
KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA
I TE TIRITI O WAITANGI

BEFORE THE WAITANGI TRIBUNAL

WAI 2180

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF THE TAIHAPE: RANGITĪKEI KI
RANGIPŌ DISTRICT INQUIRY

**CROWN CLOSING SUBMISSIONS IN RELATION TO
ISSUE 18: EDUCATION AND SOCIAL SERVICES**

7 May 2021

CROWN LAW

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INTRODUCTION

1. These closing submissions are filed on behalf of the Crown and address issues regarding education, te reo Māori (to the extent that it relates to the provision of education), health and other social services.
2. As the Crown emphasised in its opening submissions, a range of complex variables can affect health, education and social services outcomes. It is therefore important to assess claims of Tiriti/Treaty breach in respect of these issues on a case-by-case basis, and in light of the prevailing circumstances of the time.
3. The focus of the evidence on this topic has been the provision of education services in the Taihape inquiry district and that is, therefore, the focus of the Crown's closing submissions. The Crown addresses the evidence on matters relating to health and housing issues more generally. The Crown considers the Tribunal's Kaupapa inquiry process (with its focus on broader, systemic matters of policy and delivery) provides the better forum for substantively addressing these matters, as well as the contemporary provision of education services.

CROWN POSITION AND ACKNOWLEDGEMENTS

4. The Crown recognises the importance of education to Taihape Māori as a means of realising their many aspirations, including those of their whānau, children, and generations to come.
5. The Crown has already made a concession in this inquiry, acknowledging its failure to actively protect te reo Māori and encourage its use by iwi and Māori.¹ The Crown wishes to extend that concession, as follows:
 - 5.1 Taihape Māori children suffered by being punished for speaking te reo Māori in Crown-established schools, and that, despite there being no official policy banning the use of te reo Māori in schools, the Crown did not take adequate steps to prevent this practice.
 - 5.2 This was part of the Crown's failure to protect te reo Māori, which was in breach of te Tiriti o Waitangi/the Treaty of Waitangi and its

¹ Wai 2180, #3.3.31, at [12–14].

principles and has had longstanding and ongoing detrimental effects on the acquisition and use of te reo Māori, and on the tikanga and mātauranga of Māori, including for those within the Taihape inquiry district.

6. The Tribunal has accepted that there is no absolute duty on the Crown to provide education to its citizens.² The Crown accepts that te Tiriti o Waitangi/the Treaty of Waitangi and its principles requires the Crown, when it provides education (and other social services) to the population, to act fairly, reasonably, honourably and in good faith towards Taihape Māori. Where the Crown provides education and other social services, the principle of equal treatment inherent in Article III of te Tiriti o Waitangi/the Treaty of Waitangi requires the Crown to ensure Taihape Māori have the same access to, and standard of, education, health and housing services as non-Māori. Treaty principles also require the Crown to take steps that are reasonable in the prevailing circumstances to reduce disparity in outcomes between Māori and non-Māori.³ Over time, as the provision of education has become more strongly embedded as a core state function, educational aspirations and possibilities have become increasingly sophisticated (eg the Crown's role in education in 1950 differs markedly from the 1850).
7. The Crown recognises that its te Tiriti/Treaty duties relevant to education are not limited to ensuring an equal standard of education and active protection of te reo Māori (which the Crown has conceded it failed to do). In dialogue with the Tribunal and claimant counsel, Ms Holsted repeatedly expressed her commitment to working with Taihape Māori towards their educational aspirations whilst – correctly and properly – acknowledging that the Crown's part in that is always subject to resourcing constraints, the factors it can influence or control, and what is reasonable. These are ongoing processes and the Crown looks forward to continuing the dialogue through the education-focussed kaupapa inquiry.
8. The Crown's witnesses acknowledged in their evidence that Māori learners (including Taihape Māori) have consistently experienced inequitable

² Waitangi Tribunal *Te Mana Whatu Aburu (Te Robe Potae Report), Part V* (Wai 898, 2020) at p 168.

³ Waitangi Tribunal *Te Mana Whatu Aburu (Te Robe Potae Report), Part V* (Wai 898, 2020) at p 168.

outcomes in education in comparison to other learners, and that the state education system has been a contributing factor to these disparities.⁴ Ms Holsted and Ms Marshall further recognised that the state education system has not sufficiently valued Māori cultural understandings and has had consistently low expectations of tamariki and rangatahi Māori. The failure to respond to the identity, language and culture of Māori has harmed Māori and has contributed to poor education outcomes over generations. These issues have manifested in the Taihape inquiry district and, along with ‘out-of-school’ factors, have impacted on the education outcomes of claimants, their whanau and their ancestors.⁵

9. Whilst the Crown’s position is that:

9.1 the existence of inequitable outcomes does not, of itself, indicate the Crown has breached the principles of te Tiriti o Waitangi/the Treaty of Waitangi (that would effectively require the Crown to guarantee outcomes – which is not possible); and

9.2 it is difficult to assess and quantify the impact of the multiple (and complex) causes of negative education, health or housing outcomes, many of which the Crown has limited ability to control or influence;⁶

the Crown absolutely accepts its duty to take steps that are reasonable to address disparities in outcomes.

10. Ms Holsted, in discussion with the Tribunal, repeatedly affirmed the commitment of the Crown to using every tool at its disposal to improve educational outcomes, and to doing so in partnership with Māori. The Crown recognises its ongoing responsibility for education policy and for education delivery – and that providing quality teaching is one of the biggest levers to improve outcomes. Given their direct focus on these critical matters, the Tribunal’s Kaupapa Inquiries into Education, Health and Housing may

⁴ Wai 2180, #M27, at [11].

⁵ Wai 2180, #M27, at [13].

⁶ This is especially the case where claims are based on alleged failures by the Crown in respect of legislation or policy, one of the primary ways in which the Crown may influence education outcomes, and where the impact of those measures on day-to-day teaching in schools is not always one of direct cause and effect (the objectives of a policy may not always be achieved on the ground).

provide a better process and evidential basis for exploring these complexities, including opportunities for ongoing improvements and the Crown's duty to address disparity in outcomes.

11. In accordance with its duty to address disparities, the Crown is actively seeking to take meaningful steps in this area. For example, *Ka Hikitia* (the cross-agency Māori education strategy) looks to achieve system shifts in education and support Māori learners and their whānau, hapū and iwi to achieve excellent and equitable outcomes. While the Ministry of Education witnesses acknowledged *Ka Hikitia* had not been implemented as intended across the board,⁷ Ms Holsted's evidence was that work was being done to integrate *Ka Hikitia* both across the Ministry of Education and into classrooms and that the policy was being refreshed – along with complementary policies and programmes.⁸ Further initiatives are detailed in the body of these submissions. Despite this, the Crown recognises that the disparities are stubborn, there has been little long-term success and there is a need for continued concerted effort to address inequitable outcomes.⁹ As the Ministry of Education witnesses stated:¹⁰

We recognise there is much more to be done for the education system to better meet the needs and aspirations of Māori in the Taihape Inquiry district. The Ministry of Education remains committed to progressing priorities for Māori education in the Taihape Inquiry district and across Aotearoa.

12. The Crown accepts that education is also an important means through which it meets its Tiriti/Treaty obligations with respect to the protection of te reo Māori. As identified above, the Crown has conceded it has breached the principles of te Tiriti o Waitangi/the Treaty of Waitangi in failing to actively protect te reo Māori. Crown witnesses have acknowledged in this inquiry that Māori language in education, including Māori medium schooling (which is not available in the inquiry district at secondary level, and only in limited ways at primary level), provides significant opportunities to revitalise te reo Māori and support Māori educational wellbeing and achievement. While

⁷ Wai 2180, #M27, at 27.

⁸ Wai 2180, #4.1.19, at 42 and Wai 2180, #M27 at [27]. Counsel is instructed that updates of *Ka Hikitia* and *Tau Mai Te Reo* have been completed and published since this evidence was presented to the Tribunal.

⁹ Wai 2180, #M27, at [65].

¹⁰ Wai 2180, #M27(c), at [7].

Taihape Māori have been tireless to ensure te reo Māori is catered for across the education system, the Crown recognises that education in the inquiry district has not met the needs of all Māori learners.¹¹

13. The Crown recognises that the experience of the education system has been negative for many Taihape Māori.¹² The Crown heard that for many Taihape Māori, past and present policies and practices, particularly those relating to te reo Māori and the Crown's responsiveness to requests for particular education services, have had a detrimental effect on Taihape Māori. The Crown acknowledges these important issues that Taihape Māori have raised and sets out below its position in response to those claims.

ASSESSING THE EVIDENCE AND KEY CONSIDERATIONS

14. Evidence regarding education (and other social services) has been received in this inquiry from Dr Paul Christoffel¹³ and the Ministry of Education (evidence of Iona Holsted and Jann Marshall).¹⁴ The Tribunal has also had the benefit of hearing evidence filed by tangata whenua witnesses who have given evidence concerning their experiences, and the experiences of their tupuna and tamariki in the education system (as students, as parents, as members of Taihape education communities, as school board members, and as service providers in partnership with the Ministry of Education).¹⁵
15. The Crown notes the limitations identified by Dr Christoffel in relation to his report, including:

15.1 the size and location of the inquiry district presenting methodological problems, including settlements outside the district dominating parts of the written record (owing to county boundaries), and the need to infer local developments from regional

¹¹ Wai 2180, #M27, at [102]–[103].

¹² See for example Wai 2180, #G09, at [16]; Wai 2180, #J05, at [17]–[18]; Wai 2180, #E03(a), at [11]–[13]; Wai 2180, #E07(a), at [7]; Wai 2180, #G02, at [3]; Wai 2180, #G04, at [26]; Wai 2180, #G05, at [8]; Wai 2180, #H03, at [10]–[13]; Wai 2180, #H10, at [19]–[34]; Wai 2180, #H11, at [11]–[15]; Wai 2180, #I12, at [16]–[18]; Wai 2180, #J09, at [23]; Wai 2180, #J13, at [10]; Wai 2180, #K12.

¹³ Wai 2180, #A41.

¹⁴ Wai 2180, #M27 and #M27(c).

¹⁵ See for example Wai 2180, #I10; Wai 2180, #G09; Wai 2180, #J05; Wai 2180, #E03(a); Wai 2180, #E07(a); Wai 2180, #G02; Wai 2180, #G04; Wai 2180, #G05; Wai 2180, #G07; Wai 2180, #G08(a); Wai 2180, #H03; Wai 2180, #H10; Wai 2180, #H11; Wai 2180, #H12; Wai 2180, #J09; Wai 2180, #J13; Wai 2180, #K12; and Wai 2180, #I15.

or national ones owing to little local information.¹⁶ In response to Tribunal questioning, Dr Christoffel noted examples where the national picture was different, including housing trends and, in terms of education matters, native schools;¹⁷

15.2 reliance (almost exclusively) on written sources;¹⁸ and

15.3 in relation to education issues:

15.3.1 the fact that the report largely focuses on education policy rather than on the specifics of what was taught in the classroom;¹⁹ and

15.3.2 the lack of native schools in the district on which to focus research,²⁰ and the consequent difficulties identifying general schools to focus on to build a picture of the provision of education to Māori in the district.²¹

16. The Crown also acknowledges the limitations of the evidence given by Ms Holsted and Ms Marshall, in particular:

16.1 The evidence focuses on contemporary education policy and delivery rather than detailing the Crown's historical delivery of education.

16.2 Statistical analysis of student achievement in the inquiry district has limitations due to the small student population, with the achievement of one or two students significantly impacting the reported results.

16.3 As the evidence has been provided by the Ministry of Education, its focus is at the level of policy and work taking place across the

¹⁶ Wai 2180, #A41, at 3.

¹⁷ Wai 2180, #4.1.15, at 373.

¹⁸ Wai 2180, #A41, at 3.

¹⁹ Wai 2180, #A41(d), at 10.

²⁰ The only one being Moawhango, which operated as a native school for 24 years 1944 – 1969.

²¹ Wai 2180, #A41, at 18–20.

system, with specific attention to the inquiry district, rather than on the day-to-day functioning (and actions) of individual schools.

17. The limitations identified above should be considered in assessing claims relating to education and other social services. The Crown also emphasises that all relevant facts and circumstances must be taken into account before a finding of Tiriti/Treaty breach relating to such claims can be made. In this regard:
- 17.1 The Crown is to be held to the principles of Te Tiriti o Waitangi/the Treaty of Waitangi – including recognising the importance of identity, language and culture within that framework. In doing so, care must be taken not to ascribe today’s standards and reasonable expectations to the Crown actions and actors of the past. Historical context and prevailing circumstances are fundamental, including the state of knowledge at the time and the question of what was reasonably foreseeable.
- 17.2 Consideration should be given to the resources available to the Crown, and prioritisation of these, particularly when considering the Crown’s response to calls for particular services. The Tribunal should be cautious in considering these issues where the full context of Crown actions and demands on its resources, including on a national scale, is not known. Context, and a measurement of Crown action requires a comparative assessment with the experiences of others in New Zealand, both Māori and Pākehā.
- 17.3 The geographical location of the inquiry district also requires consideration. There have never been any significant urban centres in the inquiry district. Instead, the district is a collection of rural districts, small settlements and towns. Dr Christoffel considered the district’s isolation, small population and rural characteristics caused enormous challenges to the provision of services such as

education.²² It appears the provision of education services has reflected population fluctuations.²³

CURRENT DAY PROVISION OF EDUCATION

18. The evidence from the Crown shows the continued commitment by the Ministry of Education to provide education to Taihape Māori and the population of New Zealand generally. The Ministry has been working to remedy historical disparities for some time and the Crown notes that there are several programmes underway that are designed to ensure students have the same educational opportunities, wherever they live. This is addressed further below.
19. As noted in Crown evidence, the education system is a decentralised one, with responsibility for the administration, management and governance of individual schools lying with individual School Boards.²⁴ Schools are given the autonomy and flexibility to work closely with their local communities to allow them to respond directly to local priorities and needs. Boards are comprised of the school principal and a mix of elected and non-elected representatives from the school community. There is also a staff representative and, in secondary schools, a student representative and a number of co-opted and appointed members.²⁵
20. Section 127(1)(d) of the Education and Training Act 2020 provides that one of a board's primary objectives in governing a school is to ensure that:

the school gives effect to Te Tiriti o Waitangi, including by—

- (i) working to ensure that its plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori, and te ao Māori; and
- (ii) taking all reasonable steps to make instruction available in tikanga Māori and te reo Māori; and
- (iii) achieving equitable outcomes for Māori students.

²² Wai 2180, #4.1.15, at 493.

²³ Wai 2180, #4.1.15, at 493.

²⁴ Wai 2180, #M27, at [17]–[18].

²⁵ Wai 2180, #M27, at [19].

21. There are eight early learning services in the inquiry district, including two kōhanga reo: Te Kōhanga Reo o Mōkai Pātea and Te Kōhanga Reo o Te Pūawai o Te Kākano. Te Kōhanga Reo o Mōkai Pātea is one of the oldest kōhanga reo in the country, having been established in 1983. This is clearly a point of pride for Taihape Māori.²⁶
22. There are nine schools in the inquiry district. Taihape Area School is the only secondary school and there are currently no Māori medium immersion or bilingual education schooling options in the district,²⁷ with the exception of Moawhango School.²⁸ Several of the schools in the district have very small rolls and have faced recent leadership changes.²⁹

SOCIAL SERVICE DELIVERY: EDUCATION, HEALTH, HOUSING (TSOI 1-3)

Issue 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?

Issue 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?

Issue 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?

Introduction

23. The Crown became involved with the provision of various education and health services in the Taihape inquiry district from the end of the 19th century, including through:

- 23.1 the provision of financial support for the establishment of primary and secondary schools;
- 23.2 the provision of grants and scholarships to enable Māori students to attend school; and

²⁶ See for example Wai 2180, #K05, at [119]; and Wai 2180, #J05, at [14].

²⁷ Wai 2180, #M27, at [59].

²⁸ Wai 2180, #M27(c), at [17].

²⁹ Wai 2180, #M27, at [62]–[64].

- 23.3 the establishment of Moawhango Native School, the Kurahaupō Māori Council, Taihape Hospital, and various medical and dental services.
24. As outlined above, where the Crown provides education and other services it does so as part of its governance role and must ensure Taihape Māori have the same access to, and standard of, education and other social services as other citizens of New Zealand. The principle of equal treatment in Article III of te Tiriti o Waitangi/the Treaty of Waitangi requires the Crown to provide Māori and non-Māori with equal rights and equal access to such services, and to ensure that its policies and practices are applied equally as between Māori and non-Māori.
25. Te Tiriti o Waitangi/the Treaty of Waitangi does not impose on the Crown an absolute obligation to consult with Taihape Māori.³⁰ However, the Crown recognises that te Tiriti o Waitangi/the Treaty of Waitangi requires it to act fairly, reasonably, honourably and in good faith towards Taihape Māori, and to make informed decisions on matters affecting Māori interests.
26. The Crown notes that the available evidence, particularly on historic matters, is incomplete in that it often does not provide the background detail relating to the implementation of the Crown's policies and practices relating to education and social services, including whether public consultation occurred generally, and whether there was specific consultation with Taihape Māori and what their views were. The Crown says this makes it difficult to respond to these issue questions, to the extent they relate to historic matters, with any precision.

Education

Historical position

27. Dr Christoffel considered Taihape Māori input into the location, type and curriculum of schools has been minimal.³¹
28. The establishment of Moawhango School, first as a general school in 1897 and then as a Native school in 1944, is a matter which has received some

³⁰ *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA) per Richardson J, at 683, see also Cooke P, at 665.

³¹ Wai 2180, #A41, at 152.

attention in this inquiry.³² Dr Christoffel's evidence is that a Native school was requested by Mōkai Pātea Chief Hiraka Te Rango in July 1886, who suggested Māori would give land for a school site.³³ There then followed a series of correspondence and discussion between the Crown and Māori:³⁴

28.1 The Education Minister wrote on 6 August 1886 suggesting Te Rango send him a petition for a school, signed by at least ten local Māori and offering a site for the school. A petition was duly put together and received by the Education department on 14 August 1886. The petition offered up to ten acres for a school site and teacher's residence.³⁵

28.2 It was agreed the Inspector of Native Schools, James Pope, would visit Moawhango to inspect the site, and the Education Secretary William Habens wrote to Te Rango on 1 September 1886 informing him that this would happen.³⁶

28.3 Following correspondence apologising for the delay, Pope visited Moawhango on 16 April 1888. His report spoke favourably of the request for a Native School, and noted there appeared to be some reluctance for giving absolute title for a school site. Pope also noted that Mr Te Rango had been absent when he visited and the exact position of the site had not been settled. He recorded that he had explained the principal requirements for a site, and arranged for the site to be settled on Mr Te Rango's return, marked on a map, and sent to Wellington.³⁷

28.4 Pope noted in his annual report on native schools in 1888 that the Moawhango application was more urgent than other applications received that year.³⁸

³² Wai 2180, #3.3.46, at [7.23]–[7.29]. Note: the education reserve endowment lands issue is addressed in Issue 3 (Native Land Court) submissions.

³³ Wai 2180, #A41, at 54.

³⁴ See Wai 2180, #A41, at 54–61.

³⁵ Wai 2180, #A41, at 54–55.

³⁶ Wai 2180, #A41, at 55.

³⁷ Wai 2180, #A41, at 55–57.

³⁸ Wai 2180, #A41, at 57.

- 28.5 In May 1891, Mr Te Rango appeared before the Native Land Laws Commission and told the Commission that his hapū had “set apart some portion of land for school purposes”, but did not mention what had happened since doing so.³⁹
- 28.6 The next record located by Dr Christoffel was an entry from Pope dated 4 April 1893 noting that a Land Purchase Officer had called to say the Moawhango people were anxious to have a school and that he would see to them obtaining all of the necessary formalities. Pope subsequently recorded in his 1893 annual report that the application for a school had recently been renewed.⁴⁰
- 28.7 Correspondence in early 1894 from Joshua Down (an aspiring native school teacher at Moawhango) to Pope noted that he had attended a hui in Moawhango where a strong desire for a native school was expressed, but that a site was not decided upon.⁴¹
- 28.8 Having reviewed the Native Schools Code, Down helped put together a petition to the Minister of Education from the Moawhango people for a native school, which noted that three acres had been selected for a school site and asked the Minister to send an inspector to see it. On 1 February 1894 an education official wrote seeking specific information on both the proposed students and the proposed school site.⁴²
- 28.9 In early 1894 Lands Minister John McKenzie and Premier Richard Seddon (separately) visited Moawhango and the request for a school was discussed. McKenzie wrote to the Education Minister in support of the request and the Education Minister responded saying his department was already dealing with the matter.⁴³
- 28.10 In June 1894, Mr Down’s aspirations of becoming the teacher at a native school in Moawhango were ruined when Pope was informed

³⁹ Wai 2180, #A41, at 57.

⁴⁰ Wai 2180, #A41, at 57.

⁴¹ Wai 2180, #A41, at 59.

⁴² Wai 2180, #A41, at 59–60.

⁴³ Wai 2180, #A41, at 60.

that Mr Down's wife had been pregnant when they had married (which was considered inconsistent with the Native Schools Code 1880).⁴⁴

29. As Dr Christoffel notes, there are no other records as to the outcome of the Moawhango native school application, including any record of the Moawhango people providing a site description, or of efforts to find an alternative teacher.⁴⁵
30. Dr Christoffel explores possible reasons for the delay in establishing the school (including finding land for the school when Native Land Court proceedings were on foot in the area, and the seeming inability to reach agreement on an exact site) but he does note that this is speculation as the relevant records appear to have been lost.⁴⁶ Under cross-examination, he added that while he does speculate in his report, “[w]hat happened in the case of Moawhango I really don’t know... it’s really a bit unclear.”⁴⁷ These events occur in parallel with the Awarua block titling (in 1886) and subdivision (1892).
31. The eventual establishment of a general school in 1896 by William Batley (a local settler who offered a building for lessons and free board to a teacher for a year) in conjunction with the Wanganui Education Board⁴⁸ does not show the Crown failed to act unequally between Māori and non-Māori. In particular:
- 31.1 The establishment of the general school was consistent with the practice at the time of requiring settler families to provide land and/or school buildings until the need for a school was clearly established.⁴⁹
- 31.2 Acknowledging the record is incomplete, it shows there was much correspondence between the Crown and Moawhango Māori

⁴⁴ Wai 2180, #A41, at 61.

⁴⁵ Wai 2180, #A41, at 61.

⁴⁶ Wai 2180, #A41, at 62–63.

⁴⁷ Wai 2180, #4.1.15, at 441.

⁴⁸ Wai 2180, #A41, at 62.

⁴⁹ Wai 2180, #A41, at 23.

regarding their proposal for a native school, as well as genuine consideration of the proposal, and significant support for it from the Crown. The lack of an agreed site appears to have been the stumbling block. It was not the case that the Crown simply rejected the native school proposal and leapt at the general school proposal.

31.3 There is evidence in this era of the Batleys being well integrated with the people of Moawhango. The Tribunal will be aware of his role assisting Moawhango people on correspondence with the Crown, in recording and presenting whakapapa, and in and around the contemporaneous Native Land Court proceedings.

32. The subsequent conversion of Moawhango School to a Native school in September 1944 demonstrates the Crown's responsiveness to requests from Taihape Māori regarding their preferences for education in that era. Dr Christoffel outlines in his report how the request was made by Moawhango parents, who considered a change in status would provide better resourcing for the school, and how the Education Department sought to ensure it had properly ascertained the views of the school community before the change was approved by the Minister of Education.⁵⁰ It is therefore clear the transformation of the Moawhango School to a Native school was a direct response to local parents requesting the change.

33. More broadly, the Crown notes that since 1877 there has been an ability for parents to elect and stand for election on school committees and, later, boards of trustees – both of which were set up to make decisions about the running of schools. School committees were historically active in both native and general schools, and – although there were limitations as to what decisions committees could make – it appears from the evidence that the Moawhango Māori school committee created a very close involvement between the community and the school.⁵¹ Dr Christoffel also indicated the official record appears to show extensive involvement by the Māori community in Taihape School during the periods in which it had a predominantly Māori roll.⁵² The Crown also notes that, although the historic record is poor, the evidence

⁵⁰ Wai 2180, #A41, at 78–80.

⁵¹ Wai 2180, #A41, at 96.

⁵² Wai 2180, #4.1.15, at 487–488.

includes examples of teachers, principals and inspectors taking into account the community's views and preferences.⁵³

34. The Crown's position is that this evidence indicates Taihape Māori input into education services historically was more than minimal. The available evidence relating to Taihape Māori raising concerns or preferences about education in the district is limited, as is the Crown's response to them.

Increasing provision for involvement of whānau, hapū and iwi in education matters

35. Over time, the opportunities for participation of whānau, hapū and iwi in education delivery and policy making have increased.
36. Dr Christoffel observes that Taihape schools have established links with local marae, that iwi representatives have been appointed to the Taihape Area School board of trustees, and that input has been sought from the local Māori community into aspects of the school's operation and curriculum.⁵⁴ Nicola Chase also set out her experience of these changes.
37. The Crown recognises that partnership with iwi, in the form of enabling iwi to design, develop and implement culturally authentic, enriching and affirming education programmes with whānau, will facilitate greater whānau involvement and, in turn, improved educational outcomes for Māori learners.⁵⁵ Evidence given by Ms Holsted and Ms Marshall noted the research supporting this approach, which shows that the "in-school factor that makes the most difference for Māori students is quality teaching, supported by effective leadership, and educationally powerful connections with whānau and iwi."⁵⁶ Both *Ka Hikitia* and *Tau Mai Te Reo*, the strategies for accelerating Māori success and for supporting te reo Māori in education, highlight the importance of the contribution of whānau, hapū and iwi to the educational success of Māori students.⁵⁷ Ms Holsted and Ms Marshall commented on the various ways such contributions may manifest.⁵⁸

⁵³ See for example Wai 2180, #A41, at 45, 50, 89, 90, 152–153.

⁵⁴ Wai 2180, #A41, at 153.

⁵⁵ Wai 2180, #M27, at [37].

⁵⁶ Wai 2180, #M27, at [24].

⁵⁷ Wai 2180, #M27, at [26].

⁵⁸ Wai 2180, #M27, at [26].

- 37.1 Supporting individual tamariki and rangatahi, as well as wider whānau and communities.
- 37.2 Supporting quality Māori language and cultural provision.
- 37.3 Using their expertise to support the development of a localised and relevant curriculum.
38. The Ministry of Education has been actively exploring ways in which whānau and teachers/principals can interact to raise performance through its Iwi-Education relationships strategy.⁵⁹ In Taihape, this has included working with Ngā Iwi o Mōkai Pātea Services across a range of initiatives. The two parties have had a number of agreements (with a value of nearly \$950,000 between 2011 – 2019) that aim to improve education outcomes for the iwi and Māori in the area. The outcomes of those agreements include:⁶⁰
- 38.1 Development of cultural standards to improve the education provision for Mōkai Pātea learners and whānau and support Mōkai Pātea whānau, hapū and iwi to be actively involved in the teaching and learning of Mōkai Pāteatanga for all learners.⁶¹
- 38.2 Development of a language strategy to support priorities for te reo-a-iwi.
- 38.3 Increasing ECE participation rates and NCEA Level 2 achievement rates.
- 38.4 More recently, a focus on improving the educational outcomes of young people who are at risk of not succeeding in education, including providing learning support for Māori learners in Years 1 – 8, and support for Māori 15 – 18 year olds outside the education system to re-engage in learning.
39. Ngā Iwi o Mōkai Pātea Services has also strengthened its relationship with Taihape Area School, and this is reflected in the fact the Ngā Iwi o Mōkai Pātea Service independently selects two Iwi representatives who are

⁵⁹ Wai 2180, #M27, at [38].

⁶⁰ Wai 2180, #M27, at [41]–[44].

⁶¹ Wai 2180, #M27, at [26].

appointed onto the School Board, and that the charter of the School utilises the aspirations in the Mōkai Pātea Mātauranga Strategy to inform school practice.⁶² Recent Education Review Office (ERO) reports for schools in the district suggest relationships between schools and whānau are generally seen as positive, and Taihape Area School and Moawhango School are recognised as having strong relationships with iwi, aligning their curriculum to iwi education plans.⁶³ The Crown acknowledges tangata whenua evidence that this has not always been the case,⁶⁴ and is an area that is being further developed across the district.⁶⁵

40. The Crown also points to the kōhanga reo in the district, which the Wai 262 Tribunal acknowledged indicates a “degree of partnership” in the education system, where kōhanga reo receive state support but maintain a reasonable measure of autonomy (acknowledging that “[s]ome of that support has been hard won”).⁶⁶ The Crown acknowledges, of course, the tireless efforts of Taihape Māori to provide te reo Māori education for their people.

41. In terms of higher level policy development, the Crown notes the increasing focus on engaging all education participants in agreeing shared priorities for Education, and the Ministry of Education’s clear acceptance of the need to continue to engage Māori communities to ensure their voices inform the future of Māori education.⁶⁷ The Crown points to the following examples of this:

41.1 Engagement with Māori communities by the Associate Minister of Education (Māori Education) through a series of regional wānanga in 2018 regarding the future of Māori education.⁶⁸

41.2 *Te Whāriki*, the early learning curriculum document which has been developed using a partnership approach, and includes two distinct curriculum pathways (a bicultural framework for all early learning

⁶² Wai 2180, #M27, at [46].

⁶³ Wai 2180, #M27, at [61].

⁶⁴ See for example Wai 2180, #4.1.10, at 143.

⁶⁵ Wai 2180, #M27, at [61].

⁶⁶ Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Vol 2* (Wai 262, 2011), at 559.

⁶⁷ Wai 2180, #M27, at [36].

⁶⁸ Wai 2180, #M27, at [36].

providers, and a framework for use in all kōhanga reo affiliated to Te Kōhanga Reo National Trust which reflects a unique indigenous pedagogy).⁶⁹

- 41.3 Engagement with Māori learners, educators, whānau, communities and iwi by the Ministerial Advisory Group undertaking a review of NCEA (which had a particular focus on Māori students across both Māori and English medium settings).⁷⁰
- 41.4 Co-design of the Ministry and Iwi regional approach to the Toikuranui Investment Fund, which Ngā Iwi o Mōkai Pātea Services participated in, which identified three shared priorities in the region (including sustainable and supported Māori immersion and Māori medium education pathways).⁷¹
- 41.5 The Tomorrow's Schools Review process (the most comprehensive review of the schooling system since reforms in 1989), during which the Independent Taskforce undertook more than 100 public and targeted meetings, including with a range of Māori organisations. Submissions were also received from Māori organisations and individuals.⁷²

Request for a kura kaupapa

42. The Taihape Schools Network Review and the proposal to establish a kura kaupapa Māori has been an issue focussed on in the Taihape inquiry relating to education.⁷³ The review was initiated because the rolls of some schools in the area had fallen significantly and because the school age population in the district was projected to continue to fall, which jeopardised the viability and quality of education provision in the area.⁷⁴ The review aimed to resolved uncertainly about the future of Year 7 – 13 education in the Taihape area, ensure a viable network of schools, and improve the quality of educational

⁶⁹ Wai 2180, #M27, at [48].

⁷⁰ Wai 2180, #M27, at [71].

⁷¹ Wai 2180, #M27(c), at [9]–[10].

⁷² Wai 2180, #M27(c), at [32].

⁷³ Wai 2180, #J05; Wai 2180, #G09; Wai 2180, #K12.

⁷⁴ Wai 2180, #M27, at Annex 2, [5].

provision in the area.⁷⁵ The review considered every type of education relevant to the area, and attempted to ensure the needs of all the area's students were adequately catered for.⁷⁶

43. The engagement and consultation process utilised in the progression of the review included two phases:⁷⁷
- 43.1 Phase 1: Initial consultation with school boards and preparation of a report with preliminary options.
- 43.2 Phase 2: Consultation with school boards and their communities (including the schooling sector, local authorities and iwi) to ensure Ministry was fully informed.
44. The place of Māori immersion teaching in a given area, the needs of Māori students, the role of iwi and their relationship with local schools were all considered as part of the review consultation process.⁷⁸
45. Ngā Iwi o Mōkai Pātea Services met with the Network Review Facilitator (appointed to facilitate the consultation process) and expressed concerns that the educational needs of Māori were not being met within the current network, and that the establishment of a kura kaupapa Māori was considered within the rohe to be the preferred option.⁷⁹
46. At a meeting in Taihape, the Minister of Education at the time acknowledged the call for a kura kaupapa, but also noted the risks to quality education faced in very small schools and indicated that for Taihape at that time, the risks of establishing a kura probably outweighed the potential benefits.⁸⁰ The call for a new kura came at a time when the Ministry was working to resolve the issues Taihape faced due to population decline. Data from that time shows kura in particular, being largely rural with low rolls, were susceptible to requiring statutory interventions to remain operational.⁸¹ It was in that context that the

⁷⁵ Wai 2180, #M27, at [93].

⁷⁶ Wai 2180, #M27, at Annex 2, [4].

⁷⁷ Wai 2180, #M27, at Annex 2, [6]–[7].

⁷⁸ Wai 2180, #M27, at Annex 2, [4].

⁷⁹ Wai 2180, #M27, at Annex 2, [8].

⁸⁰ Wai 2180, #M27, at Annex 2, [9].

⁸¹ Wai 2180, #M27, at [99]–[100].

Ministry's Report to the Minister supported the Minister's view and did not support the establishment of a new kura at that time. Instead, the Ministry recommended the new network of schools be encouraged to meet the needs of Māori students within their schools.⁸²

47. The Minister announced a proposal for the Taihape Schools Network Review on 30 January 2004 which did not include a kura kaupapa.⁸³ Ngā Iwi o Mōkai Pātea Services viewed the Minister's "no response" to their proposal as very disappointing and requested re-consideration. In particular they proposed the establishment of a kura as a planned long-term development over five years.⁸⁴
48. The revised Ngā Iwi o Mōkai Pātea Services proposal was included in a Phase 3 report produced by the Network Review Facilitator, which was in turn included as an appendix to the Education Report dated 7 April 2004.⁸⁵ The Minister then made the decision to close Taihape College and Taihape Primary School and establish Taihape Area School.⁸⁶
49. There is no record of the decision not to incorporate the request for a kura kaupapa (and the reasons for it) being communicated to iwi, either in relation to the proposal announced in January 2004 or in relation to the final decision on the Network Review. The Crown acknowledges that it failed to communicate its decision not to establish a kura kaupapa at that time (and the reasons for it). However, the Crown's position is that the consultation process was consistent with Tiriti/Treaty principles requiring good faith and informed decision-making on matters affecting Māori interests. The process allowed for Taihape Māori to participate meaningfully and communicate their interests.
50. In making its decision, the Crown was required to balance its duty to actively protect te reo Māori, along with other considerations that flow from the Crown's right to govern. The Crown may decide from a number of possible policy options how to give effect to its Tiriti/Treaty obligations provided, in

⁸² Wai 2180, #M27, at [101].

⁸³ Wai 2180, #M27, at Annex 2, [11].

⁸⁴ Wai 2180, #M27, at Annex 2, [12]–[13].

⁸⁵ Wai 2180, #M27, at Annex 2, [15].

⁸⁶ Wai 2180, #M27, at Annex 2, [17].

pursuing a particular course of action, it is acting reasonably and in good faith. In light of the prevailing circumstances (population decline and a number of schools with very small rolls), the decision not to establish a kura kaupapa in the district at that time, and instead support te reo Māori education in mainstream schools, was consistent with the Crown's Tiriti/Treaty obligations. The Crown rejects the suggestion that the preferences of the wider community outweighed Māori desire for a kura kaupapa.⁸⁷

Provision of education in te reo Māori

51. Connected to the above issue is the broader provision of Māori language education in the inquiry district. Taihape Māori have experienced loss and dislocation as their children and whanau have relocated from the region in order to access such education services. This has been a strong feature of the tangata whenua evidence in this inquiry.⁸⁸ Evidence in this inquiry has also shown the tireless efforts of tangata whenua to seek and provide te reo Māori education for their tamariki.⁸⁹
52. As noted above, the Crown acknowledges that Māori language in education, including Māori medium schooling, provides significant opportunities to revitalise te reo Māori and support Māori educational wellbeing and achievement. The Crown also acknowledges education in the inquiry district has not met the needs of all Māori learners.⁹⁰
53. As the Ministry of Education witnesses observed,⁹¹ the provision of education options that provide for education within a Māori context in the inquiry district beyond early childhood education has been limited and sporadic.⁹² In 2019, twelve students at Moawhango School were being taught

⁸⁷ Wai 2180, #4.1.19, at 115–120.

⁸⁸ See for example Wai 2180, #G09, at [4]–[5], [18]; Wai 2180, #I16, at [6]–[7]; Wai 2180, #K12, at [26] and [45].

⁸⁹ See for example Wai 2180, #K05, at [119]; Wai 2180, #J05, at [14] and [30]–[41]; Wai 2180, #G09; #G08(a), at [9]–[10]; Wai 2180, #H10, at [23]–[34]; Wai 2180, #H11, at [12]–[15]; Wai 2180, #I12, at [23]; Wai 2180, #I15, at [17]; and Wai 2180, #K12, at [26], [37]–[38].

⁹⁰ Wai 2180, #M27, at [102]–[103].

⁹¹ Wai 2180, #4.1.19, at 37.

⁹² Prior to establishing Taihape Area School, Taihape Primary School ran three Māori immersion classes covering all Year levels and Taihape College was funded for some Māori language provision. These were amalgamated into multi-level Reo-Rua provision on the establishment of Taihape Area School. These classes were disestablished in 2011 to make te reo Māori “business as usual” across the school (Wai 2180, #M27, at [87]).

in te reo Māori for 51% – 80% of the time. It is acknowledged there are no other Māori immersion schooling options in the inquiry district.

54. Acknowledging this, there are real difficulties, outside of the Crown's control, arising from the remoteness of the district and population demographics, which present challenges to providing high quality Māori language education. The Crown submits, however, that it is meeting its duty to actively protect te reo Māori by actively seeking to increase the availability of education in te reo Māori, including immersion, across the country and in the inquiry district in particular – within the limits of maintaining appropriate quality of teaching.
55. At a national level, lifting Māori language provision in all educational settings is a key focus across the Education Work Programme.⁹³ A particular focus is attracting and retaining more Māori into the teaching profession; increasing the supply of teachers for Māori medium; and the provision of Māori language across the system, including through scholarships and awards, a targeted marketing campaign, and a voluntary bonding scheme.⁹⁴ The panel and Ms Holsted shared significant common ground in articulating the challenges involved in achieving this and in the critical need to overcome those challenges. Ms Holsted spoke to the multiple active steps being taken. These matters will no doubt be progressed further in the upcoming Education Kaupapa inquiry.
56. As to the inquiry district in particular, the Crown recognises evidence given by Taihape Māori who have trained to be teachers of te reo Māori and returned to the inquiry district to teach.⁹⁵ The Crown also notes evidence given about an issue at Taihape Area School with a te reo Māori teacher being appointed from outside the rohe who witnesses considered to have difficulties engaging with the local Māori community.⁹⁶ The Ministry of Education witnesses agreed that the Ministry wants to try and find a way to get immersion te reo Māori education into the Taihape community.⁹⁷ They also agreed that, to the extent Taihape Māori who are qualified te reo Māori

⁹³ Wai 2180, #M27(c), at [18].

⁹⁴ Wai 2180, #M27, at [105].

⁹⁵ See for example Wai 2180, #4.1.10, at 131–132.

⁹⁶ Wai 2180, #G09, at [19.10].

⁹⁷ Wai 2180, #4.1.19, at 127.

teachers have not been able to find job opportunities in the district, it is worth understanding the issue in more detail to see whether it can be addressed.⁹⁸ Importantly, the Ministry agrees that it needs to work with Taihape iwi and hapū to find a solution that delivers quality te reo Māori education.⁹⁹

57. Before turning to the issue of Health, the Crown wishes to acknowledge that many of the matters discussed with Ms Holsted and the Tribunal ranged beyond those of particular application to the inquiry district. Counsel is instructed that Ms Holsted, as Secretary of Education, appreciated that discussion and she and her team have been informed by it in their subsequent work. The Ministry also welcomes the opportunity to progress further such matters through the planned kaupapa inquiry – in partnership with Māori more generally, and with guidance from the Tribunal.

Health

Role for Taihape Māori in delivery of health services

58. The Crown acknowledges that matters relating to the provision of healthcare are important to Taihape Māori who, over time, have expressed a desire to participate in the development of health policy and services that affect their people, and have proactively sought to do so.¹⁰⁰ The Crown also recognises evidence given by Taihape Māori of negative experiences with the health system, and its failure to give adequate regard to Māori customs and beliefs.¹⁰¹
59. The Crown notes that the role Taihape Māori might have played (or sought to play) in the development of healthcare policy and services does not appear to have been a particular focus of Dr Christoffel's report, nor has it been a particular focus in tangata whenua evidence (or in cross examination by claimant counsel of Dr Christoffel). The Crown says the lack of evidence limits the ability to make firm conclusions in respect of this particular issue. However, the Crown points to the following evidence which demonstrates that Taihape Māori did have opportunities to participate in the design,

⁹⁸ Wai 2180, #4.1.19, at 128.

⁹⁹ Wai 2180, #4.1.19, at 129.

¹⁰⁰ See for example Wai 2180, #K06, at [29]–[32]; Wai 2180, #K07, at [12]–[13].

¹⁰¹ See for example: Wai 2180, #K02, at [21]–[22], Wai 2180, #K04; Wai 2180, #K06, at [12] and [41]; Wai 2180, #K07, at [22]–[27]; Wai 2180, #K08.

establishment, management, and implementation of healthcare policy and services in a number of ways:

- 59.1 Under the Maori Councils Act 1900, Māori councils had duties aimed at improving Māori health and sanitation. They were empowered to make by-laws relating to health and hygiene, and could appoint Village Committees for specific Māori settlements to deal with local sanitation matters,¹⁰² and worked together with the Health Department’s sanitary inspectors.¹⁰³ The Kurahaupō Māori Council was particularly active throughout most of the inquiry district from 1901 – 1912.¹⁰⁴ Officials considered the Councils and committees played a crucial role in improving Māori health and living standards.¹⁰⁵
- 59.2 Native Health Inspectors, whose main duties included “inspecting dwellings, administering inoculations, and liaising with Māori communities on health matters, were active in the 1920s”.¹⁰⁶ Native Health Nurses also worked within the inquiry district on occasions, assisting with large scale typhoid immunisations and providing health education in the 1920s and 30s.¹⁰⁷
- 59.3 The district nursing scheme (which incorporated the role of Native Health Nurses from the early 1930s) and included visits to Māori homes, Māori schools and Māori children in general schools.¹⁰⁸
- 59.4 The provision of ‘hutments’ in the 1940s, portable huts located on Māori properties, which aimed to prevent Māori with tuberculosis who were reluctant to enter hospitals from infecting their families.¹⁰⁹
- 59.5 The Māori Social and Economic Advancement Act 1945 abolished the Māori Councils and replaced them with tribal executives and

¹⁰² Wai 2180, #A41, at 175.

¹⁰³ Wai 2180, #A41, at 178.

¹⁰⁴ Wai 2180, #A41, at 177–181.

¹⁰⁵ Wai 2180, #A41, at 177–180.

¹⁰⁶ Wai 2180, #A41, at 201.

¹⁰⁷ Wai 2180, #A41, at 202–204.

¹⁰⁸ Wai 2180, #A41, at 220.

¹⁰⁹ Wai 2180, #A41, at 232–233.

committees, which had a variety of functions and powers including some related to health.¹¹⁰ The Kurahaupō North executive had three tribal committees, whose work included approving typhoid inoculations for Māori children in their district and improving water supply and sewage disposal.¹¹¹

- 59.6 The establishment of a standing Māori Health Committee of the Board of Health in the early 1980s which endorsed the devolution of some health services to iwi.¹¹²
- 59.7 The formation of the Māori Health Project team and the Oranga Māori programme by the Department of Health in 1984, which aimed to work more effectively with Māori.¹¹³
- 59.8 The increasing employment of Māori community health workers from the mid-1980s to improve the connection between Māori and the health system.¹¹⁴
- 59.9 The Ōtaihape Māori Komiti (today Ngā Iwi o Mōkai Pātea Services Trust) which provided for direct Māori engagement in health services. This included Komiti members being appointed onto governance boards of other organisations;¹¹⁵ a joint project between the Komiti and Taihape Rural Health Centre to appoint a Māori liaison health worker; and the Taihape Community Health Gains Project which was established through consultation between the Komiti, Centre staff, the local community health group and a local GP.¹¹⁶
- 59.10 In relation to mental health, the introduction of Māori scholarships to draw Māori into mental health training, as well as the adoption of

¹¹⁰ Wai 2180, #A41, at 219.

¹¹¹ Wai 2180, #A41, at 220. Barbara Ball discusses the work of the Ngāti Whiti Tribal Committee (Wai 2180, #G07, at [6]–[23]).

¹¹² Wai 2180, #A41, at 239.

¹¹³ Wai 2180, #A41, at 239.

¹¹⁴ Wai 2180, #A41, at 239.

¹¹⁵ Wai 2180, #G07, at [10], [18].

¹¹⁶ Wai 2180, #A41, at 240. Barbara Ball discusses the Otaihape Māori Committee at Wai 2180, #G07, at [7]–[14].

Māori-centred protocols in patient assessment and therapies, and the development of Kaupapa Māori mental health services.¹¹⁷

60. The Crown submits that the changing nature of the role for Taihape Māori in the management and delivery of healthcare services across time reflects changing demographics and prevailing philosophies. Dr Christoffel notes, for example, increasing urbanisation from the late 1950s made residual Māori-oriented approaches such as district nurses and tribal committees less relevant in terms of providing health services.¹¹⁸ The subsequent call for a new approach in light of on-going health disparities between Māori and non-Māori led to “the importance of Maori cultural beliefs and practices to good health outcomes [becoming] part of the health agenda”¹¹⁹ in the 1970s and then to specific provision for Māori input being reflected in the 1980 reforms.
61. Today, Māori have significant opportunities for input into matters relating to their health and well-being, including in the development of health policy. For example, in order to recognise and respect the principles of te Tiriti/the Treaty, the New Zealand Public Health and Disability Act 2000 provides for a range of mechanisms to enable Māori to contribute to decision-making in relation to, and to participate in the delivery of, health and disability services.¹²⁰ These include:
- 61.1 the requirement that every District Health Board (DHB) have at least two Māori members;¹²¹
- 61.2 requirements that DHBs aim to:
- 61.2.1 reduce health disparities by improving health outcomes for Māori and other population groups;¹²² and
- 61.2.2 aim to reduce, with a view to eliminating, health outcome disparities between various population groups within New Zealand by developing and implementing, in consultation

¹¹⁷ Wai 2180, #A41, at 242–243.

¹¹⁸ Wai 2180, #A41, at 238.

¹¹⁹ Wai 2180, #A41, at 239 quoting Mason Durie.

¹²⁰ New Zealand Public Health and Disability Act 2000, s 4.

¹²¹ New Zealand Public Health and Disability Act 2000, s 29.

¹²² New Zealand Public Health and Disability Act 2000, s 22(1)(e).

with the groups concerned, services and programmes designed to raise their health outcomes to those of other New Zealanders;¹²³ and

- 61.3 the functions of DHBs being to, inter alia, establish and maintain processes to enable Māori to participate in, and contribute to, strategies for Māori health improvement,¹²⁴ and to continue to foster the development of Māori capacity for participating in the health and disability sector and for providing for the needs of Māori.¹²⁵
62. In relation to Taihape Māori specifically, there are a range of initiatives that enable them to be involved in the management and delivery of health and well-being services. For example, Mōkai Pātea Services Trust work with other groups to provide an extensive range of services, including Tamariki Ora/Kaiāwhina Well Child services, Kaupapa Māori Community Mental Health, midwifery, and smoking cessation programmes.¹²⁶ The Whānau Ora model has had significant impacts in this space.
63. The Government has very recently announced major reforms to New Zealand's health system, which include the replacement of DHBs with one national organisation, and the establishment of a new Māori Health Authority. The reforms are designed to put a greater emphasis on primary healthcare and ensure fairer access to health services for all New Zealanders. It is intended that the Māori Health Authority will lead the system to produce real change for Māori.¹²⁷

Response to particular concerns or preferences regarding healthcare

64. The responsiveness of the Crown to particular concerns or preferences of Taihape Māori regarding healthcare does not appear to have been a focus of Dr Christoffel's report. The one issue that does receive particular attention is the closure of Taihape Hospital in 2010.
65. As Dr Christoffel records, Taihape Hospital became the Taihape Rural Health Centre in the mid-1990s and operated under a community trust model

¹²³ New Zealand Public Health and Disability Act 2000, s 22(1)(f).

¹²⁴ New Zealand Public Health and Disability Act 2000, s 23(1)(d).

¹²⁵ New Zealand Public Health and Disability Act 2000, s 23(1)(e).

¹²⁶ Wai 2180, #A41, at 241.

¹²⁷ <https://www.beehive.govt.nz/release/major-reforms-will-make-healthcare-accessible-all-nzrs>

offering integrated services.¹²⁸ Given financial issues, a proposal for the Centre's future was developed in 2006 in conjunction with the Taihape and District Medical Trust, the Ruanui Trust and the Ōtaihape Māori Komiti. The proposal was the subject of public meetings.¹²⁹ As a result, the Ōtaihape Health Trust was formed to operate the Centre and the Ruanui rest home through a new company. Unfortunately that measure was not successful and both the Centre and the rest home closed in 2010.¹³⁰ Dr Christoffel states that, because they were involved at a governance level in these health services, the protest of Taihape Māori "was more at an official level".¹³¹

66. The Crown recognises the evidence from tangata whenua witnesses of the negative impact of the hospital's closure on the community.¹³² The provision of health services in a geographically remote area with a small population presents unique challenges. The Crown submits that there is no evidence of the principle of equal treatment having been compromised in these events and that the current arrangements for health services for Taihape Māori are reasonable in light of these contextual factors.
67. More generally, the Crown submits that responses to any concerns regarding social service delivery must be assessed with regard to the prevailing circumstances at the time. The Crown notes that, for example, complaints about healthcare services are not in themselves unusual and do not necessarily indicate any wider systemic issues. Further, just because a complaint is made, for example, about the standard of service provided by a particular health professional, it does not mean the complaint is well-founded or requires action. Indeed, the exact nature of any complaint and the Crown's response must be scrutinised carefully. Likewise, the Crown recognises that designing and providing health care services is a complex matter and that various initiatives have been (and continue to be) developed which constitute the best endeavours of policy developers and decision makers at that point in time – health delivery is not an area where simple solutions are available.

¹²⁸ Wai 2180, #A41, at 245.

¹²⁹ Wai 2180, #A41, at 246.

¹³⁰ Wai 2180, #A41, at 246–247.

¹³¹ Wai 2180, #A41 at 247.

¹³² See for example Wai 2180, #K06, at [14]; Wai 2180, #K07, at [21], [28].

68. The Crown acknowledges that, unlike today, there has not always been formal processes through which concerns about the development, implementation, and provision of health services could be raised, particularly during the 19th and the earlier part of the 20th centuries. In most cases, it is likely that any concerns would have been addressed directly to those providing services, such as doctors and nurses.
69. Today, Taihape Māori have a range of processes through which they can raise concerns regarding the development, implementation, and provision of healthcare services. Raising issues directly with the Ministry of Health, DHBs, or specific healthcare providers is a clear option. Other processes include:
- 69.1 the Health and Disability Commissioner;
 - 69.2 complaining to professional standards bodies, such as the Medical Council of New Zealand, the Nursing Council of New Zealand, and the Dental Council; and
 - 69.3 District Inspectors of Mental Health.
70. A further pathway is through the Tribunal's current health kaupapa inquiry. The dialogue between government and Māori conducted through and in parallel with that process has, in combination with multiple other factors, contributed to some significant changes (that have, at the time of writing these submissions, been recently announced (referred to in paragraph [63] above)).

Housing

Evidence on housing in the inquiry district

71. The Crown submits that the evidence demonstrates there have been a range of housing programmes and initiatives which have either provided for Māori to be involved in the delivery of housing services or have been open to Māori to participate in (but, for various reasons outside the Crown's control, have varied in the degree to which they have been taken up by Māori). These include:
- 71.1 Early 20th century measures which used Māori community resources to improve Māori housing, particularly the Kurahaupō

Māori Council. The approach included a system of sanitary and health inspectors and senior officials from the Department of Public Health (including Maui Pōmare and Te Rangi Hīroa) liaising with regional Māori councils and village committees appointed under the Maori Councils Act 1900 to improve Māori housing and sanitation. (The work was funded in part by dog taxes and fines levied for breaching Māori Council by-laws.¹³³) There is little information available as to the extent to which the Kurahaupō Māori Council and associated village committees initiated work undertaken on destroying and erecting dwellings and improving sanitation, nor on the work of the health inspectors.¹³⁴

71.2 Native land development schemes set up by Native Minister Apirana Ngata which made loans available to Māori to develop their land, a significant component of which included capital for building and improving Māori housing.¹³⁵ Although no full development scheme was implemented within the inquiry district, two Māori farmers were assisted under this initiative.¹³⁶

71.3 Major Māori housing programmes introduced from the late 1930s. The Native Housing Acts of 1935 and 1938 and the schemes which followed allowed for “significant borrowing by Māori for new housing and improvements.”¹³⁷ Loans were provided by the Native Department (later the Department of Māori Affairs) from the 1930s to Māori families to help them renovate, repair and purchase homes, including a number within the inquiry district.¹³⁸ New houses were built for Māori to buy using government loans, first by the Department of Public Works and then, from 1944, the Native Department.¹³⁹ From 1944, provisions were also made to allow Māori who would otherwise be unable to afford a loan to take one out, with the lowering of deposits and repayments, the aid of

¹³³ Wai 2180, #A41, at 265.

¹³⁴ Wai 2180, #A41, at 265.

¹³⁵ Wai 2180, #A41, at 262.

¹³⁶ Wai 2180, #A02, at 110–111.

¹³⁷ Wai 2180, #A41 at 268.

¹³⁸ Wai 2180, #A41, at 274–276.

¹³⁹ Wai 2180, #A41, at 270–272.

interest-free supplements, and allowance for capitalisation of the family benefit.¹⁴⁰

- 71.4 The Rural Housing Act 1939 and the rural housing scheme initiated in 1940 which authorised local authorities to lend money to farmers for new or improved housing for their employees.¹⁴¹ Dr Christoffel describes this as “possibly the single most significant government measure with respect to Māori housing in the Taihape inquiry district.”¹⁴² The scheme aimed to ensure a good standard of housing in rural areas, with the consequence of “countering urban drift and securing increased production.”¹⁴³ Dr Christoffel suggests many Māori agricultural workers in the inquiry district were provided with rental housing financed by their employers under the scheme. Dr Christoffel accepts the speculative nature of this conclusion, but notes it is supported by the significant increase in the proportion of rented Māori homes between 1956 and 1966 and the fact that Rangitīkei District Council was a significant participant in the scheme.¹⁴⁴
- 71.5 The establishment of Māori Welfare Officers under the Māori Social and Economic Advancement Act 1945 who, among other tasks, investigated Māori housing conditions and helped Māori apply for loans.¹⁴⁵
- 71.6 The Kurahaupō North tribal executive and three tribal committees appointed in 1949 were possibly involved in housing issues in the district until around 1970, but little evidence was found.¹⁴⁶
- 71.7 Mainstream government programmes operating in Taihape for much of the 20th century providing subsidised housing, including railway housing, local authority housing and state housing. Notably, Taihape was specifically identified for inclusion in the state housing

¹⁴⁰ Wai 2180, #A41, at 271–273.

¹⁴¹ Wai 2180, #A41, at 281.

¹⁴² Wai 2180, #A41, at 280–281.

¹⁴³ Wai 2180, #A41, at 283.

¹⁴⁴ Wai 2180, #A41, at 280 and 283–284.

¹⁴⁵ Wai 2180, #A41, at 272.

¹⁴⁶ Wai 2180, #A41, at 284.

scheme.¹⁴⁷ These programmes were accessed more by Māori as their presence in Taihape increased.¹⁴⁸

- 71.8 Housing initiatives since the 1970s aimed at improving Māori housing and enabling housing to be built on multiply-owned land. These include funding to build kaumatua flats,¹⁴⁹ and the introduction in 1985 of the papakāinga lending scheme, which provided loans to individuals to build on Māori land.¹⁵⁰
72. Dr Christoffel concludes that “Taihape Māori have rarely been consulted on programmes to assist with housing and have participated to only a small extent in such programmes.”¹⁵¹ However, the evidence on housing in this inquiry addresses the broad historical provision of housing services. It does not explore in any detail the expectations of Māori with respect to their role in the provision of housing services, nor how the concerns or preferences of Māori with respect to housing services were addressed.
73. The Crown submits that despite the limitations of the available evidence it can be seen that the Crown took steps over time to improve the housing conditions of Taihape Māori. These initiatives (particularly the rural housing scheme and the state housing scheme) were accessed by Taihape Māori and responded at least in part to the particular challenges faced in this inquiry district, with its rural characteristics and small settlements and towns with fluctuating populations.
74. The Crown submits that the Housing Kaupapa Inquiry is the appropriate forum for contemporary issues relating to housing and homelessness to be explored.

¹⁴⁷ Wai 2180, #A41, at 293.

¹⁴⁸ Wai 2180, #A41, at 286.

¹⁴⁹ Wai 2180, #A41, at 284. Four kaumatua flats were built at Winiata Marae in 1985.

¹⁵⁰ Wai 2180, #A41, at 285. Dr Christoffel did not establish whether any such loans were made in the inquiry district.

¹⁵¹ Wai 2180, #A41, at 307.

EDUCATION-SPECIFIC ISSUES (TSOI 4-9)

Issue 4: To what extent has cultural assimilation guided state-run education? To what extent has the delivery of state-run education effected cultural assimilation?

75. The evidence in this inquiry does not provide a detailed analysis of assimilation and whether there was an assimilationist agenda inherent in the education that Taihape Māori received. The expert historian evidence on the record of inquiry provides a historical overview and the Crown urges the Tribunal to take a cautious approach in using the evidence to make findings that go beyond this.
76. In the past the Crown saw part of the role of schools in the district as a way of preparing Māori students for inevitable interaction with Pākehā settlers. In order to assist Māori students to participate in settler society the education provided included instruction in English language and subjects that were generally provided within the curriculum for general schools.
77. Dr Christoffel did not address the specific question of assimilation in detail in his report. Nevertheless, in response to questioning from the Presiding Officer that the education framework was one of assimilation, he commented that:¹⁵²
- 77.1 The framework was designed to enable Māori to gain the skills that would enable them to make their way in the modern world. That was perceived as learning the English language and the ‘usual’ school subjects such as writing and arithmetic.
- 77.2 Until the 1930s, there was no Māori culture input into schools at all. The policy was that Māori went to school to learn about Pākehā culture and language.
- 77.3 There was a shift from the 1930s to introduce Māori culture into Native schools.
78. As Dr Christoffel noted, “[i]t never occurred to anyone really at all in the 1920s that the Māori language might be in danger and in fact it took many

¹⁵² Wai 2180, #4.1.15, at 390–391.

decades after that before that awareness became much more widespread”. The thinking was that Māori were only exposed to English for a small part of their day (and were otherwise speaking te reo Māori at home).¹⁵³

79. The Crown acknowledges that the English language was promoted in the early 20th century as an important skill for children to acquire, and accepts that the promotion of English came at the expense of te reo Māori. The Crown has acknowledged that its failure to actively protect te reo Māori is in breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles, as expressed above at paragraph 5.

Punishment for speaking te reo Māori at school

80. Dr Christoffel stated under cross-examination that he thinks it is “fairly clear...from 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”.¹⁵⁴
81. Dr Christoffel noted that while corporal punishment ought to have been recorded in school log books, very few have survived for the inquiry district, and there was no reference to any corporal punishment.¹⁵⁵ He agreed under cross-examination that it was a failure of the Department of Education to check that log books were being administered appropriately.¹⁵⁶
82. Tangata whenua set out their experiences of corporal punishment being inflicted on tamariki for speaking te reo Māori at schools within the district.¹⁵⁷ This echoed evidence heard in many other Tribunal inquiries. Witnesses spoke to their own experience and to that of their parents and grandparents. This included at Turangarere school,¹⁵⁸ Moawhango school,¹⁵⁹ Hunterville

¹⁵³ Wai 2180, #4.1.15, at 490.

¹⁵⁴ Wai 2180, #4.1.15, Hearing Week Seven Transcript, at 428.

¹⁵⁵ Wai 2180, #4.1.15, Hearing Week Seven Transcript, at 434. In context this statement appears to relate to Native schools only (as it follows discussion of the requirement under the memorandum attached to the Native Schools Code and successive regulations that such punishment be entered in a school log book).

¹⁵⁶ Wai 2180, #4.1.15, at 434.

¹⁵⁷ See for example Wai 2180, #C02; Wai 2180, #G09; Wai 2180, #H03; Wai 2180, #J09; Wai 2180, #4.4.10 at 271.

¹⁵⁸ Wai 2180, #C02, at [11].

¹⁵⁹ Wai 2180, #G09, at [16].

school and Mataroa school¹⁶⁰ during the early to mid-20th century, and included reports of:

82.1 Getting beaten.¹⁶¹

82.2 Receiving the strap.¹⁶²

82.3 Having one's mouth washed out with soap.¹⁶³

82.4 General punishment.¹⁶⁴

83. The Crown submits:

83.1 There was never a policy banning the use of te reo Māori in schools. The use of punishment for speaking te reo Māori was contrary to successive Native Schools Codes and Regulations which expressly stated that discipline in a Native School was to be “mild and firm” and corporal punishment was to be avoided wherever possible and its use recorded in the log book.¹⁶⁵

83.2 No evidence has been identified showing the Crown was directly aware of the practice of punishment for speaking te reo Māori.

83.3 Nevertheless, the Crown recognises that evidence given on the issue in the Taihape Inquiry, which follows evidence of a similar nature being given to the Waitangi Tribunal in other inquiries, demonstrates a widespread practice of corporal punishment for speaking te reo Māori in Crown-established schools, which the Crown did not prevent.

84. The Crown therefore acknowledges that:

84.1 Taihape Māori children suffered by being punished for speaking te reo Māori in Crown-established schools, and that, despite there

¹⁶⁰ Wai 2180, #H03, at [11].

¹⁶¹ Wai 2180, #G09, at [16].

¹⁶² Wai 2180, #C02, at [11]; Wai 2180, #H03, at [11]; Wai 2180, #J09, at [23].

¹⁶³ Wai 2180, #H03, at [11].

¹⁶⁴ Wai 2180, #K12, at [14]–[15].

¹⁶⁵ Circular Memorandum for Teachers of Native Schools – By Education Department Wellington 4th June 1880 “Directions for Teachers of Native Schools; Native Schools Regulations 1931, regs 39 – 41.

being no official policy banning the use of te reo Māori in schools, the Crown did not take adequate steps to prevent this practice.

84.2 This was part of the Crown's failure to protect te reo Māori, which was in breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles and has had longstanding and ongoing detrimental effects on the acquisition and use of te reo Māori, and on the tikanga and mātauranga of Māori, including for those within the Taihape inquiry district.

Integration of Māori culture and te reo Māori into schools

85. The Crown submits that the evidence demonstrates that from the 1930s there was increasing integration of Māori culture and te reo Māori into schools, particularly those schools with significant Māori student numbers. For example:

85.1 Te reo Māori was encouraged in Māori boarding schools from as early as 1909, and was recognised as being beneficial for Māori to learn.¹⁶⁶ Te reo Māori was a compulsory subject for holders of Government scholarships at these schools in the 1930s.¹⁶⁷

85.2 Māori cultural instruction was part of the Native school curriculum for the entire time Moawhango was a Native school. Although there is not much detail in the written record, it appears Māori cultural activities or studies were occurring at Moawhango in the 1950s and 1960s.¹⁶⁸ There is also mention of links being made with a local marae in a 1985 inspection report.¹⁶⁹

85.3 The Ohingaiti district centenary publication records Māori being taught at Ohingaiti School in the 1940s. At Ōtamakapua School in 1963, a hangi and Māori concert was held for over 200 people at the end of year function 'to conclude a Maori Studies project'.¹⁷⁰

¹⁶⁶ Wai 2180, #A41, at 101.

¹⁶⁷ Wai 2180, #A41, at 116.

¹⁶⁸ Wai 2180, #4.1.15, at 491. See also Wai 2180, #A41, at 86 (mention of pupils putting on Māori items at a Queen Carnival Concert in the Town Hall, and mention of Māori culture being fostered at the School in an October 1963 inspection report).

¹⁶⁹ Wai 2180, #A41, at 90–91.

¹⁷⁰ Wai 2180, #A41, at 152–153.

- 85.4 Inspection reports for Turakina show an increased integration of Māori culture, eventually gaining a central place in the curriculum.¹⁷¹
- 85.5 In the 1960s the newly-established Taihape College had an active Māori Club and the school attempted to foster Māori culture.¹⁷² Māori studies became a compulsory subject at Taihape College in Year 9 in the 1980s, and an elective in Years 10 and 11. In 1982 the school inspectors commended the ‘strong emphasis on Maori culture, and the involvement of the Maori cultural group with the community’.¹⁷³
86. The Crown has addressed the current position with respect to the provision of te reo Māori medium and immersion education pathways above.

Issue 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)?**
87. As the Crown noted in its opening submissions, there appears to be limited evidence on the ways in which Taihape Māori have historically been involved in the design of curricula and its delivery. This has changed to some degree in modern times through the partnership and services provision agreements between the Crown and Mōkai Pātea Services Trust and through specific positions being provided on the Board of Taihape Area School for Māori. The Crown refers to its submissions above outlining the ongoing opportunities and initiatives for participation of whānau, hapū and iwi in education delivery.
88. The devolved nature of the school system means the way in which the national curriculum might have been implemented in individual schools, and

¹⁷¹ Wai 2180, #A41, at 116.

¹⁷² Wai 2180, #A41(c), at [9].

¹⁷³ Wai 2180, #A41, at 108.

the way education services have been provided, may differ across districts, reflecting the particular context and needs of their communities. As to consistency of policy, Ms Holsted did note in her evidence the drive to integrate *Ka Hikitia* across all parts of the Ministry of Education, rather than it being appended to other policy and developed in isolation. She also spoke of the change in the Ministry of Education towards integrating consideration of Māori interests and engagement into all policy development.¹⁷⁴ The Crown submits that over time these initiatives will contribute towards consistency of service.

89. The lack of a clear pathway for education within a Māori context in the district has been addressed above.

Issue 6: To what extent and in what ways did curricula imposed by the Crown encourage Taihape Māori into specific vocations?

90. For much of the 20th century, Taihape District High School provided the only secondary schooling within the inquiry district. District High Schools tended to emphasise practical subjects “on the assumption that most rural pupils were likely to embark on rural occupations or become farmer’s wives.”¹⁷⁵ Dr Christoffel’s conclusion was that schools in the inquiry district attempted, within the constraints of their location, to provide a reasonably broad education to both Māori and Pākehā pupils.¹⁷⁶
91. Dr Christoffel’s also stated that, though Māori boarding schools (which were the secondary schools Taihape Māori who attended secondary school most likely attended before the 1940s) were criticised for supposedly channelling Māori students into manual occupations (such as farming and domestic roles), his research did not back up this criticism.¹⁷⁷
92. The report notes that – as with all instruction of female students in the early 20th century – Turakina Māori Girls College curriculum included a significant amount of domestic instruction.¹⁷⁸ However, in the 1930s inspectors recommended more challenging subjects be introduced to ensure more able

¹⁷⁴ Wai 2180, #4.1.19, at 41–42.

¹⁷⁵ Wai 2180, #A41(c), at [11].

¹⁷⁶ Wai 2180, #4.1.15, at 356–357; Wai 2180, #A41(c), at [14].

¹⁷⁷ Wai 2180, #4.1.15, at 356; Wai 2180, #A41(c) at [12].

¹⁷⁸ Wai 2180, #A41, at 117.

and ambitious girls had access to a more advanced secondary course in order to enter the professions. The school did so, and introduced a new academic stream with less focus on practical subjects and new subjects like geometry and algebra.¹⁷⁹ Dr Christoffel “found no evidence that officials encouraged Turakina to prepare its students for life as farmer’s wives – in fact quite the opposite. The Crown encouraged the school to increase its emphasis on preparing girls to enter professions”.¹⁸⁰

93. Interestingly, the availability of greater access to manual training (including woodworking and cookery) was a reason given by parents in 1944 for wanting to convert Moawhango School from a general school to a native school (although such activities were never actually introduced to the school).¹⁸¹
94. Judge Harvey put to Dr Christoffel that Dr Simon, who is quoted in the Tribunal’s report on the Wānanga Capital Establishment claim, asserts that there was a deliberate effort to make Māori a labouring class.¹⁸² He asked Dr Christoffel whether the policy framework was directed to channelling Māori into manual labour and whether the prevailing orthodoxy in the 19th and early 20th centuries was that, being farmers and farmers wives, Māori did not need a high mental culture.¹⁸³ Dr Christoffel’s response was that the excerpts that are used as evidence to support the existence of such a framework or prevailing orthodoxy was “extraordinarily selective”.¹⁸⁴ In 1910 and the decades following, when secondary schooling was expanding, there was a move to encourage a much greater emphasis on manual and technical skills, both in general and Māori secondary schools, so as to encourage skills useful in the workforce (on the basis only a small proportion of people would need to continue to university and enter professions such as the law).¹⁸⁵ This was particularly the case in district high schools such as Taihape District High

¹⁷⁹ Wai 2180, #A41, at 117.

¹⁸⁰ Wai 2180, #4.1.15, at 356.

¹⁸¹ Wai 2180, #A41, at 94–95.

¹⁸² Wai 2180, #4.1.15, at 385–386.

¹⁸³ Wai 2180, #4.1.15, at 388.

¹⁸⁴ Wai 2180, #4.1.15, at 388.

¹⁸⁵ Wai 2180, #4.1.15, at 389. The Crown also refers to the Waitangi Tribunal’s *Turanga Report* which noted the argument by Sir Robert Stout and Sir Apirana Ngata “that it was the job of the State to provide agricultural education in schools” (Waitangi Tribunal *Report on the Turanganui a Kiwa Claims* (Wai 814, 2004) at 496).

School. Due to location and population trends, district high schools were those which Māori were more likely to be attending.¹⁸⁶

95. The Crown notes the evidence given to the Wānanga Capital Establishment Tribunal (and recorded in its report) that Māori education was focused on practical rather than academic skills and that Māori were deliberately channelled into lesser-skilled occupations by the education system.¹⁸⁷ The Crown submits, however, that the evidence presented in this inquiry does not support a conclusion that the curriculum for Taihape Māori, in particular, was restricted in a way that sought to limit the vocational opportunities available to them as a group. Rather, the evidence shows that throughout the 19th and early 20th century teaching focused on matters relevant to students and work available in the New Zealand economy at the time and that practical vocational skills were taught to Pākehā students as well, particularly agricultural skills in rural areas.

Issue 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?

96. The Crown considers that the financial commitment Māori had to make to schools, especially needs to be examined on a case-by-case basis.
97. The 1871 Ōwhāoko education endowment reserve issue is addressed in submissions on Issue 3. The proposal for the endowment land came from a Turangarere pan tribal hui in 1871. Stirling states:¹⁸⁸

While the hui was focused on defining areas of tribal interests in relation to land dealings, the matter of setting aside land to endow a Native school was also raised. [...] Owahaoko was suggested by Renata Kawepo as land suitable for such school endowment, and Ngati Whiti and Ngati Tama were asked to provide that land, to which they agreed.

98. The subsequent title history of the endowment is addressed in Issue 3. The endowment was intended to support Ōmahu Native School – on the Eastern side of the ranges. The endowment was needed to cover Māori contributions

¹⁸⁶ Wai 2180, #4.1.15, at 390.

¹⁸⁷ Waitangi Tribunal *The Wānanga Capital Establishment Report* (Wai 718, 1999) at 5–9.

¹⁸⁸ Wai 2180, #A43, at 263.

towards the costs of the school buildings and other costs (including books, fencing and insurance), with the Crown funding providing for the balance.¹⁸⁹

99. It appears children of Taihape Māori went to Ōmahu Native School in the 1870s given there were no schools in the inquiry district at that time.¹⁹⁰ At that time many Taihape Māori also lived and worked around Ōmahu (including Winiata Te Whaaro). Even at Ōmahu, with its higher population, difficulties in keeping sufficient numbers of students enrolled meant that the school struggled.¹⁹¹ After having opened in 1872 it closed due to its diminishing roll in 1877.¹⁹² These events, though outside the inquiry district (and thus not addressed in detail in these submissions), are relevant to the expectations of education provision for Taihape Māori given the even smaller population in the inquiry district.
100. Perhaps not surprisingly given this experience, in 1891 when he was asked about Māori setting aside land to endow schools, Mōkai Pātea Chief Hiraka Te Rango replied:¹⁹³

I do not approve of that. ...My objection is this: that, if I own certain land, why should I give it up for the purpose of providing education for other people's children? ... It is all right to give up land for my own child, but to give it up for the children of other people, I cannot see why I should do it. My hapu has set apart some land for school purposes.

...The Owahaoko school reserve was given as an endowment for the school Renata Kawepo set that land apart for school purposes, and yet there is no school established. It was one year at Omahu, and we do not know what has become of the money.

101. It should be noted, however, that although it is clear from the evidence that Māori considered the government did not make sufficient contributions to

¹⁸⁹ Wai 2180, #A43, at 451.

¹⁹⁰ Wai 2180, #A43, at 451. Mr Stirling appears to accept that “the people of Mokai Patea were apparently sending their children to live at Ōmahu, in order to attend the Ōmahu Native School”, but then subsequently suggests that the fact that Pakeha parents objected to Māori boarders at the School meant that children of Taihape Māori were likely precluded from attending the School and therefore neither they nor their parents derived any benefit from the Ōwhāoko endowment. These appear to be inconsistent positions.

¹⁹¹ Wai 2180, #A43, at 452.

¹⁹² Wai 2180, #A43, at 452.

¹⁹³ Wai 2180, #A43, at 454–455.

the School, the available evidence makes reference to significant Crown contributions.¹⁹⁴

102. More broadly, the claimants set out that Māori seeking a native school were required to contribute land and, at various times, resources too. The Crown notes that there has only ever been one Native school within the inquiry district, at Moawhango. As addressed above, there was a delay between a request by Māori to establish a school at Moawhango and the establishment of a school – apparently due in part to the time taken to identify an appropriate site and for the land to be titled and subdivided.¹⁹⁵ A general school was ultimately established on land offered for use by a Pākehā settler, and the school was subsequently converted to a Māori school.¹⁹⁶
103. In the 19th century, the supply of schools struggled to meet demand and a solution adopted by education boards (including, relevantly, the Wanganui board) was to require settler families to provide land and/or school buildings until the need for a school was clearly established.¹⁹⁷ Under the Education Act 1877, for example, section 75 provided that a committee (the community) could, with the sanction of the Board of the district, provide a school and buildings and the Board could require the committee to pay for those things from the school fund (which, prior to establishment of the school, would have consisted only of donations).¹⁹⁸ Settlers built the hall that housed Ūtiku school in 1897,¹⁹⁹ rented the building that housed Turangarere School in 1904,²⁰⁰ and donated the land on which Rātā School was established in 1890.²⁰¹
104. As these examples show, it was therefore not quite so simple in all cases that Taihape Māori were required to provide land (and other resources) for their children's schools but non-Māori were not. In addition, Māori were not restricted to attending Māori or native schools. Though the Crown

¹⁹⁴ Wai 2180, #A43, at 453.

¹⁹⁵ Wai 2180, #A41, at 62–63 and Wai 2180, #4.1.15, at 442.

¹⁹⁶ Wai 2180, #A41, at 62.

¹⁹⁷ Wai 2180, #A41, at 23.

¹⁹⁸ Wai 2180, #2.1.15, at 443.

¹⁹⁹ Wai 2180, #A41, at 26.

²⁰⁰ Wai 2180, #A41, at 28.

²⁰¹ Wai 2180, #A41, at 30.

acknowledges that there were some legislative differences as to contributions required for the establishment of native and general schools, this did not necessarily lead to major differences in reality.

105. Other than the fact Māori in the district generally lived further away from schools and therefore have a greater financial barrier to accessing education, there is very little evidence of funding and resource differentials. The Crown also notes there have been measures to reduce such disparities, such as Māori scholarships, assistance with boarding costs and free rail passes.²⁰²

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

106. Moawhango was the only Native/Māori school in the district, from 1944 – 1969. For that reason there is little evidence on this issue. As claimant counsel note in their generic submissions, counsel have not been able to locate any evidence as to the involvement of Taihape Māori in the appointment of teachers.²⁰³ Dr Christoffel did note, however, that the school had good teacher retention (for a small school) from 1947, with teachers generally staying 3 – 4 years.²⁰⁴ It is also relevant that Moawhango parents elected their first school committee after it became a native school,²⁰⁵ and that the committee was very active during the time Moawhango remained a Native school.²⁰⁶

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

107. These submissions have addressed above matters relating to disparity in outcomes and active protection of te reo Māori in education.²⁰⁷
108. As the Crown has acknowledged already, the state education system has not sufficiently valued Māori cultural understandings and has had consistently low expectations of tamariki and rangatahi Māori.²⁰⁸ The Ministry of

²⁰² See for example #A41, at 153–156.

²⁰³ Wai 2180, #3.3.46, at [6.52].

²⁰⁴ Wai 2180, #A41, at 85–86.

²⁰⁵ Wai 2180, #A41, at 81.

²⁰⁶ Wai 2180, #A41, at 96.

²⁰⁷ Matters highlighted by claimant counsel in their generic closing submissions on this question (Wai 2180, #3.3.46, at [6.55]).

²⁰⁸ Wai 2180, #M27, at [13].

Education evidence recognises the existence and impact of low expectations and unconscious biases, the impact on Māori student outcomes, and the need to address this issue to improve education policy and delivery, and notes the Ministry is actively engaged in working towards this.²⁰⁹ Ms Holsted’s evidence emphasised the importance of “changing the hearts and minds of teachers”, and, outside of the various programmes that have sought to address matters of unconscious racism and bias, emphasised that the key action is to ensure that teachers are trained in a way that allows them to come out culturally connected.²¹⁰

109. The Crown submits that the available evidence demonstrates the Crown is actively seeking to address these complex and difficult matters.

URBANISATION, URBAN MIGRATION, AND DISPERSAL FROM HOMELANDS (TSOI 10-11)

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

Issue 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?

110. The Crown has addressed this matter with respect to te reo Māori at paragraph 51–57 above.
111. Dr Christoffel’s evidence is that the urbanisation trend “was considerably less pronounced” in the inquiry district than at the national level,²¹¹ but that Taihape Māori “at times moved to access better economic opportunities before the urbanisation trend, possibly driven by the loss of ancestral lands and a rising population.”²¹² He suggests the rural housing scheme may have contributed to Taihape Māori remaining in the district, as there was less need to move to towns and cities to access better quality housing.²¹³
112. The Crown submits, that to the extent it occurred in the inquiry district, there were many factors influencing urban migration. Māori chose to move to

²⁰⁹ Wai 2180, #M27, at [15] and [31]; and see #M27(g), at 6–12 for an outline of the initiatives.

²¹⁰ Wai 2180, #4.1.19, at 91–92.

²¹¹ Wai 2180, #A41(c), at [32].

²¹² Wai 2180, #A41(c), at [34].

²¹³ Wai 2180, #A41(c), at [32].

cities for a variety of reasons and continue to do so today. The Crown did not initiate or control this historical (and global) movement, nor could the Crown realistically have suppressed or reversed it. The Waitangi Tribunal has previously observed that “no doubt there were world-wide economic forces leading to urban migration globally that were beyond the power of a government to control.”²¹⁴

113. The Crown acknowledges the significance of tūrangawaewae to Taihape Māori, and that in moving to urban centres some Taihape Māori may have lost or compromised their connection to their traditional rohe. The Crown acknowledges evidence that many claimants have given concerning the loss of connection with their ancestral homelands and Māori culture and the deep commitment to (and the difficulties in) maintaining those links and supporting ahi kā roa.
114. To the extent that urbanisation did have a negative impact, the Crown submits that the Treaty does not impose any general duty on the Crown to mitigate any such effects, although the range of socio-economic policies and initiatives developed and implemented by the Crown is motivated in part to reduce adverse impacts of those demographic trends.

POLICY EFFECTS (TSOI 12-13)

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

115. The Crown submits that historical poverty should not be assessed against contemporary living standards. Any consideration of claims concerning poverty must have regard to the prevailing circumstances of the time and the standards of living generally attainable by the population at that time.
116. There is limited evidence which provides analysis of the causal link between Crown policies, actions or omissions and impoverishment with Taihape Māori communities. Dr Christoffel comments that “[a] diminishing pool of land and an inability to develop what land was left all contributed to Maori poverty.”²¹⁵ He noted under cross-examination that land loss was not

²¹⁴ See Waitangi Tribunal *Whanganni River Report* (Wai 167, 1999) at 83.

²¹⁵ Wai 2180, #A41, at 262.

“necessarily the only cause of poverty”, but that it was “a significant factor”.²¹⁶ Dr Christoffel also refers to the effects of high unemployment and low wages being seen in poverty during the Depression of the 1930s.²¹⁷ The Crown notes the impacts of that Depression were not particular to Māori.

117. With respect to matters of land loss, the Crown refers to submissions on Issues 4 and 11 regarding sufficiency of land and monitoring.
118. As Dr Christoffel accepted, impoverishment is influenced by a range of factors. The Crown is not able to control or influence all of these factors. For this reason, the Crown says assessing the causation of impoverishment is inherently difficult and, accordingly, submits that caution is required in assessing any claims concerned with impoverishment.

Issue 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?

119. The level of social service provision in Taihape, as outlined in Dr Christoffel’s report and in the submissions above, has been broadly similar to other districts and has been broadly consistent with the principle of equal treatment. The reality that the services offered have been limited in scale at times is influenced primarily by the realities of remoteness and population sizes.
120. The Crown accepts that it has a duty to protect the tribal structures of Taihape Māori, and this generally requires the Crown to respect, and not undermine, these structures. In this regard, the Crown has acknowledged (see Issue 3 (Native Land Court) submissions) that:
- 120.1 the requirement of Taihape Māori to defend their interests in the Native Land Court significantly damaged relationships between

²¹⁶ Wai 2180, #4.1.15, at 373.

²¹⁷ Wai 2180, #A41, at 266.

Taihape Māori and their neighbours, and amongst the iwi, hapū and whānau of Taihape, the effects of which are still felt today;

120.2 the overall operation of the native land laws, in particular the awarding of land to individuals, undermined tribal Taihape Māori decision making and made their land more susceptible to partition, fragmentation, and alienation;

120.3 this eroded Taihape Māori traditional tribal structures; and

120.4 the Crown's failure to protect Taihape Māori tribal structures was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

121. The Crown submits that the preservation of tribal identity is not a matter within the Crown's responsibility and control: iwi identity is a matter for iwi, hapū, and whānau to determine. These are matters that are internal to the relevant group. As the Tribunal has found previously:²¹⁸

How and why Māori choose to affiliate is no business of the Crown: at least in the sense that it is no part of the Crown's role to seek to influence that choice.

122. It is also important to acknowledge that Māori tribal identities are not static and were not fixed in 1840 for all time. Rather, Māori tribal identities change and evolve over time due to a wide range of factors, including:

122.1 inter-marriage;

122.2 movement and migration of populations;

122.3 individuals' personal preferences and choices; and

122.4 political expediency.

123. The Crown notes that in declining to make a finding of Treaty breach in relation to tribal identity, the Wairarapa ki Tararua Tribunal noted the difficulty in determining the Crown's culpability due to a range of factors.²¹⁹

²¹⁸ Waitangi Tribunal *The Wairarapa ki Tararua Report, Vol 3* (Wai 863, 2010) at [14.4].

²¹⁹ Waitangi Tribunal *The Wairarapa ki Tararua Report, Vol 3* (Wai 863, 2010) at [14.4].

124. The Crown submits that the extent to which any Crown actions or omissions have affected Taihape Māori tribal identities or the recognition of such identities is complicated by the range of non-Crown factors which may have also played a role, such as urbanisation and the way in which Taihape Māori chose to assert their tribal identities.²²⁰ Mr Walzl's evidence is that the inquiry district, until the 1980s, did not have the same degree of urbanisation as in other areas (attributed to Waiōuru Military Exercise Area and railway related employment).²²¹
125. The Crown says that there is insufficient evidence on the record of inquiry to establish that Crown actions or omissions related to social services provision alone have caused prejudice to the tribal identities of Taihape Māori, but they have been contributing factors. Evidence has been given of those matters contributing to people leaving the area (either permanently or temporarily). In particular, tangata whenua gave evidence that they, or their children, have needed to leave the area to access Māori-medium educational opportunities and that this has had a direct effect on their home populations, and on the maintenance of cultural connections and obligations (including, for example, sufficient speakers of te reo Māori for the paepae). This was also addressed by Mr Christoffel who noted the attendance of Taihape Māori at schools such as Te Aute, Hato Petera, and Turakina Māori Girls college. Such schools require certain population bases to be sustainable – these educational opportunities were accessible by Taihape Māori in locations near to, but outside of, their rohe.
126. The Crown also acknowledges that the various administrative boundaries it has defined and operated within (including those for education, health, housing and other social service policy and delivery) do not reflect the rohe of Taihape Māori and that the regional offices of agencies are located outside the inquiry district (and have been since the 19th century). There is nothing inherently wrong in the Crown establishing regional presences – these are a reasonable attempt to balance centralism and localism, however, where rohe straddle administrative boundaries, it behoves the Crown to ensure it

²²⁰ Waitangi Tribunal *The Wairarapa ki Tararua Report, Vol 3* (Wai 863, 2010) at [14.4].

²²¹ See submissions on Issue 4.

operates in an integrated fashion for those whose interests are intersected by those boundaries.

127. Taihape Māori have had to deal with more than one region as their tribal interests straddle the Crown's administrative boundaries. They have had to form relationships with Crown officials that are not based in the Taihape district and this has at times been difficult. Tangata whenua have given evidence of the difficulties they have experienced in having to navigate these complex arrangements, and in having their needs recognised and voices heard. In a practical sense, these issues have also resulted in difficulty in locating relevant correspondence or data that is specific to the peoples of Taihape.
128. The Crown recognises the efforts of Taihape Māori, especially from the 1980s, to re-establish their distinct identity in their rohe, including with Crown agencies. The Crown acknowledges that it has not always recognised that distinct identity (see for example, evidence on Issue 9) and that the Crown's failure to do so has impacted on Taihape Māori. The Crown takes reasonable efforts to ensure its administrative boundaries do not restrict its service provision to Taihape Māori, or its ability to meet the principle of equal treatment.²²² The Crown acknowledges that where the Crown imposes administrative boundaries it behoves the Crown to ensure it operates in an integrated fashion for those whose interests straddle those boundaries, and that it may not have always achieved that. The Crown also recognises an ongoing need for government agencies to improve their recognition of, and relationships with, Māori – including those in remote regions like Taihape.

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TO: The Registrar, Waitangi Tribunal
AND TO: Claimant Counsel

²²² For example, see submissions on Mōkai Patea Services Trust and the Ministry of Education above.