IN THE WAITANGI TRIBUNAL

KEI MUA I TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI

WAI 2959

WAI 3327

KEI RARO I TE MANA O	te ture o Tiriti o Waitangi 1975
Ā	
I TE TAKE O	te ruku tātari ohotata te reo Māori i te Kāwanatanga (Wai 3327)
Ā	
I TE TAKE O	tētahi kerēme nā Druis Barrett mā te Ropu Wahine Maori Toko i te Ora/ the Maori Women's Welfare League Incorporated, its members, and all wāhine Māori of Aotearoa (Wai 2959)

OPENING SUBMISSIONS ON BEHALF OF TE ROPU WAHINE TOKO I TE ORA | MAORI WOMEN'S WELFARE LEAGUE

I tēnei rā, i te rā 6 o Hune 2024

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MAY IT PLEASE THE TRIBUNAL

A. SUMMARY OF THE LEAGUE'S POSITION

1. Te Tiriti o Waitangi[1] embodies a momentous agreement between Māori and the Crown.

2. Te reo Māori is an identity-shaping taonga[2] critical to Māori wellbeing, which Article 2 guaranteed would remain firmly under Māori authority within the tino rangatiratanga sphere of influence.

3. Contrary to that guarantee, the treaty relationship has been characterised by the Crown overstepping the bounds of the kāwanatanga.

4. The policies and actions of this Coalition Government to limit the use and status of te reo Māori in the public sector is a continuation of the erosion of Māori tino rangatiratanga. The prejudice to Māori is profound.

5. The legacy of Te Ropu Wahine Maori Toko i te Ora/the Maori Women's Welfare League Inc (**the League**) as fierce advocates for the promotion and protection of te reo Māori is well documented.

6. The League's evidence demonstrates the damaging consequences these Crown policies and actions will have on wāhine Māori and their whānau, in contravention of the treaty promises made.

B. STANDARDS OF MEASURE FOR CROWN CONDUCT

Te Tiriti o Waitangi

7. The necessary starting point is the text of te Tiriti – the Article 2 guarantee to Māori of tino rangatiratanga over (inter alia) their taonga.

8. The relevant treaty principles must be based on the actual agreement reached in February 1840 between Māori and the Crown: [3]

> We have concluded that in February 1840 the rangatira who signed te Tiriti did not cede their sovereignty. That is, they did not cede their authority to make and enforce law over their people or their territories.

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[1] For the purposes of these submissions, references to both Māori and English texts is set out as "the treaty", the Māori text is "te Tiriti" and the English text is "the Treaty".

[2] Wai 3327 #A37 Brief of Evidence of Assoc. Prof Mere-Skerrett White at [50(d)]

[3] *Tino Rangatiratanga me te Kāwanatanga – The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry Part 1* (Waitangi Tribunal, 2023), p 22 (**Te Raki Stage 2**). The League considers this report to be the authority on the treaty agreement made between Māori and the Crown.

> Rather, they agreed to share power and authority with the Governor. They agreed to a relationship: one in which they and Hobson were to be equal – equal while having different roles and different spheres of influence. In essence, rangatira retained their authority over their hapū and territories, while Hobson was given authority to control Pākehā. …
>
> The detail of how this relationship was to work in practice, especially where the Māori and Pākehā populations intermingled, remained to be negotiated over time. It is clear that at no stage, however, did rangatira who signed te Tiriti in February 1840 surrender ultimate authority to the British.[4]

9. An assessment therefore of the applicable treaty principles starts with:

   a. **Te mātāpono o te tino rangatiratanga:** The duty of the Crown was (and is) to foster tino rangatiratanga, not to undermine it, and to ensure that its laws and policies were just, fair, and equitable and would adequately give effect to treaty rights and guarantees, notably those affecting hapū autonomy and tikanga and hapū retention and management of their lands and resources.[5]

   b. **Te mātāpono o te kāwanatanga:** The Crown's duty from the outset was to ensure treaty rights and guarantees were recognised in its laws and policies – especially those affecting hapū autonomy and tikanga, and hapū retention, control and management of their lands and resources, including the determination of titles. Where Government decisions or policies, or their impacts, were discriminatory, or placed unreasonable limitations on tribal or hapū exercise of tino rangatiratanga, they were not in accordance with the agreement reached.

   c. **Te mātāpono o te houruatanga / the principle of partnership:** The Crown could not unilaterally decide what Māori interests were or what the sphere of tino rangatiratanga encompassed; that was for Māori to negotiate with the Crown. Both parties must act honourably and in good faith.[6] This partnership between the Crown and Māori shapes their relationship and the interaction of the parties' respective spheres of influence.

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[4] *He Whakaputanga me te Tiriti* (Waitangi Tribunal, 2014), p xxii.
[5] *Te Raki Stage 2*, p 69.
[6] *Te Raki Stage 2*, p 70.

d. **Te mātāpono o whakaaronui tētahi ki tētahi / the principle of mutual recognition and respect:** Mutual recognition and respect are vital qualities in the treaty relationship; each party must recognise and respect the values, laws, and institutions of the other.[7] The Crown's recognition and respect should be evident in the importance it places on the treaty guarantee of tino rangatiratanga.[8]

e. **Te mātāpono o te matapopore moroki / the principle of active protection:** Active protection is not a Crown duty arising from its sovereign authority. Rather, it requires the Crown to help restore balance to a relationship with Māori that had become unbalanced as the Crown assumed an authority far beyond the bounds understood by Māori when they signed te Tiriti in February 1840.[9] This duty is heightened as long as the imbalance remains.[10]

f. **Te mātāpono o te whakatika / the principle of redress:** Where the Crown has breached the treaty agreement through its legislation, policy, actions, or omissions, it is obliged to provide timely and adequate redress to Maori.[11] Substantive redress is important in *"re-establishing the mutual recognition and respect embodied in the treaty relationship, for restoring the honour of the Crown, and for providing a renewed opportunity for giving effect to the treaty's guarantee of tino rangatiratanga and, ultimately, te mātāpono o te houruatanga*".[12]

10. The League submits that while the primary principles are those that set out the treaty partners relationship (tino rangatiratanga, kāwanatanga and partnership) the balance of the principles are relevant because of the failure by the Crown to respect Māori tino rangatiratanga and act as a good treaty partner to Māori.

Te Ture mō Te Reo Māori 2016

11. The Tribunal's confirmation that te reo is a taonga and that the protection it enjoys under the Treaty of Waitangi means the Crown owes special

[7] *Te Raki Stage 2,* p 70.
[8] *Te Raki Stage 2,* p 83.
[9] *Te Raki Stage 2,* 71.
[10] *Te Raki Stage 2,* p 66.
[11] *Te Raki Stage 2,* p 71.
[12] *Te Raki Stage 2,* p 69.

obligations in respect of it[13] led to those obligations being formalised in legislation.

12. In 2016, Te Ture mō Te Reo Māori / Māori Language Act was passed in which the Crown committed to work in partnership with iwi and Māori to actively protect and promote te reo.[4]

13. That act also sets out guidance for public agencies including that iwi and Māori should be consulted on matters relating to te reo, te reo should be used in the promotion of government services and provision of information to the public, and government services and information should be accessible to iwi and Māori including through the use of te reo.

C. THE CROWN'S ATTACK ON TE REO MĀORI

14. The National – New Zealand First Coalition Agreement (to be read in conjunction with the National – ACT NZ Party Agreement) signed on 24 November 2023 include commitments to:

    a. Legislate to make English an official language of New Zealand;

    b. Ensure all public service departments have their primary name in English;

    c. Require public service departments and Crown entities to communicate primarily in English, except those specifically related to Māori.[14]

15. The Coalition Agreements form the premise of the present government and set out the arrangements between the respective parties, including policy programmes, progress during their time in government. The authoritative guide to central government decision-making for Ministers, their offices and those working within the government is set out in the Cabinet Manual.

16. The Crown's intention was formed and recorded in the Coalition Agreement, with Crown policy to limit the use and status of te reo Māori in the public sector falling out of same.

17. The 25 March 2024 Cabinet Office Circular has directed that all "all Ministers, Parliamentary Under-Secretaries, chief executives, and their respective offices need to be familiar with the two agreements and ensure

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[13] Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (Wai 262, 2011) vol 1 at 161.

[14] Coalition Agreement, New Zealand National Party & New Zealand First NZFirst_Agreement_2.pdf (nationbuilder.com) Emphasis added.

that they have processes in place to implement them".[15]

18. While full implementation of the policies is not yet complete, it is underway. The direction of travel is clear.

19. Treaty compliance is not subject to election promises. From the signing of the Coalition Agreements in November 2023 to the present date, the Crown has acted inconsistently with its treaty and legislative obligations and with what is expected of a partner acting in good faith, with mutual respect and recognition of its partner's domain.

D. CONSEQUENCES OF THE TREATY BREACH

20. Despite the existence of a legislative and policy framework to protect and promote te reo, the Crown has, and is, introducing policies and actions which diminish and threaten the status and use of te reo in the public sector and beyond.

21. Māori, including the League, have not been consulted either in the promulgation or roll-out to date of these policies. Māori decision-making capacity, particularly with respect to their own taonga, has further been marginalised.

22. While the policies are targeted at agencies which are not "specifically related to Māori", the League says that all Crown agencies are relevant to Māori and have an obligation to serve Māori equally. Having Te Reo Māori visible in public services, is about serving the people for whom public services exist.[16]

23. As Associate Professor Mere Skerrett-White has articulated:

    a. Māori also work within the public service, many in roles designed to decrease disparities between Māori and non-Māori. Not only does that impact on Māori working in the public service but has rippling effects on the community.

    b. The stamping out of te reo Māori gives a signal from the very top that there is no value in te reo Māori, an attitude that will also inevitably filter beyond the doors of the public service.

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[15] As set out in Wai 3327 (Appellation number pending) Brief of Evidence of Hannah Cameron at [50] Cabinet Office Circular "National, ACT and New Zealand First Coalition Government: Consultation and Operating Arrangements" (25 March 2024) CO 24/2

[16] Wai 3327 #A06 Brief of Evidence of Dr Hope Tupara at [88]-[89].

c. The move to eradicate Māori signage in public spaces impacts on Māori children's ability to read the words and the world through the lens of their heritage language, a language that for many Māori children is now their first language.

d. Te Reo Māori is an important Pacific language, only found here in New Zealand. What is harmful to Māori is harmful to the nation and beyond.

24. The Crown's policies to limit the use and status of te reo Māori in the public sector will undermine the progress of the last decades to publicly endorse its value.

25. The League occupies a unique position as the only Māori women's organisation in the world to have advocated for Māori women and their whānau since its inception in 1951. The League has long fought for Te Reo Māori when it was at risk of extinction[17] and has had a key role in its promotion and retention. A key objective for the League, as set out in its Constitution is to support and advocate for the revitalisation of Te Reo Māori.[18]

26. The League has filed evidence from a cross-section of its membership, all wāhine Māori who are fierce advocates for and of te reo Māori, both in their personal and professional capacities. These include :

a. National President Dr Hope Tupara;

b. National Vice President Associate Professor Mere Skerrett-White;

c. Dame Iritana Tāwhiwhirangi;

d. Hana Mereraiha Skerrett-White;

e. Te Ao Marama Maaka;

f. Phillecity Ngarangione; and

g. Ngawaiata Evans.

27. These wāhine Māori provide the Tribunal with insight into their mahi in various fields and spaces, with the common theme of promoting the use and importance of te reo Māori. They provide insight into the League's mahi, at

[17] Ibid at [99].
[18] Te Ropu Wahine Maori Toko I Te Ora | Maori Women's Welfare League Inc, Constitution objective 7

both National Executive and regional levels, to advance the interests of whānau and wāhine Māori.

28. Despite their trajectories being vastly different, working in different spaces and during different periods of time, their experiences and concerns about the intrusion by the Crown into their rangatiratanga (and fostering of their reo me ona tikanga) are the same. In summary, any progress made by Māori to advance the status and use of te reo Māori is consistently undermined by the Crown.

29. In a practical sense for the League, as an organisation with relationships with Crown agencies, there is a responsibility to ensure its kaimahi or members are in safe spaces.[19] The Crown's policies and actions to limit the use and status of te reo Māori in the public sector will directly impact on the League's operations, to the detriment of wāhine and whānau Māori.

30. The League says:

> "We cannot complete our mahi engaging in positive initiatives when we are under attack. We cannot complete our mahi, developing partnerships with other organisations who align with our goals when the country is thrown into uncertainty in terms of Te Tiriti of Waitangi, te Reo Māori, tikanga Māori. We cannot complete our mahi in advocating for indigenous women and their cultural practices/languages all over the world when our own country is treating the Mana Whenua with such disrespect."[20]

31. The effect of the Crown's policies will cause prejudice to Māori, and to this end the League supports the Claimants in this Inquiry.

I TĒNEI RĀ i Tāmaki Makaurau i te rā 6 o Hune 2024

Amy Chesnutt / Alisha Castle
Ngā roia mō te Kaikerēme

[19] Above n 16 at [97].
[20] Above n 2 at [53].