
**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 20: TE REO RANGATIRA**

7 May 2021

CROWN LAW

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INTRODUCTION

CROWN POSITION AND CONCESSIONS

1. The Crown recognises te reo Māori as a taonga of Māori, including Taihape Māori, and accepts it has a duty to protect and sustain the language.
2. The Crown concedes (as it also has acknowledged in submissions on Education and Social Services (Issue 18)) that:
 - 2.1 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.
 - 2.2 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.
3. The Crown accepts te reo Māori includes dialects and, thus, the dialects of Taihape Māori.
4. The Crown recognises that education is an important means through which it meets its Tiriti/Treaty obligations with respect to the protection of 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 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.¹

¹ Wai 2180, #M27, at [102]–[103].

5. The Crown is actively seeking to increase the availability of education in te reo Māori, including immersion education, across the country and in the inquiry district in particular – within the limits of maintaining appropriate quality of teaching.²
6. The Crown recognises multiple factors are relevant to the protection of te reo Māori in Taihape, not only state education. The Crown acknowledges that matters addressed in submissions on 19th and 20th century land administration and alienation form relevant context to the Crown’s concession that it failed to meet its obligation under te Tiriti/the Treaty to protect te reo Māori.

ISSUES

Protection

Issue 1: Was the Crown under an obligation to protect and promote Te Reo Māori among Taihape Māori? Did this include the protection of dialects of Taihape hapū and iwi in the region?

7. Section 4 of Te Ture mō Te Reo Māori 2016 enshrines the recognition of Māori language as a taonga of iwi and Māori and formally recognises Māori as kaitiaki of the Māori language. These aspects of recognition do not limit or affect any responsibilities of the Crown in relation to the Māori language.

4. Te whakaū i te reo Māori hei taonga

- (1) He taonga te reo Māori mā ngā iwi me ngāi Māori.
- (2) Ko ngā iwi me ngāi Māori ngā kaitiaki o te reo Māori.
- (3) Kāore e herea, e pāngia rānei e tēnei wehenga ngā haepapatanga o te Karauna e pā ana ki te reo Māori.

Recognition of Māori language as taonga

- (1) The Māori language is a taonga of iwi and Māori.
- (2) Iwi and Māori are the kaitiaki of the Māori language.
- (3) This section does not limit or affect any responsibilities of the Crown in relation to the Māori language.

8. The Crown recognises te reo Māori as a taonga of Māori, including Taihape Māori, and accepts it has a duty to protect and sustain the language. The Crown has conceded it has breached the principles of te Tiriti o

² See for example Wai 2180, #M27(c), at [18]; Wai 2180, #M27, at [105]; and Wai 2180, #4.1.19, at 127–129.

Waitangi/the Treaty of Waitangi in failing to actively protect te reo Māori (as outlined above) and accepts this includes dialects of Taihape Māori.

9. However, the Crown's duty is not absolute and unqualified; the Crown is required to take such action as is reasonable in the prevailing circumstances as recognised in the *Broadcasting Assets* case:³

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

10. The Tribunal and Courts have recognised that the obligation to protect te reo Māori is a shared obligation between the Crown and Māori.⁴ A particularly vulnerable taonga may require extra vigilance.

Issue 2: Did legislation, policies and practices of the Crown contribute to the decline of Te Reo Māori among Taihape Māori? If so, how?

Issue 3: What factors influenced legislation, policies and practices of the Crown concerning Te Reo Māori in the Taihape inquiry district?

Issue 4: Was the generational transmission of Te Reo Māori among Taihape Māori affected by Crown legislation, policies and practices? If so, how?

11. The Crown acknowledges there is consistent evidence of a lack of generational transmission of te reo Māori in the Taihape inquiry district.⁵ The Tribunal has also heard evidence that the tūpuna of Taihape Māori spoke unique dialects of te reo,⁶ and that Taihape Māori have experienced loss and dislocation as their children and whānau have had to learn te reo from kaumātua from other iwi or institutions outside their rohe.⁷
12. Te Ture mō Te Reo Māori 2016 states:

6. Te Whakaūnga a te Karauna

(1) Ka whakaū te Karauna i ngā pānga kino o āna kaupapa here o mua, o āna mahi hoki o mua, i roto i ngā whakatipuranga, kāore i āta

³ *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 at 517 [*Broadcasting Assets*].

⁴ See, generally, Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (Wai 262, 2010) and *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 [*Broadcasting Assets*].

⁵ See, for example, Wai 2180, #G08, at [11]–[12]; Wai 2180, #E03(a), at [6]; Wai 2180, #E07(a), at [6]–[7], [11]; Wai 2180, #H03, at [16]; Wai 2180, #H10, at [20], [33]; Wai 2180, #H11, at [11]; Wai 2180, #I15, at [12]; Wai 2180, #K12, at [15]; Wai 2180, #L02, at [9].

⁶ Wai 2180, #A52, at 436; Wai 2180, #K09, at [9]–[10]; Wai 2180, #I15, at [14]; Wai 2180, #I16, at [7].

⁷ See, for example, Wai 2180, #G09, at [4]–[5], [18]; Wai 2180, #I16, at [17]; Wai 2180, #K12, at [26], [45]; Wai 2180, #K09 at [14].

whai kia tiakina, kia tokona ake hoki te reo Māori, kāore hoki i ākina kia whakapuakina te reo e ngā iwi me ngāi Māori, otirā ko ngā take—

(a) kua kapohia i roto i ngā taunakitanga ki Te Rōpū Whakamana i Te Tiriti o Waitangi;

(b) hoki kua whakaūngia e te Karauna i roto i ngā whakaaetanga whakataunga me ngā iwi hei whakatau i ā rātou kerēme i raro i Te Tiriti o Waitangi.

(2) Ka whakapuaki te Karauna i tōna ū kia mahi tahi me ngā iwi me ngāi Māori ki te āta whai tonu kia tiakina, kia tokona ake hoki tēnei taonga, ko te reo Māori, mō ngā whakatipuranga e haere ake nei.

6. Acknowledgement of the Crown

(1) The Crown acknowledges the detrimental effects of its past policies and practices that have, over the generations, failed actively to protect and promote the Māori language and encourage its use by iwi and Māori, matters that—

(a) have been recorded in evidence given to the Waitangi Tribunal; and

(b) the Crown has acknowledged in deeds of settlement entered into with iwi to settle their claims under the Treaty of Waitangi.

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

13. The Crown has conceded it has failed to actively protect te reo Māori and that this has had longstanding and ongoing detrimental effects on the acquisition and use of te reo Māori, including for those within the Taihape Inquiry District. Section 6 of Te Ture mō Te Reo Māori 2016 (see the full text above) likewise acknowledges the detrimental effects of the Crown's past policies and practices that have failed to actively protect and promote te reo Māori.
14. The Crown recognises multiple factors are relevant to the protection of te reo Māori in Taihape, not only state education. The Crown recognises that matters addressed in submissions on 19th and 20th century land administration and alienation form relevant context to the Crown's concession that it failed to meet its obligation under te Tiriti/the Treaty to protect te reo Māori.
15. Over time, and particularly since the latter part of the 20th century, the Crown has undertaken a number of initiatives to protect and revitalise Te Reo Māori. These initiatives have included the establishment of, and

ongoing support for, Te Taura Whiri and introducing Te Ture mō Te Reo Māori 2016, and measures for its implementation across the public sector and more generally.

16. The extent to which specific Crown legislation, policies and practices have negatively impacted te reo Māori for Taihape Māori has, however, only been addressed in detail in this inquiry in the education context. This is considered comprehensively with respect to the historic education position at [75]–[85] of the Crown’s submissions on Issue 18.
17. The Crown also refers the Tribunal to its submissions on Education and Social Issues at paragraphs [50]–[57]. These submissions outline the progress that is underway in lifting te reo Māori provision in all educational settings, as well as the Ministry of Education’s commitment to address the need for te reo Māori teachers in the inquiry district who are Taihape Māori.

Issue 5: What has been the Crown’s policy and practice towards Te Reo Māori including dialects of Te Reo in Taihape over time?

18. The Crown refers to its closing submissions on Education and Social Issues at paragraphs [51]–[57] (regarding the contemporary position) and paragraphs [75]–[85] (regarding the historical position).

Education

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

19. The Crown refers to its closing submissions on Education and Social Issues at [80]–[84]. Within these submissions, the Crown acknowledges that:
 - 19.1 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.
 - 19.2 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.

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

20. The Crown refers the Tribunal to paragraphs [51]–[57] of the Crown’s closing submissions on Education and Social Issues. The Crown reiterates its submission 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 education, across the country and in the inquiry district in particular – within the limits of maintaining appropriate quality of teaching.

7 May 2021



R E Ennor / MGA Madden
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TO: The Registrar, Waitangi Tribunal
AND TO: Claimant Counsel