area at the time of the request by Taihape Māori for a school below at [7.23]-[7.25].

- 6.49 There was only one native school in this inquiry district, at Moawhango.¹³⁴
- 6.50 Counsel are not aware of any specific statements from Taihape Māori about the role they expected to play in the appointment of teachers at this school.
- 6.51 However, as set out above at [6.6]-[6.11], the evidence is very clear that Taihape Māori expected to play a significant role in the organisation and management of education delivery for their tamariki and placed a high importance on their tamariki receiving an appropriate education from the 1800s to the present day.
- 6.52 It thus appears highly likely that Taihape Māori would have expected or hoped to be involved in appointment of teachers at Moawhango school, but counsel have not located evidence as to whether any such expectations were satisfied.

Standard of service and education expected by Taihape Māori

Question 18(9): What standard of service and education did Taihape Māori expect of teachers and to what extent were those expectations satisfied?

- 6.53 As set out above at [6.7(b)(i)]-[6.7(b)(iii)], the evidence is very clear that Taihape Māori placed a high importance on their tamariki receiving an appropriate education from the 1800s to the present day.
- 6.54 Counsel are unaware of any evidence in this inquiry district that indicates that Taihape Māori would desire a high-quality education for their tamariki less than non-Māori.
- 6.55 On the evidence available, counsel submit it is clear that, at the very least, Taihape Māori expected that the education their tamariki were provided with:
- (a) Protected and respected their reo, their tikanga, and mātauranga;
 - (b) Did not create and sustain large and ongoing inequities in education outcomes between their tamariki and non-Māori children; and
 - (c) Ensured equitable treatment of students, both Māori and non-Māori.

¹³⁴ Counsel note that this was originally a general school but changed to a native school in 1944; #A41 at 65.

6.56 It is apparent that, in general, such expectations have not been met, and in many cases, the reality has fallen well short of these expectations. In particular:

- (a) In relation to Taihape Māori reo, tikanga and mātauranga, counsel refer to [6.13]-[6.39] of these submissions and to the generic claimant closing submissions regarding Te reo Māori me ōna Tikanga, which illustrate that, the reo, tikanga and mātauranga of Taihape Māori has not been actively protected by the Crown.
- (b) In relation to inequities in education outcomes, counsel refer to [7.46]-[7.54] of these submissions, which illustrate that, despite some improvements to aspects of the education provided to Māori, there are continued inequities between the educational outcomes of Taihape Māori and non-Māori, and the education system is still failing a disproportionate number of Māori students.
- (c) In relation to equitable treatment of students, counsel refer to [6.13]-[6.39] of these submissions, which illustrate that the education provided to Taihape Māori failed to cater equitably to these tamariki as compared with non-Māori, including due to racism, unconscious cultural biases, and the lack of provision for their reo and mātauranga in the education system.

Urbanisation, urban migration, and dispersal from homelands

Question 18(10): In what ways, if any, did Crown policy regarding social services influence Taihape Māori to move away from their ancestral lands?

Question 18(11): What were some of the socio-economic effects Taihape Māori experienced as a result of moving away from their ancestral lands? Was the Crown under any obligation to mitigate these effects?

6.57 The evidence available indicates that many Taihape Māori dispersed from the inquiry district during the course of the 20th century to urban centres.¹³⁵

6.58 It is unclear from the evidence the extent to which social service provision influenced urban migration. However, while these services might not

¹³⁵ Armstrong, *Mokai Patea Land, People and Politics* (Wai 2180, #A49) at 96.

necessarily have been the *primary* influence on Taihape Māori to move away from their tūrangawaewae, it is clear other factors, such as loss of whenua,¹³⁶ inaccessibility of remaining whenua, or an inability to utilise that remaining whenua to support present and future generations is likely to have had a significant influence on movement to urban centres to obtain employment.

- 6.59 Tāngata whenua evidence expresses how it became a struggle to remain in the inquiry district due to land loss, inabilities to purchase other land to remain on, and retaining employment in the area.¹³⁷ As Dr Christoffel agreed under cross-examination:¹³⁸

Q. But just a couple of questions at a relatively general level, you would of course agree that Māori are likely to migrate to obtain employment for a number of reasons, that would be fair?

A. Yes.

Q. But among those it might include, for example, loss of ancestral whenua, that would be fair?

A. Yes, it would.

Q. And in the same vein, inaccessibility of that remaining whenua, that would be fair as well, so they aren't able to use it?

A. Yes.

- 6.60 Indeed, tāngata whenua evidence clearly chronicles the painful progression from landowners, to often seasonal and physically demanding work, to increased unemployment and lack of housing following closure of employers such as the railways, to the lack of space provided for Te Ao Māori and the exercise of tino rangatiratanga by colonial governments, to the loss of hapū and whānau support systems with the many waves of migration to larger centres, to further alienation from and of the land (including through rates), and ultimately

¹³⁶ See for example Summary of *Education, Health, Housing in the Taihape Inquiry District, 1880-2013* (Wai 2180, #A41(c)) at 11.

¹³⁷ See for example: Brief of evidence of Te Rangiangoa Hawira dated 29 November 2017 (Wai 2180, #H11) at [32]-[41].

¹³⁸ #4.1.15 – hearing week seven transcript at 421.

to a cycle of ever-increasing erosion of traditional structures of Taihape Māori whānau, hapū, and iwi.¹³⁹ Counsel highlight the words of Hari Benevides:¹⁴⁰

... Where once we had been masters of our own destiny, we were forced to follow the beat of a foreign drum. Somewhere in this painful process we became the servants or labourers of the settlers who were farming what were once our lands. ...

Is it any wonder we have become the disaffected, diseased, disabled, disrupted and disengaged people we are today? We are the bearers of many social ills and evils: alcohol and drug addiction, domestic and abhorrent child violence, and one of the highest number of smokers per head of population in the world! For many of our whānau, there has been suffering caused by poor health and education standards, low income, substandard housing and increasing numbers of homeless.

So many of our children, supposedly our most precious taonga, are brought up by solo mothers with absent fathers. One could be forgiven for thinking Māori male should be listed as a threaten species. The incarceration and recidivism rates for Māori men is at an all-time high and rising. It is our wāhine who seek higher education in order to better the outcomes for their children.

So many of these parents were never parented themselves, and so in this way another layer of disconnection and dysfunction is added.

- 6.61 To the extent that Crown acts and omissions resulted in a disconnection (whether through, for example, land alienation, inaccessible whenua or otherwise) or inability to maintain meaningful ahi kā, this is likely to have impacted on the exercise of tino rangatiratanga.
- 6.62 Where Crown acts and omissions have left Taihape Māori in a position where urban migration has become necessary, and in doing so, breached Te Tiriti, the Crown is under an obligation to take Te Tiriti-compliant steps to remedy this, consistent with the principle of redress.
- 6.63 To conclude, it is evident that although social service provision may not have been the primary cause of urban migration, acts and omissions of the Crown

¹³⁹ See for example Brief of evidence of Maurini Haines-Winiata dated 3 May 2018 (Wai 2180, #K6) at [21], Brief of evidence of Hari Benevides dated 19 March 2018 (Wai 2180, #J3) at [9]-[21].

¹⁴⁰ Brief of evidence of Hari Benevides dated 19 March 2018 (Wai 2180, #J3) at [4], [19]-[21], [28].

have had the effect of leaving many Taihape Māori in a position where urban migration has become necessary. Counsel have not located any clear evidence on the record to indicate that the Crown has acted appropriately to redress this.

Impacts on communities and social structures

Question 18(12): To what extent, if any, has Crown policy, action, and/or omission contributed to or facilitated impoverishment within Taihape Māori communities?

Question 18(13): To what extent, if at all, have Crown social and economic policies led to a breakdown of family and social structures for Taihape Māori? Where Crown social and economic policies can be shown to have negatively affected Taihape Māori social cohesion, what obligations does the Crown have to remedy these outcomes and how is fulfilment of its obligations appropriately assessed?

- 6.64 Crown policies, acts and/or omissions have clearly contributed to and facilitated impoverishment within Taihape Māori communities.
- 6.65 The extent to which impoverishment has occurred and how it has occurred, stretches beyond just matters of health, education, and other social services, to the manner in which the Crown, in exercising what it has defined as its kāwanatanga, has engaged with the tino rangatiratanga of Taihape Māori.
- 6.66 Counsel highlight the recent findings of the Tribunal in the Te Rohe Pōtae report *Te Mana Whatu Ahuru* which deal with the interconnection between various aspects of social, cultural, and economic wellbeing, and which are likely to be of assistance in reaching conclusions as to Te Tiriti breaches in this inquiry district:

It is impossible to calculate the longer-term damage to Māori health, well-being, and economic success that arose from this rapid loss of land and opportunity, but it is certain to have been substantial. We find that, through these actions, the Crown failed in its duty of active protection through failing to protect Te Rohe Pōtae Māori from the adverse effects of settlement.¹⁴¹ ...

Previous Tribunals to engage with these issues have drawn clear links between land loss, poverty, and the poor performance of Māori across a range of social

¹⁴¹ Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims* – Part V (Wai 898, 2020) at 60.

indicators, including educational attainment. The Te Tau Ihu report linked the socio-economic impoverishment of Te Tau Ihu Māori, including educational under-achievement, to their loss of their land base. The Tauranga Moana report described educational disadvantage as one element of an interlinked ‘cycle of deprivation’ experienced by Tauranga Moana Māori as a result of widespread land alienation. In this sense, the Tribunal has a well-developed position that Māori educational under-achievement is an ongoing aspect of prejudice stemming from land loss due to Crown actions.¹⁴² ...

In addition, as seen in the previous chapter, the extreme poverty experienced by many Te Rohe Pōtae Māori communities by the turn of the twentieth century likely formed a further barrier to their children’s ability to access schooling. Overcrowding and poor standards of housing in Māori communities rendered them particularly vulnerable to outbreaks of infectious diseases such as measles and diphtheria, interrupting school attendance.¹⁴³

- 6.67 Counsel also highlight the following finding of the Tribunal in *Tauranga Moana*:¹⁴⁴

At a hapu and iwi level, land ownership is hugely important, if not essential, to group identity and to social, cultural, and economic wellbeing.

- 6.68 Counsel refer to the other generic closing submissions filed for the benefit of claimants in this inquiry district,¹⁴⁵ and summarise at a high level the cumulative effects of Crown acts and omissions on Taihape Māori as follows:

- (a) An exercise of kāwanatanga that has not provided sufficient space for the exercise of rangatiratanga by Taihape Māori, and which, for an extended period of time has prioritised the interests of Pākehā settlers and their subsequent generations; and
- (b) Very much interlinked and running parallel to this:
 - (i) Extensive land loss by Taihape Māori, particularly facilitated through Crown purchasing, the operation of the Crown-introduced Native Land Court and its system of individualisation, and subsequent private purchasing.

¹⁴² Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims* – Part V (Wai 898, 2020) at 133.

¹⁴³ Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims* – Part V (Wai 898, 2020) at 167.

¹⁴⁴ Waitangi Tribunal *Tauranga Moana 1886–2006* (Wai 215, 2010) Vol II at 801.

¹⁴⁵ Including those in relation to constitutional issues, Crown and private purchasing, the Native Land Court, and Economic Development.

- (ii) Difficulties experienced by Taihape Māori in using any remaining lands for economic gain, including due to lack of access (landlocked or otherwise), title difficulties, and quality of land.
- (iii) Lack of appropriate alternative means provided by the Crown for Taihape Māori to participate in economic development.
- (iv) Consequent substantially reduced ability of Taihape Māori to provide for their present and future generations.
- (v) Urban migration.
- (c) The cumulative impact of these factors, along with the Crown's manner of providing, for example, education and health services, has negatively impacted on the fabric of the society of Taihape Māori communities, including their social cohesion, their rangatiratanga, their whānau and wider social structures, their reo and their mātauranga.

6.69 Counsel leave detailed submissions on those points not related to social services to other generic closing submissions, but highlight the following by way of illustration:

- (a) With respect to extensive land loss suffered:
 - (i) By 2013, only 14.62% of the land in the inquiry district was Māori land.¹⁴⁶
 - (ii) This land was more likely than non-Māori private land to be categorised among the worst two land use capability categories.¹⁴⁷
 - (iii) Around 73 percent of this remaining land is landlocked.¹⁴⁸
- (b) With respect to the lack of alternative means to participate in economic development, and thus provide for future generations, the evidence indicates little was done by the Crown to facilitate the economic

¹⁴⁶ Innes, *Māori Land Retention and Alienation within Taihape Inquiry District 1840-2013* (Wai 2180, #A15) at 28, 30, 31.

¹⁴⁷ Innes, *Māori Land Retention and Alienation within Taihape Inquiry District 1840-2013* (Wai 2180, #A15) at 28, 30, 31.

¹⁴⁸ Woodley, *Taihape Rangitikei ki Rangipo Inquiry: Maori Land Rating and Landlocked Blocks Report 1870-2015* (Wai 2180, #A37) at 514-516, 533.

development and capability of Taihape Māori, but rather, that acts and omissions of the Crown generally served to undermine Taihape Māori efforts.¹⁴⁹

- (c) With respect to the links between land loss, poverty, and social cohesion and socioeconomic wellbeing:

- (i) As noted by Dr Christoffel during cross-examination:¹⁵⁰

... land loss isn't necessarily the only cause of poverty but certainly for a long time it would've been a significant factor.

- (ii) Tāngata whenua evidence provides clear examples of the overarching socioeconomic impacts of the Crown's acts and omissions on Taihape Māori – from poverty, to mental health issues, to the overarching loss of cohesion within iwi, hapū and whānau, to the lack of whānau available to carry out responsibilities on the marae.¹⁵¹ Counsel highlight in this regard, by way of example, the kōrero of Barbara Thomason:¹⁵²

The social impact of land alienation, and the loss of our economic land base, has had far reaching effects on our people of Ngāti Hauti. Institutional racism and the stripping away of our traditional values and social structures that connected us to the land. This resulted in whanau dysfunction, poverty, domestic violence, child abuse, alcoholism, gambling, loss of our Reo, loss of mana.

It is difficult for me to even bring these past events back into this kōrero, because it brings a flood of pain, anxiety and confusion. But it is necessary, because we often comment on the "here and now" without seeing the root of this evil. It is through the insidious processes of colonisation that have turned whānau against whānau, mother against daughter, son against father.

¹⁴⁹ For further detail, counsel refer to submissions and evidence referred to in the generic claimant closing submissions regarding Economic Development.

¹⁵⁰ #4.1.15 – hearing week seven transcript at 373.

¹⁵¹ See for example: Brief of evidence of Barbara Thomason dated 12 February 2018 (Wai 2180, #12) at [4], [5], Brief of evidence of Hari Benevides dated 19 March 2018 (Wai 2180, #J3) at [4], [30], Brief of evidence of Ngaire Anne Kauika-Stevens dated 19 March 2018 (Wai 2180, #J5) at [23].

¹⁵² Brief of evidence of Barbara Thomason dated 12 February 2018 (Wai 2180, #12) at [4], [5].

- (iii) There is certainly also a link to be made between poverty and education outcomes in this inquiry district. By way of example, counsel point to the words of MOE Secretary of Education Iona Holsted in response to Tribunal questions:¹⁵³

I just wish to go back and make it very clear, this is not in any way to say that what we do in education doesn't need to be different and better. It is however, harder if children are not well housed and well fed to ensure the school can do its best work.

- (iv) Although employment in agriculture and forestry appears to some extent to have reduced the negative impact on the employment levels and living standards of Taihape Māori in spite of generally lower qualifications, it is clear they have been unable to share anywhere close to equally in the fruits of the resources and employment opportunities in the inquiry district when compared with non-Māori.¹⁵⁴

6.70 It may be argued by the Crown that the roots of the position faced by Taihape Māori today is multifactorial and that the extent to which the Crown is able to devote resources, for example to social services, at any time will vary.

6.71 To this, counsel would reply that such conclusions do not necessitate mathematical apportionment of fault for the causes; rather, the question is whether, in light of the acts and omissions attributable to the Crown, it can be said to have met its Te Tiriti obligations.

6.72 Where Crown acts and omissions have negatively affected Taihape Māori social cohesion and in doing so, breached Te Tiriti, the Crown is under an obligation to take Te Tiriti-compliant steps to remedy this, consistent with the principle of redress. In this inquiry district, counsel have not located any clear evidence to indicate that the Crown has acted to appropriately redress the negative impacts outlined above.

6.73 To conclude, the evidence indicates that the Crown has:

¹⁵³ #4.1.19 – hearing week eleven transcript at 51.

¹⁵⁴ Counsel deal with this matter in further detail below in the section relating to Education inequities.

- (a) By its acts and omissions, negatively impacted on the social cohesion of Taihape Māori.
- (b) Failed to take Te Tiriti-compliant steps to address the negative impacts its acts and omissions have had on the social cohesion of Taihape Māori.

7. OVERVIEW OF THEMES OR ISSUES IN THE INQUIRY

- 7.1 Themes or defining issues in this inquiry district are set out below.
- 7.2 Where there is overlap between themes or issues and the responses to TSOI questions set out above, counsel have sought to summarise the issue in this section, rather than to reproduce the response in its entirety.

Health

- 7.3 Three key themes arise in relation to health, namely the persistent inequities between the health outcomes of Taihape Māori and non-Māori, the difficulties that Taihape Māori face in accessing appropriate health services, and the lack of voice that they have when it comes to their health and health services.

Inequities in health outcomes

- 7.4 The evidence has shown that while there have been improvements over time, there remains a significant inequity between the health outcomes of Māori and non-Māori, including in terms of life expectancy and certain health conditions.¹⁵⁵ In some areas, for example mental health, the inequity has been reported to have been growing.¹⁵⁶
- 7.5 Counsel are unaware of any evidence indicating that the situation is materially better for Taihape Māori, and indeed the evidence available suggests that it is reflective of the national situation.¹⁵⁷
- 7.6 It is clear from the evidence that, while there have been some improvements since the 1950s, the inequities between the life expectancy of Māori and non-Māori has remained virtually the same since the 1980s.¹⁵⁸

¹⁵⁵ Counsel refer, for example to the life expectancy statistics contained in Revisions to Report and to Questions of Clarification by Dr Christoffel (Wai 2180, A#41(f)) and Responses to questions of clarification by Dr Christoffel (Wai 2180, #A41(d)) at 14-15.

¹⁵⁶ #A41 at 242 – reference to report in 2007.

¹⁵⁷ Counsel refer, for example to the life expectancy statistics contained in Revisions to Report and to Questions of Clarification by Dr Christoffel (Wai 2180, A#41(f)).

- (a) For the period 1950-1952: Māori males were living an average of 14.3 years less than their non-Māori counterparts, while for females this was 16.5 years less.
- (b) For the period 1980-1982: Māori males were still living an average of 7.0 years less than their non-Māori counterparts, while for females this was 8.5 years less.
- (c) For the period 2012-2014, for the area of Manawatu-Wanganui in particular: Māori males were still living an average of 7.2 years less than their non-Māori counterparts, while for females this was 7.0 years less.¹⁵⁹

7.7 Turning to recent statistics about inequities in other health outcomes, Dr Christoffel observed that “significant disparities remain”. For example:¹⁶⁰

- (a) For 2010-2012: the Māori cardiovascular disease mortality rate for 35+ years, is 286.8 per 100,000 people, compared with under half this for non-Māori at 132.4 per 100,000.
- (b) For 2010-2012: the Māori cancer mortality rate for 25+ years, is 215.6 per 100,000 people, compared with just over half this for non-Māori at 120.3 per 100,000.
- (c) For 2012-2014: the Māori asthma hospitalisation rate for 5-34 years, is 222.4 per 100,000 people, compared with just over half this for non-Māori at 113.2 per 100,000.

7.8 Counsel submit that the continued inequities indicate that, while the Crown has taken some steps towards addressing Māori ill-health, these have fallen short of what is necessary as a responsible Te Tiriti partner; the Crown has failed to ensure a general equality of health outcomes as between Māori (including Taihape Māori) and non-Māori.

7.9 It is acknowledged that the resources that may be able to be devoted to addressing inequities may vary from time to time.

¹⁵⁸ Revisions to Report and to Questions of Clarification for #A41 (Wai 2180, #A41(f)) at 2.

¹⁵⁹ These appear to align closely with the national figures – see #4.1.15 Hearing week seven transcript at 397.

¹⁶⁰ Responses to Questions of Clarification for #A41 (Wai 2180, #A41(d)) at 14-15.

- 7.10 However, consistent with the observation by the Tribunal when discussing inequities in health outcomes in *Tauranga Moana*, where a disparity has long been well known and still exists, this “*indicates a failure of active protection by the Crown*” and “*an inadequate determination to reduce disparities*”.¹⁶¹

Access

- 7.11 Access to appropriate health services is often more difficult in rural areas. However, it has proven particularly difficult for many Taihape Māori.
- 7.12 Distinct from other inquiries, there has been no evidence of native health nurses, district nurses, or native medical officers being based in the inquiry district, and there is no evidence that the only native school in the inquiry district provided any health services.¹⁶² Doctors were based in the inquiry district from the 1880s, although they charged fees and were thus beyond the financial reach of most Māori.¹⁶³
- 7.13 The isolation of Taihape Māori has proven to be a major barrier to accessing health services in the inquiry district, and has affected them more than their non-Māori counterparts. This was particularly so due to the fact that Māori were often further from main transport hubs, and because the main consideration of healthcare provision appears to have been the needs of settlers throughout most of the 20th century.¹⁶⁴
- 7.14 Further increasing the barriers to accessing healthcare, were the cultural and financial barriers that for a time inhibited Māori from attending hospitals and hospitals from accepting Māori patients.¹⁶⁵ Counsel refer in this regard to the discussion with Dr Christoffel under cross-examination regarding the example of Taihape hospital.¹⁶⁶

Q. Okay, so if I can next get you to turn to page 184 of your report? Now you say there at paragraph 4 that there was evidence that at least some Māori used Taihape Hospital in its early years, don't you?

A. Yes.

¹⁶¹ Waitangi Tribunal *Tauranga Moana 1886–2006* (Wai 215, 2010) Vol II, at 811.

¹⁶² #A41 at 251, 257.

¹⁶³ #A41 at 252.

¹⁶⁴ #A41 at 254, 255.

¹⁶⁵ #A41 at 255.

¹⁶⁶ #4.1.15 – hearing week seven transcript at 399-400.

Q. But you also indicate earlier on that there was prejudice on the part of hospitals against admitting those Māori patients because they were not perceived as making a contribution with rates, that's correct?

A. Yes, that's right, that's correct, yes.

Q. And that wasn't something that was resolved fully until a number of years later with the passing of the Social Security Act in 1938, that's correct?

A. Yes, that's correct.

- 7.15 In more recent times, the declining population of the inquiry district has also provided a barrier to accessing some medical services.¹⁶⁷
- 7.16 Tāngata whenua evidence clearly sets out the difficulties and gaps encountered in accessing medical services particularly mental health services, palliative care, aged care facilities and hospital services since the closure of Taihape Hospital. Issues appear to have arisen due to transport costs, distances to services, and financial situation.¹⁶⁸
- 7.17 To conclude, the evidence indicates that the Crown has failed to provide equitable access to health services for Taihape Māori as compared with non-Māori. While remote populations might have made it more difficult to be equitable, the health inequities faced by Taihape Māori meant the Crown should have better prioritised access for Māori.¹⁶⁹

Representation

- 7.18 Counsel have dealt with the issue of representation above at [6.6]-[6.11] but highlight key points as follows below.
- 7.19 For an extended period of time:
- (a) The evidence indicates little to no role was provided by the Crown for Taihape Māori in relation to provision of health services.

¹⁶⁷ #A41 at 255.

¹⁶⁸ See for example: Brief of evidence of Raewyn Iosia-Sipeli dated 30 April 2018 (Wai 2180, #K7) at [18]-[21], [29], Brief of evidence of Lualua'ai Simi dated 3 May 2018 (Wai 2180, #K8) at [13]-[14], [19]-[20], Brief of evidence of Waiharakeke Winiata dated 30 April 2018 (Wai 2180, #K4) at [24].

¹⁶⁹ See for example comments in Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims* – Part V (Wai 898, 2020) at 60.

- (b) The evidence available about the role Taihape Māori expected to play in the organisation and management of health service delivery is relatively limited. This appears to be due in large part to the lack of consultation or involvement provided for by the Crown or its agents. Notwithstanding this, the evidence does indicate that Taihape Māori have consistently sought to engage in matters affecting them, including health and health services. Counsel have not located any evidence to suggest expectations, such as they were, were satisfied.
- (c) There is little to no evidence of meaningful consultation by the Crown with Taihape Māori about their concerns or preferences when it comes to health and health services.

7.20 To conclude, the evidence indicates Taihape Māori have been limited to exercising very limited decision-making power over their health and wellbeing, been unable to choose how to organise themselves, and how or through what organisations they express their tino rangatiratanga when it comes to health services, and have not been afforded the opportunity to partner with the Crown in the provision of health services.

7.21 To conclude, the evidence indicates Taihape Māori have generally been constrained to exercising very limited decision-making power over their health and wellbeing, been unable to choose how to organise themselves, and how or through what organisations they express their tino rangatiratanga when it comes to health services for an extended period of time, not been afforded the opportunity to truly partner with the Crown in the provision of health services (although there appears to have been some improvement in ability to be involved in health service provision in more recent times), and generally been limited in their ability to influence the health services provided to them.

Education

7.22 Five key themes/particular issues arise in relation to education, namely:

- (a) The delay in establishing a school requested by Taihape Māori.
- (b) The lack of understanding of Te Tiriti obligations and principles within the education system.

- (c) Issues with strategies and policies in relation to education.
- (d) The consistent failure to provide a te reo Māori pathway in the inquiry district.
- (e) The persistent inequities between the education outcomes of Māori (including Taihape Māori) and non-Māori.

Delay in establishing school requested by Taihape Māori

7.23 While Māori at Moawhango requested a school in 1886 and offered land for this purpose as required by native schools legislation,¹⁷⁰ there was significant delay in establishing the school, which in the end, commenced as a general school after a local settler approached the Wanganui Education Board and offered to provide a building and free board for a teacher for a year.¹⁷¹ This delay had meant tamariki at Moawhango were unable to access education services for an extended period of time.¹⁷²

7.24 As Dr Christoffel outlined under cross-examination regarding the delay in setting up a school at Moawhango:¹⁷³

23 years you know it just seems to be quite remarkable to me. You've got to remember that even before the school is established in 1896 there was a 10-year gap when they were unable to find or it certainly appeared to be unable to find land in which to build the school in that period as well. So it's more like 30 plus years that seemed to be unable to find a site for the school.

7.25 Moawhango sat on the Awarua block and went through the Court in 1886. The matter of partition was still to be dealt with and there had been a lengthy period of Crown purchase. It was thus not an ideal environment in which to get agreement for land to be “donated”.¹⁷⁴ Dr Christoffel agreed under cross-examination that there was no evidence in his report that the Crown considered waiving the insistence on getting land before providing a native school.¹⁷⁵

¹⁷⁰ For example Native Schools Act 1867, Native Schools Act Amendment Act 1871.

¹⁷¹ #A41 at 54-62.

¹⁷² Indeed, in #A41 at 56, an education official comments in 1888 indicate that the education services available at that time “do not reach any points within 50 miles of them”.

¹⁷³ #4.1.15 – hearing week seven transcript at 373-374.

¹⁷⁴ #A41 at 62-63.

¹⁷⁵ #4.1.15 – hearing week seven transcript at 401-402.

- 7.26 Only once a Pākehā got involved, did matters seem to progress; as acknowledged by Dr Christoffel under cross-examination, there was a rapid turnaround after this point.¹⁷⁶
- 7.27 With respect to the options available for those Māori who were awaiting a school at Moawhango, Dr Christoffel answered, during questions from the Tribunal, that the “only real option” would have been for tamariki to be sent away somewhere to another school outside of the district, but that the options were “extremely limited”.¹⁷⁷
- 7.28 Counsel highlight the recent findings of the Tribunal in the Te Rohe Pōtae report *Te Mana Whatu Ahuru* in relation to delays in establishing native schools in that rohe, of 14, 8 and 7 years:¹⁷⁸

We find these long delays in establishing native schools, in spite of repeated requests from Māori, to be inconsistent with the Crown’s duty of active protection and the principle of equity (14 years, 8 years, and 7 years).

- 7.29 To conclude, the evidence indicates that the Crown failed to treat Taihape Māori equitably as compared with non-Māori in the setting up of the school at Moawhango, both due to the insistence on receiving title to land before setting up the school and due to the evidently rapid turnaround managed once a Pākehā individual also indicated interest in having a school.

Apparent lack of understanding of Te Tiriti obligations and principles within the education system

- 7.30 During the course of hearings, it became increasingly apparent that the MOE, while expecting staff to act in accordance with Te Tiriti, do not provide clear or up to date guidance on what the principles of Te Tiriti are, or how staff or educators can give effect to these. This filters down to curricula documents that guide the manner in which tamariki are educated. In particular:
- (a) Te Tiriti principles in key documents, if they are actually set out at all, are limited to “the three Ps”, namely “*partnership, participation, and*

¹⁷⁶ #4.1.15 – hearing week seven transcript at 402-403.

¹⁷⁷ #4.1.15 – hearing week seven transcript at 445.

¹⁷⁸ Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims* – Part V (Wai 898, 2020) at 171.

protection". These principles do not reflect the nature and extent of the Te Tiriti principles.

- (b) There is limited, if any, guidance in key documents about how Te Tiriti principles are to be given effect to.

7.31 To illustrate:

- (a) The MOE expects staff to give "*active expression*" to the principles of Te Tiriti as they carry out their daily professional duties and to be "*well informed, innovative and resolute when considering the Treaty of Waitangi in all business matters*".¹⁷⁹ As MOE officials agreed under cross-examination, to ensure that this occurs, staff need to be clear on what the Te Tiriti principles are, and how to give effect to them, within their realm of expertise.¹⁸⁰
- (b) The MOE witnesses confirmed under cross-examination that the three principles of "partnership, participation and protection" are the Te Tiriti principles the Ministry of Education recognises and considers when carrying out its mahi.¹⁸¹ These are explicitly set out in official MOE documents including:
 - (i) In the MOE's statement of intent for 2018 to 2023, where, in the part titled "*Our commitment to the Treaty of Waitangi or te Tiriti o Waitangi*" it is recorded that the MOE honours "*the obligations of partnership, participation and protection*".¹⁸²
 - (ii) In the MOE's strategy, *Whakapūmautia Papakōwhaitia, Tau Ana*, which sets out that the principles are "*partnership, participation and protection*".¹⁸³
- (c) The principles "partnership, participation, protection" were analysed by the Tribunal in Stage One of the Wai 2575 Health Services and

¹⁷⁹ Ministry of Education Responses to Questions of Clarification (Wai 2180, #M27(g)) at question 27.

¹⁸⁰ #4.1.19 – hearing week eleven transcript at 75-79.

¹⁸¹ #4.1.19 – hearing week eleven transcript at 75-79.

¹⁸² Bundle of documents for cross-examination of MOE witnesses filed by Rainey Collins (Wai 2180, #M27(f)) citing Ministry of Education Statement of Intent 2018-2023 (2018) at 1, 6.

¹⁸³ Appendices to the Brief of Evidence of Iona Holsted and Jann Marshall for the Ministry of Education, dated 18 February 2019 (Wai 2180, #M27(a)) at 160 citing EDU4 *Whakapūmautia, Papakōwhaitia, Tau ana – Grasp, Embrace and realise. Conducting Excellent Education Relationships* at 7.

Outcomes inquiry. There, the Tribunal focused on the use of these principles in the primary health sector, including in particular in the strategy He Korowai Oranga. In its report for this Stage, the Tribunal:¹⁸⁴

- (i) Noted that these “principles” were derived from the 1988 Royal Commission on Social Policy.
 - (ii) Observed that “*Contemporary thinking on Treaty principles has moved on significantly from the ‘three Ps’ approach favoured in the health sector*”; and
 - (iii) Concluded, among other things, that “*He Korowai Oranga and its articulation of ‘partnership, participation and protection’ does not adequately give effect to the Treaty principles*”.
- (d) In Ka Hikitia, the “Treaty of Waitangi” is but one of five guiding principles. Ka Hikitia sets out that the strategy “*gives expression to how the principles of the Treaty of Waitangi are applied in education*”.¹⁸⁵
- (i) Despite this, in terms of Te Tiriti, the strategy makes a number of statements that in large part do not get close to meeting the standards of Te Tiriti, but instead refer to considering Māori “fairly” in policies and funding, and about Te Tiriti providing “context” to Crown-Māori relations. To explain, Ka Hikitia sets out:
 - (A) The rights and duties that stem from the principles of Te Tiriti “*include ensuring the position of Māori is considered fairly when developing policies and funding*”.
 - (B) Te Tiriti provides “*a context*” for relationships between the Crown, iwi and Māori.
 - (C) “*[E]nsuring Māori students enjoy and achieve educational success as Māori is a joint responsibility of the Crown, iwi, hapū and whānau*”.

¹⁸⁴ Waitangi Tribunal Hauora: Report on Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry (Wai 2575, 2019) at 79, 80, 97.

¹⁸⁵ Appendices to the Brief of Evidence of Iona Holsted and Jann Marshall for the Ministry of Education, dated 18 February 2019 (Wai 2180, #M27(a)) citing various passages from EDU1 Ka Hikitia Accelerating Success 2013 – 2017, including in particular at 14.

- (D) The power of collaboration and working with iwi and Māori organisations and how this is about creating ways for whānau, hapū and iwi to contribute to what and how Māori students learn.
- (E) There is an acknowledgement of the Crown's Te Tiriti obligation to strengthen and protect the Māori language.
- (ii) Other than this, there does not appear to be any specific explanation of what the Te Tiriti principles are or how they are to be applied or given effect to.
- (e) In terms of the New Zealand Curriculum, the statement of official policy for teaching and learning in English-medium schools:¹⁸⁶
 - (i) This document, together with foundation curriculum policy statements are underpinned by principles that required the curriculum to "*acknowledge the principles of the Treaty of Waitangi and the bicultural foundations of Aotearoa New Zealand*".
 - (ii) There are eight principles in this document, one of which is the "Treaty of Waitangi".
 - (iii) This sets out that the curriculum "*acknowledges the principles of the Treaty of Waitangi and the bicultural foundations of New Zealand. All students have the opportunity to acquire Te Reo Māori me ōna tikanga.*"
 - (iv) This document doesn't set out what the principles of Te Tiriti are, or how to give effect to them when setting up a curriculum.
- (f) In terms of the parallel document to the New Zealand Curriculum, for Māori-medium schools,¹⁸⁷ Te Marautanga o Aotearoa:¹⁸⁸

¹⁸⁶ Bundle of documents for cross-examination of MOE witnesses filed by Rainey Collins (Wai 2180, #M27(f)) citing Ministry of Education The New Zealand Curriculum (2007) at introductory sections, 9.

¹⁸⁷ #M27 Ministry of Education evidence at [56].

¹⁸⁸ Bundle of documents for cross-examination of Ministry of Education witnesses filed by Rainey Collins (Wai 2180, #M27(f)) at 4.

- (i) This document sets out that “*Central to Te Marautanga o Aotearoa is the Treaty of Waitangi. Arising from the Treaty are the following overarching principles to guide school-based curricula*”.
- (ii) This document doesn’t set out what the principles of Te Tiriti are, or how to give effect to them when setting up a curriculum.

7.32 To conclude, the evidence available indicates the MOE is utilising outdated references to Te Tiriti principles in key documents (if it references them at all) and appears to give little to no useful guidance of how to put these into practice.

7.33 Counsel question how the MOE, its staff, and educators more widely, are able to give effect to Te Tiriti and its principles, if it is unclear what these are and how to give effect to them. Counsel suggest that this lack of understanding and clarity has contributed to the breaches of Te Tiriti alleged in these submissions.

Policies and strategies: verging on the multitudinous, flawed in implementation, limited monitoring, and delays in updating

7.34 Another striking set of issues arising in relation to education were:

- (a) The sheer quantity of policies and strategies;
- (b) Flawed implementation of key policies and strategies;
- (c) The apparent lack of monitoring of the efficacy of these; and
- (d) The delays in updating policies and strategies that need refreshing.

7.35 With respect to the quantity of policies and strategies, counsel highlight the cross-examination of the MOE witnesses in which this issue was discussed.¹⁸⁹ Comments from educators bear out the difficulty of having multiple strategies and policies, often fragmented and lacking coherence, which make implementation a real challenge. In particular, counsel point to the following as examples:

¹⁸⁹ #4.1.19 – hearing week eleven transcript at 93-98.

- (a) Comments of a principal and Ministry official, who were interviewed as part of an analysis completed into the earlier iteration of Ka Hikitia:¹⁹⁰

One principal, struggling to find Ka Hikitia as he showed me a box where he kept the many documents and strategic plans received from the Ministry noted that “we have so many initiatives – (like) a flavour of the month.”

A Ministry official noted the same: We have high aspirations and goals, and a sense of what a difference we can make, and yet we have a whole lot of initiatives... (We have) lots of fragmented programs, but not an integrated game plan.

- (b) Conclusions of the Auditor General, in a report summarising findings by the Office of the Auditor General regarding Māori education in 2016 are also highly relevant:

*Right now, there are too many Māori education initiatives that are not connected or evaluated for cost-effectiveness. A more coherent set of initiatives would probably result in better outcomes. This would be an immense help to everyone in the school system. I know it is difficult to stop programmes, but I hope someone has the courage to try.*¹⁹¹

*In our view, the range of initiatives creates implementation problems and leads to confusion about how the different initiatives fit together. They are also potentially a waste of resources.*¹⁹²

*Efforts to improve Māori student achievement will benefit from a smaller and better-integrated range of initiatives and from initiatives that are shown to be effective for a range of outcomes. This would mean less internal competition for resources and attention, leading to simpler and less expensive implementation, support, and monitoring of initiatives that work together.*¹⁹³

¹⁹⁰ Bundle of documents for cross-examination of Ministry of Education witnesses filed by Rainey Collins (Wai 2180, #M27(f)) at 317, citing excerpt from P Goren *How Policy Travels: Making Sense of Ka Hikitia – Managing for Success: The Māori Education Strategy 2008-2012* (2009) at i-ii, 37-39.

¹⁹¹ Bundle of documents for cross-examination of Ministry of Education witnesses filed by Rainey Collins (Wai 2180, #M27(f)) at 206 citing *Report of the Auditor General Summary of our Education for Māori reports* (2016).

¹⁹² Bundle of documents for cross-examination of Ministry of Education witnesses filed by Rainey Collins (Wai 2180, #M27(f)) at 220 citing *Report of the Auditor General Summary of our Education for Māori reports* (2016).

¹⁹³ Bundle of documents for cross-examination of Ministry of Education witnesses filed by Rainey Collins (Wai 2180, #M27(f)) at 220 citing *Report of the Auditor General Summary of our Education for Māori reports* (2016).

7.36 In terms of flawed implementation of policies and strategies, the key Māori education strategy, Ka Hikitia has seen a number of issues, both in its first iteration from 2008-2012 and its second and current iteration from 2013-2017. Such issues have been traversed across a series of reports by the Office of the Auditor General. They were also acknowledged by MOE witnesses before the Tribunal. Counsel highlight the following:

(a) In respect of Ka Hikitia 2008-2012:

(i) The Auditor General concluded that the MOE introduced Ka Hikitia “slowly and unsteadily”. It was concluded that “[c]onfused communication about who was intended to deliver Ka Hikitia, unclear roles and responsibilities in the Ministry, poor planning, poor programme and project management, and ineffective communication with schools meant that action to put Ka Hikitia into effect was not given the intended priority”.¹⁹⁴

(ii) MOE witnesses indicated that while being a “very fine policy document”:¹⁹⁵

(A) It had not actually been integrated across the Ministry.

(B) There was a history of “*of things Māori being appended to, but not integrated with everything else that’s happening for the Ministry of Education*” which was “*not unusual*” for the MOE. Rather, it was “*quite typical of the time*” for Māori policy to be set aside and developed “*almost in isolation*”.

(C) There were multiple reasons why it was not implemented as well, with insufficient time and resources being provided to training teachers and providing the curriculum to support it, a possible reason.

(D) The strategy was one of “*launch and hope*”.

¹⁹⁴ Bundle of documents for cross-examination of Ministry of Education witnesses filed by Rainey Collins (Wai 2180, #M27(f)) at 67, citing *Report of the Auditor General Education for Māori - Implementing Ka Hikitia* (2013).

¹⁹⁵ Hearing Week Eleven transcript (Wai 2180, #4.1.19) – Tribunal questions and cross-examination of Ministry of Education officials at 41-42, 59.

- (b) In spite of the feedback obtained on the 2008-2012 strategy, Ka Hikitia 2013-2017 also faced issues:

- (i) MOE witnesses advised that:¹⁹⁶

The principles of Ka Hikitia – Accelerating Success, 2013-2018 is well-regarded across the education sector. However, while there are 'pockets of excellence' supporting Maori to succeed as Maori, this is not the norm. Ka Hikitia has not been implemented as intended across-the-board and this will be a focus in the refresh of the strategy in 2019.

- (ii) In 2016, the Auditor General indicated that there were some implementation problems with Ka Hikitia,¹⁹⁷ and there has been only modest improvement overall in Māori students' academic results since Ka Hikitia was launched. Nevertheless, the strategy had been helping to create the conditions for improved Māori student success.¹⁹⁸

- (c) In summarising the reporting from the preceding years in relation to Māori education and Ka Hikitia, the Auditor General stated in 2016 that:¹⁹⁹

In our view, significant improvement in Māori student achievement is a realistic objective.

However, progress on Māori education is still too slow. The disparity between Māori and non-Māori is too great, and too many Māori students are still leaving our school system with few qualifications.

We urge the education sector to:

- *do more to enable greater and faster gains in Māori student achievement;*

¹⁹⁶ #M27 Ministry of Education evidence at [27].

¹⁹⁷ Counsel understand this was in reference to both iterations of the strategy.

¹⁹⁸ Bundle of documents for cross-examination of Ministry of Education witnesses filed by Rainey Collins (Wai 2180, #M27(f)) at 218, citing *Report of the Auditor General Summary of our Education for Māori reports* (2016)

¹⁹⁹ Bundle of documents for cross-examination of Ministry of Education witnesses filed by Rainey Collins (Wai 2180, #M27(f)) at 211, citing *Report of the Auditor General Summary of our Education for Māori reports* (2016).

- *share and learn from the better-performing schools;*
- *properly implement the Ka Hikitia Māori education strategy in all schools;*
- *continue to support the growth of better relationships between schools and whānau;*
- *make better use of information to help improve Māori student achievement; and*
- *lead a more co-ordinated effort to share good practices and to collect and use information to inform decisions and better support Māori students.*

- (d) A key focus of Ka Hikitia is on the language, culture and identity of Māori learners.²⁰⁰ That the MOE witnesses acknowledged that “*the failure to respond to the identity, language and culture of Maori has harmed Maori and has contributed to poor education outcomes over generations*”,²⁰¹ is indicative of the degree of success implementation of Ka Hikitia has had to date.

7.37 With respect to monitoring the success or otherwise of the key Māori educational strategy, Ka Hikitia, it is evident this is no longer completed in the way initially intended, that statistics on Māori education are being made available on the Education Counts website (although it does not appear that these are being measured against Ka Hikitia’s goals) and that the MOE is now looking for options for reporting on strategy progress:

- (a) In questions of clarification, counsel noted that MOE evidence indicated that “*Ministry of Education, ERO and education sector agencies will publish annual monitoring reports to measure the progress against the actions, goals, outcomes, targets, measures, and vision*” of Ka Hikitia²⁰² and indicated it was understood that the annual monitoring would be reported in Ngā Haeata Mātauranga: The Annual Report on Māori

²⁰⁰ Appendices to the Brief of Evidence of Iona Holsted and Jann Marshall for the Ministry of Education, dated 18 February 2019 (Wai 2180, #M27(a)), see Principle 4 of Ka Hikitia in EDU 1.

²⁰¹ #M27 Ministry of Education evidence at [12], [13], [14], [15], [28], [31], [103].

²⁰² Appendices to the Brief of Evidence of Iona Holsted and Jann Marshall for the Ministry of Education, dated 18 February 2019 (Wai 2180, #M27(a)) at 58.

Education. Counsel questioned MOE witnesses about where copies of these reports for the years 2017 onward could be located.

(b) The MOE responded:²⁰³

Ngā Haeata Mātauranga reports have not been produced since 2015/16. The Ministry of Education has put emphasis on making more statistical data about Iwi and Māori learners, and learners in Māori medium available in the statistics and indicators pages on the Education Counts website (www.educationcounts.govt.nz). A key feature of this was the release on Te Mataaho-ā-Iwi|Iwi Education Data dashboard (<https://www.educationcounts.govt.nz/iwidashboard>) in September 2019. The dashboard is a tool developed in partnership with iwi education leaders around the country and provides iwi with up to date data about Māori learners, along with learners who affiliate to their iwi. With reviews of Ka Hikitia and Tau Mai Te Reo being undertaken, the Ministry is looking at options for reporting on the progress of these strategies.

7.38 It is also evident that a number of these policies and strategies were due for “refreshes” but that these have not occurred as scheduled. For example:

- (a) The MOE advised that the refresh of Ka Hikitia and Tau Mai Te Reo (both 2013-2017 programmes) would occur “during the 2019/20 financial year”,²⁰⁴ after initially indicating this would occur “in 2019”.²⁰⁵ In response to a question about why Ka Hikitia was not refreshed in 2018 and why there has been a further projected delay for the refresh to the 2019/20 financial year, the MOE responded by advising that *“The timeframe for the finalisation of the refresh of both Ka Hikitia and Tau Mai Te Reo is intended for mid-2020. This will allow both strategies to reflect and build on key workstreams for Māori learners and whānau arising from the component parts of the overall Education Work Programme”*.²⁰⁶
- (b) Where such strategies or policies are not working as intended, it appears particularly important to avoid delays in refreshing.

²⁰³ Responses from the Ministry of Education to questions of clarification (Wai 2180 #M27(g)) at 25.

²⁰⁴ Updated Summary of evidence of Iona Holsted and Jann Marshall on behalf of the Ministry of Education (Wai 2180, #M27(d)) at [22].

²⁰⁵ Summary of evidence of Iona Holsted and Jann Marshall on behalf of the Ministry of Education (Wai 2180, #M27(b)) at [21].

²⁰⁶ Responses from the Ministry of Education to questions of clarification (Wai 2180 #M27(g)) at 26.

- 7.39 To conclude, while there is a significant amount of rhetoric about improving the educational outcomes and experiences of Māori tamariki (including Taihape Māori), the sheer quantity of policies and strategies, issues with their implementation and monitoring, and delays in scheduled refreshes, indicate that there is some way to go before this rhetoric consistently filters down and translates to positive impacts on the experiences of Taihape Māori in education.

Consistent failure to provide a te reo Māori pathway

- 7.40 While te reo Māori in Taihape is a matter dealt with in the generic claimant closing submissions on Te Reo Rangatira me ōna Tikanga, the lack of pathway for te reo Māori in the education system is another fundamental theme for education.

- 7.41 Counsel leave the detail of the Crown's treatment of te reo Māori to that submission, but note the following in relation to the te reo pathway in education:

- (a) The MOE is clearly aware (and has been for some time) about the importance of te reo to educational success for Māori (including Taihape Māori):
 - (i) In discussing the Ka Hikitia strategy and its predecessor (released in 2008), the MOE evidence sets out that the Ministry knows "*Maori students thrive in educational settings that reflect their identity, language and culture.*"²⁰⁷
 - (ii) It is clear that there is a strong correlation between being a te reo Māori speaker and qualification attainment, something that MOE officials are aware of,²⁰⁸ and which is set out in MOE documents.²⁰⁹ Conversely, Māori students in English medium schools are more likely to have lower rates of achievements in literacy, numeracy and science than non-Māori students.²¹⁰

²⁰⁷ #M27 Ministry of Education evidence at [24].

²⁰⁸ #4.1.19 – hearing week eleven transcript at 83-84.

²⁰⁹ Appendices to the Brief of Evidence of Iona Holsted and Jann Marshall for the Ministry of Education, dated 18 February 2019 (Wai 2180, #M27(a)) at 93.

²¹⁰ Appendices to the Brief of Evidence of Iona Holsted and Jann Marshall for the Ministry of Education, dated 18 February 2019 (Wai 2180, #M27(a)) at 38.

- (b) Notwithstanding its acknowledged importance, evidence from the MOE and from tāngata whenua evidence illustrates the serious and ongoing gaps in the pathway for learning te reo Māori in the inquiry district.²¹¹
- (c) Taihape Māori have been tireless in seeking to ensure that their reo is catered for in the education system. However, despite the state of te reo Māori and the importance of it to Taihape Māori and their educational success, this has not been met by equal commitment from the Crown. To the contrary, the evidence indicates the Crown's response has been one of complacency, with an overwhelming preference for the status quo. To illustrate:
 - (i) Tāngata whenua kōrero details the call by Taihape Māori to the MOE for a kura kaupapa, which had its genesis in wānanga and collaborative measures within the hapū and the marae of this area. This kōrero shares the immense efforts and hope this call had on the part of Taihape Māori, but which ultimately resulted in the MOE telling Taihape Māori to work with what they had (which was an incomplete te reo pathway).²¹² These immense efforts are detailed in a number of briefs of evidence, including that of Ngaire Anne Kauika-Stevens, who observed:²¹³

[W]e 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 te reo. There was no consideration from the Crown to honour any treaty obligations at all. The Crown was only interested in pleasing the Taihape community at large, not its Treaty partner. ...

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 then and, still today, it has not

²¹¹ See for example: Brief of evidence of Nicola Chase dated 18 September 2017 (Wai 2180, #G9) at [9], Brief of evidence of Neville Lomax dated 29 November 2017 (Wai 2180, #H10) at [24]-[30], Brief of evidence of Barbara Thomason dated 12 February 2018 (Wai 2180, #I12) at [23].

²¹² Brief of evidence of Ngaire Anne Kauika-Stevens dated 19 March 2018 (Wai 2180, #J5) at [32]-[39], Brief of evidence of Nicola Chase dated 18 September 2017 (Wai 2180, #G9) at [9].

²¹³ Brief of evidence of Ngaire Anne Kauika-Stevens dated 19 March 2018 (Wai 2180, #J5), citing in particular [36], [39].

changed. We are still being denied a basic right to learn our language in our own rohe, on our own land.

- (ii) The kura kaupapa had been sought due to the concerns Taihape Māori had that the needs of Māori learners were not being met in current schools, that there were a lack of options beyond kōhanga for immersion learning of te reo Māori, and that the provision of an educational environment separate from the mainstream was desired.²¹⁴
- (iii) The relevant Minister at the time acknowledged the call for a kura kaupapa, but indicated that for Taihape at that time, the risks “probably” outweigh the potential benefits. That view was supported by the MOE. MOE officials stated that the data from that time shows that kura in particular, being largely rural with low roles was susceptible to requiring statutory intervention in order to remain operational. However, as MOE officials accepted under cross-examination:²¹⁵
 - (A) This particular inquiry district is largely rural and has relatively low roles, but MOE evidence did not identify any further risks for a kura in this inquiry district, beyond those the MOE would generally expect a kura to face.
 - (B) At the time, the MOE instead recommended that the reorganised network of schools be encouraged to meet the needs of Māori students in their schools. The MOE supported the Reo Rua Unit continuing for the area school, a class in Māori and English medium, but this was disestablished in 2011.
 - (C) The consequence of this is that no child at that school, now Taihape Area School, the only full secondary school in the inquiry district, receives more than 3 hours of te reo tutoring a day. Furthermore, only 11 Māori students in the

²¹⁴ Appendices to the Brief of Evidence of Iona Holsted and Jann Marshall for the Ministry of Education, dated 18 February 2019 (Wai 2180, #M27(a)) at 206.

²¹⁵ #4.1.19 – hearing week eleven transcript at 85-87. See also #M27 Ministry of Education evidence at [97]-[100].

inquiry district have access to the kind of learning that would even afford them the opportunity to achieve bilingual outcomes.²¹⁶

- (iv) Tāngata whenua kōrero shares the pain of the closure of the Reo Rua unit (teaching through te reo Māori and English)²¹⁷ operating at Taihape Area School in 2011, which despite the progress made and numbers of students increasing from five years prior, was shut without consultation between the Board of Trustees, the Kaiako, whānau, iwi, hapū or marae.²¹⁸
- (d) This complacency on the part of the Crown has continued to the present day in this inquiry district:
 - (i) Notwithstanding the high percentage of Māori learners (making up nearly half the student population),²¹⁹ the clear efforts and a request for a kura kaupapa by Taihape Māori, and the emphasis in Ka Hikitia and other strategy documents on the importance of te reo, at present, only 11 Māori students have access to the kind of learning that would even afford them the opportunity to achieve bilingual outcomes.²²⁰
 - (ii) Te reo Māori does not feature strongly in any of ERO's reports for schools in the inquiry district.²²¹ Further, as MOE officials agreed it was fair to say, the evidence indicated it might be the case that bicultural practices (such as te reo me ngā tikanga Māori, effective whānau engagement) were not widespread in all of the early learning centres in the inquiry district.²²²
 - (iii) Over 15 years have passed since the initial request that was made by iwi about the possibility of having a kura kaupapa in the inquiry district, but this has not been revisited by the MOE, on the

²¹⁶ Appendices to the Brief of Evidence of Iona Holsted and Jann Marshall for the Ministry of Education, dated 18 February 2019 (Wai 2180, #M27(a)) at 68, 84-85. *Tau Mai Te Reo* at 68 outlines that a minimum of 50 percent formal Māori Language instruction is needed to achieve bilingual outcomes coupled with sustained participation and quality Māori medium education for at least six years.

²¹⁷ Responses from the Ministry of Education to questions of clarification (Wai 2180 #M27(g)) at 14.

²¹⁸ Brief of evidence of Tanya Beatty dated 4 May 2018 (Wai 2180, #K12) at [33]-[43].

²¹⁹ #M27 Ministry of Education evidence at [85].

²²⁰ Responses from the Ministry of Education to questions of clarification (Wai 2180 #M27(g)) at 19.

²²¹ #M27 Ministry of Education evidence at [88].

²²² #4.1.19 – hearing week eleven transcript at 102-103.

basis that it did not receive a new request. This is despite being aware of the initial request, and the MOE's obligation to actively protect te reo. In response to a question in this regard, the MOE advised "*The Taranaki, Whanganui, Manawatū regional office has not received an application for the establishment of a kura kaupapa, nor received any enquiries regarding the establishment of a kura kaupapa since 2004*".²²³

7.42 In summary, when it comes to the Crown's efforts to actively protect te reo Māori of Taihape Māori in their rohe, it has been long on words, short on action. The Crown has failed to actively protect te reo Māori in this inquiry district, and has shown little appetite for changing this.

7.43 Despite Taihape Māori crying out for their reo, they have been left with only grand, aspirational statements about the importance of te reo Māori to educational success, which can be contrasted with a consistent and almost complete lack of action to ensure Taihape Māori have had access to a proper te reo pathway.

7.44 Counsel highlight the following findings from two previous Tribunal inquiries:

*For the Crown's education system to be Treaty-compliant, full Māori-immersion pathways, from kōhanga to wānanga, should be available to all Te Rohe Pōtae whānau who wish to access them.*²²⁴

*The failure actively to protect Māori Treaty rights when necessary is as much a breach of the Treaty as the active removal of those rights.*²²⁵

Inequities

*Education is the most effective means to an equitable society. There are links between a parent's and a child's educational attainment, between education and health, education and income. In short, better education produces better lifelong outcomes.*²²⁶

²²³ Responses from the Ministry of Education to questions of clarification (Wai 2180 #M27(g)) at 13-14.

²²⁴ Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims* – Part V (Wai 898, 2020) at 241.

²²⁵ *Tū Mai te Rangi: Report on the Crown and Disproportionate Reoffending Rates* Waitangi Tribunal (Wai 2540, 2017) at 22.

²²⁶ Bundle of cross-examination documents for #A41 report filed by Rainey Collins (Wai 2180, #A41(e)) at 55, citing Report of the Auditor General, *Summary of our Education for Maori reports* (2016).

*The negative social and economic impacts of low educational achievement on individuals and communities are now widely recognised. In one respect, low rates of Māori achievement in education are just one aspect of the poor social outcomes flowing from earlier serious Crown Treaty breaches. ... In other respects, low educational attainment is, in itself, a direct cause of prejudice, through entrenching poverty and disadvantage in other areas. Leaving school early without qualifications, for instance, vastly limits an individual's potential earning ability, in turn making them more vulnerable to poor health and substandard housing. But on the other hand, education also presents the opportunity to break out of cycles of social and economic disadvantage.*²²⁷

- 7.45 In general, while there have been improvements to aspects of the education provided to Māori, there are continued inequities between education outcomes of Māori and non-Māori, and the education system is still failing a disproportionate number of Māori students. As stated by MOE witnesses we *“know that the education system is still not producing equitable outcomes for Maori students in the Inquiry district, and across Aotearoa. There are a number of challenges that we need to address.*²²⁸
- 7.46 While there are some variations in respect of certain education outcomes (and fluctuations due to a smaller school population) in the inquiry district, counsel are unaware of any evidence to suggest that the overall situation is materially better for Taihape Māori than it is for Māori elsewhere in Aotearoa.
- 7.47 Counsel highlight the following statistics:
- (a) Although it appears that at least one school *nearby* the inquiry district has seen improvements in recent NCEA results,²²⁹ the secondary schools in this inquiry district, and in particular Taihape Area School, has yielded results for Māori pupils ranging from those that have been described as “very poor” to “variable”.²³⁰ As stated in MOE evidence, *“[o]ver the past decade, more Maori students are achieving at NCEA Level 2 and above, continuing to study at school until they are 17, and leaving school with University Entrance. At the same time however,*

²²⁷ Waitangi Tribunal *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae claims* – Part V (Wai 898, 2020) at 242.

²²⁸ #M27 Ministry of Education evidence at [31].

²²⁹ Rangitikei College – see #A41 at 158.

²³⁰ #A41 at 158.

*Maori continue to experience inequitable educational outcomes in relation to non-Maori.*²³¹

- (b) With respect to achievement at primary schools: ERO reports that achievement in primary schools indicate “*they support their Maori students to achieve at levels similar to others in the same school*”.²³²
- (c) With respect to achievement at Taihape area school (primary and secondary) and its predecessors:
 - (i) By the end of the 1980s, 64% of Māori left school with qualifications, well below the 87% achieved by non-Māori. Taihape College appears to have followed the pattern nationally, at least for the year for which information was found.²³³
 - (ii) As at the 2013 census, Taihape Māori were more likely than non-Māori inside and outside the inquiry district to have:²³⁴
 - (A) No qualification;
 - (B) Solely NCEA level 1; and
 - (C) No post-school qualification.
 - (iii) Taihape secondary school leavers' data averaged across three years 2015 to 2017 indicates that approximately 75% achieved NCEA Level 2. Māori school leavers' achievement was lower at approximately 65%.²³⁵
 - (iv) In 2017, 76% of Māori school leavers attained at least NCEA Level 2 in the inquiry district, compared to 86% of non-Māori in the inquiry district, 68% of Māori school leavers nationally and 85% of non-Māori nationally.²³⁶

²³¹ #M27 Ministry of Education evidence at [28].

²³² #M27 Ministry of Education evidence at [65].

²³³ #A41 at 135.

²³⁴ #A41 at 137.

²³⁵ #M27 Ministry of Education evidence at [69].

²³⁶ Responses from the Ministry of Education to questions of clarification (Wai 2180 #M27(g)) at 5 – Table showing proportion of school leavers achieving NCEA Level 2 or above.

- (v) In 2018, 63% of Māori school leavers attained at least NCEA Level 2 in the inquiry district, compared to 92% of non-Māori in the inquiry district, 66% of Māori school leavers nationally and 84% of non-Māori nationally.²³⁷
 - (vi) MOE evidence stated that *“Maori students in the Taihape Inquiry district have lower NCEA Level 2 achievement when compared to Maori in decile 4 secondary schools across all New Zealand over the period 2015-2017 (73%). On average, 75% of Maori in decile 4-7 English medium area schools achieved NCEA Level 2 over the period 2015-2017”*.²³⁸
 - (vii) ERO reports that *“disparity in achievement between Maori and other students is evident at both primary and senior secondary levels. The reasons for this different pattern of achievement across the schools are not clear. What is clear is that all the schools show a commitment to better responding to Maori learners, but so far with little long-term success. High levels of student transience in two of the larger schools (Taihape Area School and Waionuru School) appear to be a contributing factor”*.²³⁹
- (d) With respect to tertiary study:
- (i) *“... Maori students from the Inquiry district who left school between 2009 and 2014 were less likely than non-Maori in the Inquiry district, and Maori school leavers nationally, to be enrolled in tertiary education within three years of leaving school. As with Maori nationally, Maori school leavers in the Inquiry district were more likely to enrol in lower level tertiary provision”*.²⁴⁰
 - (ii) *“From 2009-2017, and specifically for Taihape Area School, 70% of Māori school leavers (130 of 185 learners) went on to tertiary education. For non-Māori school leavers, 77% (150 of 195*

²³⁷ Responses from the Ministry of Education to questions of clarification (Wai 2180 #M27(g)) at 5 – Table showing proportion of school leavers achieving NCEA Level 2 or above.

²³⁸ #M27 Ministry of Education evidence at [70].

²³⁹ #M27 Ministry of Education evidence at [65].

²⁴⁰ #M27 Ministry of Education evidence at [114].

*learners) left Taihape Area School and went into tertiary education".*²⁴¹

(e) With respect to attendance at schools:

- (i) There has been a decrease in the percentage of tamariki and rangatahi Māori attending school regularly since 2011 (56% to 50%)",²⁴² although MOE evidence indicates that the level of attendance at school is higher than Māori nationally, level of suspensions, expulsions, are lower than Māori nationally.²⁴³

(f) With respect to qualifications:

- (i) Taihape Māori were less likely than Māori outside the inquiry district to have a post-school qualification, including a bachelor's degree or similar.²⁴⁴
- (ii) The 2013 census indicated that Māori in Taihape were poorly qualified compared with both non-Māori (inside and outside the inquiry district) and with Māori nationally.²⁴⁵

7.48 Crucially, educational outcomes feed into employment opportunities down the track; for example, students who achieve at NCEA Level 2 or above are more likely to have positive employment outcomes.²⁴⁶

7.49 While the lack of qualifications has not been reflected as strongly in levels of employment as might have been expected, the evidence indicates that Taihape Māori are primarily employed in jobs involving manual labour; over one in five Taihape Māori were classified as labourers, which is twice the national average.²⁴⁷ Despite both Māori and non-Māori within the inquiry district being less likely to be classified as professionals than those outside it, non-Māori were still at least twice as likely as Māori in the inquiry district, for example, to be managers.²⁴⁸ Further, by the measure of either median or average personal

²⁴¹ Responses from the Ministry of Education to questions of clarification (Wai 2180 #M27(g)) at 3.

²⁴² #M27 Ministry of Education evidence at [28].

²⁴³ #M27 Ministry of Education evidence at [72]-[75].

²⁴⁴ #A41 at 137.

²⁴⁵ #A41 at 144.

²⁴⁶ #M27 Ministry of Education evidence at [67].

²⁴⁷ #A41 at 144.

²⁴⁸ #A41 at 140.

income, both inside and outside the inquiry district, Taihape Māori received lower incomes than their non-Māori counterparts.²⁴⁹

- 7.50 The available statistics are indicative of the fact that, although employment in agriculture and forestry has to some extent reduced the negative impact on the employment levels of Taihape Māori in spite of lower qualifications, they have been unable to share equally in the fruits of the resources and employment opportunities in the inquiry district when compared with non-Māori in the inquiry district.
- 7.51 All in all, the evidence indicates that the Crown has failed to ensure a general equality of educational outcomes as between Māori (including Taihape Māori) and non-Māori.
- 7.52 It is acknowledged that the resources that may be able to be devoted to addressing inequities may vary from time to time.
- 7.53 However, consistent with the observation by the Tribunal when discussing inequities in health outcomes in *Tauranga Moana*, where a disparity has long been well known and still exists, this “*indicates a failure of active protection by the Crown*” and “*an inadequate determination to reduce disparities*”.²⁵⁰ This should be equally applicable when dealing with educational inequities.

Housing

- 7.54 A key theme arising in relation to housing relates to the inequities arising between housing standards and access to housing assistance.

Inequities

- 7.55 It is evident from the information available that there have been inequities as between Māori and non-Māori with respect to housing standards and access to housing assistance over time.
- 7.56 There is limited information, primarily in the form of brief anecdotal accounts, regarding housing of Taihape Māori at the turn of the 20th century. It has been tentatively suggested that the conditions at this time might have been better

²⁴⁹ #A41 at 141.

²⁵⁰ Waitangi Tribunal *Tauranga Moana 1886–2006* (Wai 215, 2010) Vol II, at 811.

than for Māori elsewhere in the country.²⁵¹ Counsel have not located any clear evidence to confirm that they were of an equivalent standard to non-Māori at this time.

- 7.57 In 1925, the Native Inspector and the Rangitīkei County Council inspector observed that a pa north of Taihape had dwellings in a dilapidated state, located in very unsanitary surrounds.²⁵² The standard of Māori housing declined in the early 1930s due to the Depression. While this impacted Pākehā, it did so to a lesser extent.²⁵³ Significantly 1938, a survey of 80 Māori dwellings located near the inquiry district found only 15 houses considered habitable.²⁵⁴
- 7.58 The population census of 1956, to the extent that data is available, revealed ongoing inequities in Māori housing when compared with non-Māori of the Taihape Inquiry district and non-Māori nationally.²⁵⁵
- 7.59 There has been improvement over time in terms of the issues faced by Taihape Māori, particularly in the decade following 1956,²⁵⁶ but in 2013, it is evident that inequities remain. For example, Māori dwellings in the inquiry district remain significantly more likely to be rented than non-Māori dwellings, and significantly less likely to be owned without a mortgage.²⁵⁷
- 7.60 Under cross-examination, Dr Christoffel indicated that in the post-war period it was generally better to be in a house with a mortgage or paying rent than living in a mortgage or rent free home because of the quality of the housing.²⁵⁸

A. It is all very well being in a mortgage free house but it doesn't have a toilet or a bathroom. It lacks the most basics. Electricity. If it lacks the most basic facilities –

Q. Yes.

A. – then you were better off taking on a loan or going into a much better quality, if it is available, a better quality rental house ...

²⁵¹ #A41 at 264.

²⁵² #A41 at 266.

²⁵³ #A41 at 266, 267.

²⁵⁴ #A41 at 266, 267.

²⁵⁵ #A41 at 310.

²⁵⁶ #A41 at 279.

²⁵⁷ #A41 at 311.

²⁵⁸ #4.1.15 – hearing week seven transcript at 419-420.

Q. Yes. So it is actually a reflection of the standard of housing that Māori were faced with should they not –

A. Yes.

- 7.61 Tāngata whenua evidence also indicates that the availability of housing finance and restrictions associated with building on multiple-owned land have impacted on the ability of whānau to return or remain on their tupuna whenua.²⁵⁹

8. PREJUDICE

- 8.1 Claimant-specific closing submissions will deal with the prejudice suffered by Taihape Māori as a consequence of the Crown's acts and omissions in relation to education, health and other social services in more detail. However, this prejudice includes:

- (a) A significant reduction in the ability of Taihape Māori to provide for their present and future generations.
- (b) The overrepresentation of Taihape Māori in negative socioeconomic statistics, as compared with their non-Māori counterparts.
- (c) The undermining of mana and tino rangatiratanga of Taihape Māori.

9. REMEDIES

- 9.1 Claimant-specific closing submissions will deal with the relief sought from the Tribunal by Taihape Māori in more detail. However, any relief should include:

- (a) A finding that claims in respect of education, health and other social services are well-founded.
- (b) A finding that acts and omissions of the Crown have played a substantial role in disadvantaging Taihape Māori when it comes to education, health and housing, resulting in their overrepresentation in negative socioeconomic statistics.
- (c) A finding that acts and omissions of the Crown have undermined the mana and tino rangatiratanga of Taihape Māori.

²⁵⁹ See for example Brief of evidence of Heather Hyland Gifford, dated 12 February 2018 (Wai 2180, #110) at [16.8].

(d) Recommendations that the Crown:

- (i) As a matter of urgency, engage with Taihape Māori to rectify the serious gaps in the te reo pathway in the inquiry district. This should include working with Taihape Māori to open a kura kaupapa in the rohe.
- (ii) Work with Taihape Māori to ensure more equitable representation within the education system in the inquiry district, including through roles on Boards of Trustees.
- (iii) Work with Taihape Māori to ensure better access to health services in the inquiry district, equitable representation within the health system, and equitable pay (including as between Māori and “mainstream” providers and between genders).

Dated this 21st day of September 2020

The image shows two handwritten signatures in blue ink. The first signature on the left is 'Peter Johnston' and the second signature on the right is 'E Martinez'. Both signatures are written over a horizontal line.

P Johnston / E Martinez