

I TE RŌPŪ WHAKAMANA  
I TE TIRITI O WAITANGI

WAI 1718

KEI RARO I TE MANA O

the Treaty of Waitangi Act 1975

Ā

I TE TAKE O

he kerēme nā **DR CATHY MOANA DEWES** rātou ko Te Rūnanga Nui o Ngā Kura Kaupapa Māori, ko ngā whānau o ngā kura kaupapa Māori e noho mema ana ki Te Rūnanga Nui o Ngā Kura Kaupapa Māori

Ā

I TE TAKE O

he tono hohoro nā te kaikerēme **DR CATHY MOANA DEWES** rātou ko Te Rūnanga Nui o Ngā Kura Kaupapa Māori, ko ngā whānau o ngā kura kaupapa Māori e noho mema ana ki Te Rūnanga Nui o Ngā Kura Kaupapa Māori.

**TUHINGA KŌRERO - NGĀ TĀPAETANGA WHAKAUTU KI TE KARAUNA NĀ  
NGĀ KAIKEREME**

*SPEAKING NOTES - CLOSING SUBMISSIONS IN REPLY FOR THE CLAIMANTS*

**NŌ TE 23 O NGĀ RĀ O HUNE 2023**

*DELIVERED 23 JUNE 2023*

RECEIVED

Waitangi Tribunal

**5 Jul 23**

Ministry of Justice  
WELLINGTON

**KĀHUI**  
LEGAL

Kaiwawao

PO Box 1654

WELLINGTON 6143

Waea: (04) 495 9999

Rōia: N R Coates / P T Walker / A O Houia-Ashwell / A A Grant

## 1. SPEAKING NOTES

*Te piko o te mahuri, tērā te tupu o te rakau.*

- 1.1 The balance between rangatiratanga and kāwanatanga is always negotiated. The Claimants' case is not that the Crown has done nothing, it has done something. The problem has been that the Crown has done things on its own terms. And it has always been assimilating the unique Kaupapa of Kura Kaupapa Māori.
- 1.2 These are institutions to uplift the wairua of people and whānau and the opportunity to see the world as Māori and be proud of it. There are specific duties but also the right of whānau Māori to be Māori. The Crown's approach has been undermining of these Kaupapa and their connections and obligations to whānau.
- 1.3 Ultimately, this is about tamariki, about the Kura – and the mana of whānau.
- 1.4 While the Crown thought it was honourable in trying to capture the magic of Kura Kaupapa Māori, it went about it in a way that was not compliant with its obligations under Te Tiriti – in process and in substance.
- 1.5 Kātahi te pakiwaitara pai. The Crown story is a great story, but it does not fit the facts – including as it relates to the Independent Taskforce, the Crown response, and the establishment of the Oversight Group and Technical Advisory Group.
- 1.6 It is significant that the Crown's Closing Submissions did not respond to the other aspects of the Tomorrow's Schools reform that the Claimants' have identified as problematic (see for example the analysis in the evidence of Mahinarangi Maika Wai 1718 #B26(a) Tab 1).
- 1.7 The Crown has sought to understand the realistic things it can do. This is a cynical approach. Anything is possible – previous Tribunal findings and recommendations and other outcomes are proof of this (Māori Health Authority, Māori Television etc). This is why the Claimants seek strong findings from the Tribunal.
- 1.8 The Crown has said "it would be an irony" if the effort going in was castigated. Yet that is not what the Claimants are saying. The focus has been on the mainstream and what works for the Crown within its existing framework. The Claimants say that this has not and will not work for Kura Kaupapa Māori and Te Matakahuki.

*Taskforce Recommendation and Crown Proposals*

- 1.9 In response to the submission that the Taskforce's recommendation was less than what the Crown then proposed, this is not accurate. The Taskforce was clear that it was envisaging a separate authority with the same authority and functions as the Taskforce's proposed ESA, which was independent of the MOE in the Taskforce proposals (but ultimately incorporated within the MOE in the Crown's ultimate decisions and

actions). The overall form and functions were left to the Crown and Te Rūnanga Nui and Ngā Kura a Iwi to negotiate and determine (and Kōhanga and Wānanga to consider in due course).

1.10 It was clear that the Crown was steering away from this without engaging with Te Rūnanga Nui and Ngā Kura a Iwi (EDU.012.0506)

1.11 See Independent Taskforce Final Report (Wai 1718, #A006, Tab 21 at 79):

An Education Support Agency (with Education Support Learning Network offices) is established to partner locally with schools/kura and strengthen ongoing improvement in schooling. The Education Support Agency would replace the current Ministry of Education regional and associated national level functions, (including early learning/kōhanga reo and tertiary functions). The Education Support Agency must operate throughout the country in the form of Education Support Learning Network offices by establishing and maintaining a strong and effective local presence.

1.12 And again (Wai 1718, #A006, Tab 21 at 20):

Having considered all of the feedback and evidence, we believe a new entity, separate from the Ministry of Education with a very strong local presence, is essential to address the enduring shortfall in support for our boards, leaders, teachers/kaiako, and communities in order to build collaboration and trust across the system. We have called this entity the Education Support Agency. We expect it would have one national office and multiple local offices across the country. These would replace current Ministry of Education regional offices, which would be disestablished.

1.13 And again (Wai 1718, #A006, Tab 21 at 52):

An autonomous governance body is formed to support Kaupapa Māori, which includes the educational organisations currently recognised as Kaupapa Māori: Te Rūnanga Nui o Ngā Kura Kaupapa Māori o Aotearoa and Ngā Kura ā Iwi o Aotearoa, and respects their differences.

We believe that it is impossible to meet the Crown's obligations under Te Tiriti o Waitangi without facilitation of a parallel Kaupapa Māori pathway. Rangatiratanga will be maintained by each Kaupapa Māori organisation through their own existing rūnanga/executive body continuing to set their own priorities and directions.

A representative, shared and overarching governance body could be chosen by each rūnanga to work with the Crown to determine resourcing arrangements and processes to enable effective development from a national network of Kaupapa Māori to local networks of Kaupapa Māori. This might mean a staged process over time.

The national Kaupapa Māori governance body will have the same authority/manā ōrite as, and operate parallel to, the Education Support Agency, through its two governance bodies with their respective kura. This structure will ensure rangatiratanga for the Kaupapa Māori organisations so that they can grow coherently and flourish. Once seamless pathways from early learning/kōhanga reo across the compulsory sector to tertiary have been more firmly established, kōhanga reo and where wānanga may also wish to join the Kaupapa Māori executive body through their own respective governance bodies. Under Te Tiriti o Waitangi the Ministry of Education

would continue to provide curriculum, learning, assessment and policy advice and resources for English medium and all other Māori medium settings. In the short term, these resources will also continue to be available to the Kaupapa Māori organisations. In the long term the Kaupapa Māori governance body may wish to take responsibility for some, or all, of this work for its member organisations. State schools/kura working at Level 1 immersion may be provided with a set period of transition as an opportunity to seek a change in status and adoption by any one of the Kaupapa Māori organisations represented in the Kaupapa Māori governance body. This provision reduces fundamental inequities faced by Kaupapa Māori schooling. It will enable a more coherent approach that enables them to realise their full potential, which is important for the country as a whole in terms of social, economic and cultural advancement.

1.14 And finally (Wai 1718, #A006, Tab 21 at 94):

For all these reasons we propose:

» a parallel Governance Group drawn from Te Rūnanga Nui o Kura Kaupapa Māori o Aotearoa and Ngā Kura ā Iwi o Aotearoa, supported by government officials, be set up to navigate the process of establishing the parallel Kaupapa Māori pathway we have suggested.

1.15 The Crown cherry-picked and reframed what the Taskforce had proposed (right across the board, not just for Kaupapa Māori). This was the opposite of what the Taskforce intended in terms of a systems approach – ie as noted by the Tribunal – if you don't follow through with all the parts, don't you create a problem with the system?

#### *Crown Proposals – 2021*

1.16 The Crown has consistently minimised or ignored the Claimants' concerns. The Crown set the parameters for the work programme and legislation so as to promote its preferred one-size-fits-all model – see paragraph 39 of the September 2021 Cabinet Paper (Cabinet Paper - #B30 Crown Bundle, Tab 137 at 1694, 1700).

1.17 The process of what happened was also problematic. As noted by Dr Daryn Bean in August 2021 – the Crown “acknowledge we were asking you to achieve the impossible”. Issues identified by Te Rūnanga Nui and Te Matakahuki included:

- (a) Reframing the 30% target.
- (b) Maori-medium vs Kaupapa Māori pathways.
- (c) The Crown unilaterally determining what was on and off the table – including Crown entity / non-Crown entity – and the concerns for wānanga given they were already in the midst of negotiating non-Crown entity status.
- (d) Confusion about the Oversight Group and the role of the Technical Advisory / Expert Group (changing terminology), which was also playing out within the Crown. And we learned through discovery that it was actually the Technical Advisory Group proposing process and options for appointments to the Oversight Group (EDU.012.0255, EDU012.0266, EDU 013.0052, EDU 013.0058).

- (e) The many existing issues and context (for Kōhanga, Kura Kaupapa Māori, Kura a Iwi and Wānanga), including unresolved claim issues, were not identified or discussed in the Cabinet Paper.
  - (f) Kōhanga and Wānanga appeared to be add-ons or an afterthought – this is why the proposal did not make sense for them. Kōhanga had already started work on their proposed legislation some time ago, Wānanga were already in the middle of their own discussions. This is evident even in the Crown’s internal discussions (see email from Andy Jackson re wānanga – EDU.012.0118). This reflected the rushed and ill-considered nature of the proposal.
- 1.18 Te Matakahuki were clear from the beginning that they wanted to focus on their own pathway – and did not want to participate in a process that compromised that. Yet the Crown continued to try and force them into its preferred one-size-fits-all pathway through the Oversight Group and work programme.
  - 1.19 The Crown says it was an open invitation – but it was still within the Crown’s parameters. Te Matakahuki had expressed their vision and what they were proposing to do leading up to and in June 2023 (see B30, Tab 123). It was clear that the Crown preferred a broader approach.
  - 1.20 The Crown said it was not a 4-week window to design legislation, it was 16-18 months to get it in shape. This was not what was being communicated to Te Matakahuki at the time – they were told they would have a matter of weeks for engagement. At the same time, the Crown was still having internal discussions about the nature of the role of the Oversight Group (see disclosure).
  - 1.21 The Technical Advisory Group was also problematic. Te Matakahuki were not being spoken to first, the Technical Advisory Group were being spoken to first (for example EDU.013.0008, EDU.012.0150). The Crown says the September 2021 Cabinet Paper was not developed with any other Group, but it was developed with the Technical Advisory Group – they had access to the drafting prior to it being lodged with Cabinet. Te Rūnanga Nui and Te Matakahuki did not get an opportunity to say what the Technical Advisory Group would be doing, were not involved in the process or consulted at the beginning.
  - 1.22 There are clear statements such as the Technical Advisory Group wanting to understand scope and what was on the table in order to protect the Minister and Ministry – this was not enabling rangatiratanga (EDU.012.0255).
  - 1.23 And when Te Matakahuki expressed concern about the process and declined to participate, they were publicly undermined by the Crown. See <https://waateanews.com/2022/02/21/agenda-too-big-for-kaupapa-maori-idealogues/>
  - 1.24 This was harmful and undermined Te Matakahuki and Te Rūnanga Nui publicly and to their whānau. There were also misleading statements from the Crown such as Te Matakahuki being given 14 months to design their pathway – this was patently incorrect.

- 1.25 The Crown has also said that Te Matakahuki and Te Rūnanga Nui have been focused on form over function. This is not the case. They were prepared to have the negotiation, as the Wānanga had been doing leading up to the 2021 engagement. It was the Crown that unilaterally “took things off the table”.
- 1.26 The Crown’s statements regarding the “Crown Entity Framework” have been problematic and an attempt to rewrite what the Crown said. It means what I said - “I do not seek to pursue the development of a stand-alone MME Authority or the development of a new non-Crown Entity organisation type for MME schooling services”. This was a clear differentiation between the members of Te Matakahuki, with no obvious policy rationale behind it – in fact it was simply the thoughts of one Minister. There are no other policy documents within the Crown’s decision making process that identify the issues with departing from or analyse the nature of the “Crown Entities Framework”.
- 1.27 The Crown has also attempted to give meaning to the term “Crown Entity Framework” when it does not have a singular meaning. None of the examples suggested by the Crown could be said to fall within that definition – Te Mātāwai, Te Aka Whai Ora, Te Wānanga o Raukawa are all outside the framework, notwithstanding their acceptance of accountability and transparency. The Crown is trying to read breadth retrospectively where the Ministry and the Crown have never applied these words and terms in that way.
- 1.28 The Claimants have never shied away from accountability or transparency – they are accountable to their whānau first. It is insulting to these Kaupapa when the Crown frames its reluctance to negotiate on a suitable pathway in terms of some perceived issue about lack of accountability.

*Missed Opportunities – 2022*

- 1.29 The Crown never seriously considered Te Matakahuki’s proposal or engaged with Te Matakahuki about it. The Ministry understates its power and what the implications would be when it only included options 1 – 4 in the Education Report to Ministers. It meant Te Matakahuki’s Package 5 was never going to be seriously considered.
- 1.30 Following this, Te Pae Roa and the Technical Advisory Group were being included and contributing to drafts of the proposed Cabinet Paper.
- 1.31 The Crown says that they were trying out different things where the trust exists to do so. The implication is that the trust was not there with Te Matakahuki. The question is who was going to take responsibility for the commitments to get things back on track in the Mediation Agreement – and act in a Treaty compliant way?
- 1.32 There were also serious concerns around free and frank advice. Officials noted it was not their role to provide ‘political advice’ to Ministers about the risk of not providing copies of the relevant documents to Te Matakahuki following the Mediation Agreement.

- 1.33 The Crown also submitted that where there was advice to share drafts and documents, this was from a 'junior official' who did not understand key processes and conventions. We submit that the junior official understood very well their Treaty obligations and the commitments made to Te Rūnanga Nui through the Mediation Agreement.
- 1.34 The Crown's closing submissions suggested that Te Matakahuki were saying that Package 5 was the only Te Tiriti compliant option – that is not what Te Matakahuki were saying and is a mischaracterisation. Te Matakahuki were prepared to discuss and negotiate, but the Crown kept them excluded from critical discussions.
- 1.35 The Crown makes much of its signal that it was open to moving towards package 4 over time – yet Te Matakahuki were clear that this was not what they were seeking.

#### *Independence and process*

- 1.36 There are major concerns with the independence of the whole process in terms of apparently independent people being appointed to roles directly from key roles within either the Ministry or the Minister's office. Further key documents from discovery include:
- EDU.012.0501 – Discusses what is on and off the table.
  - EDU.012.0104 – Key people being appointed from Minister's office.
  - EDU.012.0150 – Key people being appointed from Minister's office.
  - EDU.012.0266
  - Memo from TAG – Tranche 9 of discovery EDU.012.0255
  - EDU.013.0008
  - EDU.013.0009
  - EDU.013.0025
  - EDU.013.0052
- 1.37 There are two options - it is either deliberate and orchestrated to a political end, or it was clueless and reflects major shortcoming from within the Ministry and the Crown to ensure the integrity of the process.
- 1.38 It can't be anything else but one of those two things. Either way, it is fundamentally flawed and inconsistent with the Crown's stated commitment to Te Matakahuki and enabling rangatiratanga.
- 1.39 The entire process reflected a lack of competence to deal with these issues and any appreciation for those roles.

#### *Te Tiriti Obligations*

- 1.40 The important thing to consider and highlight in the discussion on Article Two is tino rangatiratanga – see paragraphs 7.46(a) and 7.48(a) of the Claimant Closing Submissions. In the Māori sphere, tino rangatiratanga is engaged and the obligations on the Crown exist.
- 1.41 Te Tiriti obligations exist at all levels and layers – at what point does the Ministry take responsibility for not consistently providing free and frank and Te Tiriti compliant advice?

- 1.42 Officials have consistently understated their power and responsibilities, including under the Public Service Act 2020. This applies equally to Māori public servants – the privilege rests in the Western system, and the Western framing that follows.
- 1.43 The Crown's reliance on Wai 262 can be problematic where both Kōhanga Reo and Kura Kaupapa Māori were not directly involved (and therefore the Crown's evidence on relevant relationship and other issues was not directly tested).

#### *Other Themes in the Crown Response*

- 1.44 Much of the response from the Crown is divisive, including as between Te Rūnanga Nui/ Kura Kaupapa Māori and Ngā Kura a Iwi, Te Rūnanga Nui and iwi and hapū, and Te Rūnanga Nui and mainstream tamariki. Te Rūnanga Nui have not sought to differentiate between them and Ngā Kura a Iwi in Treaty terms. Or as between them and Kōhanga and Wānanga. This is the antithesis of what they set out to do.
- 1.45 Further, the Crown speaks as if Te Rūnanga Nui has no regard for tamariki Māori in mainstream, when this is not the case and they have every regard for them. However, Te Rūnanga Nui have repeatedly said they can only focus on making their Kaupapa as good and as widely available as it can be.
- 1.46 The issue of the 95% in mainstream vs the 5% in Kaupapa Māori pathways – When the Crown dismisses the voice of these kaupapa, it alienates Māori from each other. They do not seem to fully realise this. It will come back to Te Matakahuki to try and reconcile that. It also puts a wedge between iwi and their national bodies.
- 1.47 The suggestion of responsibility as between Te Rūnanga Nui and whānau – this is for Kura whānau and Te Rūnanga Nui to determine. Kura whānau have delegated responsibility to Te Rūnanga Nui and the legislation clearly acknowledges this kaitiaki role.

#### *Difference in treatment – Te Matakahuki*

- 1.48 There were clear differences in treatment between members of Te Matakahuki – and this did not make sense to the members of Te Matakahuki.
- 1.49 A key thing to remember is that settlement of a claim is possible at any time. The Crown chose not to engage with Te Rūnanga Nui on their claim issues at the time the claim was filed, and chose to proceed without Te Matakahuki in 2021 and again in 2022.
- 1.50 No one can explain the difference in treatment between Wānanga and Kura/Kohanga in terms of settling or addressing claim issues.
- 1.51 See email from Andy Jackson noting the difference in approach and response to claims between Te Wānanga o Raukawa and Te Rūnanga Nui (EDU.012.0442):

Do we want to invite Te Runanganui into a separate discussion with us alongside the full group? It strikes me some of their concerns are probably



not all going to be addressed through a collective process and this could be part of the problem.

With the Raukawa example, the formal letters weren't really the focus, it was a series of very intensive meetings with Wayne over a period of some weeks. In other words, it was the relationship. When we agreed to adjourn the urgency part of the claim, it was by mutual agreement, rather than by asking the tribunal to decide. I'm not sure how much we've put into engaging directly and separately with them to try and get this kind of dynamic going?

#### *Other Issues for Te Rūnanga Nui and Kura Kaupapa Māori*

- 1.52 Despite what the Crown has said about progress, this is all on the Crown's terms and according to its priorities, policies and pools of fundings, with Te Rūnanga Nui and Kura Kaupapa Māori still left on the periphery.
- 1.53 See Mahinarangi Maika analysis in B26(a), or evidence of Mahanga Pihama stating he has not seen tangible progress on property issues. The imbalance continues to exist (one person versus a cast of hundreds / thousands).
- 1.54 In relation to expenditure – Te Rūnanga Nui track and are aware of the pūtea allocated to them by the Crown. But they consider there are real questions about unallocated pūtea in the figures provided by the Crown, for example \$70 million in capital works funding unallocated from 2017 – no evidence of pūtea being expended.
- 1.55 Te Marautanga o Te Aho Matua - see email from MOE officials - Wai 1718 #B038 SB-001. The key point is that the Crown had still not talked to TRN, was some years on from the development of Te Marautanga o Te Aho Matua, and Te Rūnanga Nui were not engaged. And ultimately, the Minister makes a decision not to proceed with work to progress funding Te Marautanga o Te Aho Matua.

#### *Equity*

- 1.56 The issue of equity is still being minimised and misrepresented, including in the Crown's closing submissions. The level playing field notion of equity is problematic, as identified by Distinguished Professor Hingangaroa Smith. What he and Dr Meade were trying to demonstrate is what an equitable system might look like for Kura Kaupapa Māori. The Crown's approach is consistently "what about all the others?" and "treating everybody the same".
- 1.57 The insitution that causes inequity cannot solve it on its own.

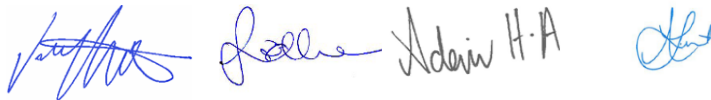
#### *Opportunity cost*

- 1.58 There has clearly been significant loss of opportunity and a discrepancy in funding and support for Kura Kaupapa Māori and Te Rūnanga Nui – this is a huge deficit that needs to be resolved with the Claimants. It is clearly within scope because it is about what is required to design and operate a Te Tiriti compliant system for Kura Kaupapa Māori. It will take investment.

#### *Mana motuhake / tino rangatiratanga*

- 1.59 Mana motuhake is not the Crown's to give, but when the Claimants try to exercise it, the Crown can and does obstruct it (e.g. te mana o te whānau whakahaere).
- 1.60 This is fundamental to the claim – while the Crown has and always will have responsibility, it cannot rely on this to avoid looking for solutions that appropriately enable mana motuhake.
- 1.61 Tino rangatiratanga are the foundational words in the Treaty. The Crown's duty to **protect** rangatiratanga does not supercede the right of the Claimants to **exercise** our rangatiratanga. It is the Crown's role to enable and protect it. There is an unwillingness to understand it – especially by throwing up excuses about all of the other responsibilities to everyone else – at the expense of that foundational role that the Claimants and their whānau have in relation to Kura Kaupapa Māori.

I TE rā 05 o Hūrae i te tau 2023 ki Te Whanganui-a-Tara



---

**N R Coates / P T Walker / A O Houia-Ashwell / A A Grant**

Counsel for the WAI 1718 Claimants