

IN THE WAITANGI TRIBUNAL

WAI 3310
WAI 1911
WAI 2139
WAI 2143
WAI 3073
WAI 3163

IN THE MATTER AND	of the Treaty of Waitangi Act 1975
IN THE MATTER AND	of the Education Services and Outcomes kaupapa inquiry (Wai 3310)
IN THE MATTER AND	of a claim by Aaron Smale (Wai 1911)
IN THE MATTER AND	a claim by Steven Wilson and Karen Pointon on behalf of Ngāti Turi (Māori Deaf) (Wai 2143)
IN THE MATTER AND	of a claim by Timothy Tukapua and Dennis Greenland on behalf of Muaūpoko and the Muaūpoko Tribal Authority (Wai 2139)
IN THE MATTER AND	of a claim by Tania Kingi on behalf of Te Roopu Waiora (Wai 3073)
IN THE MATTER	of a claim by Anne Waapu and Te Raukura O'Connell Rapira on behalf of rangatahi of today and future generations (Wai 3163)

JOINT MEMORANDUM OF COUNSEL REGARDING PARTICIPATION IN INQUIRYDated: 20 November 2024

RECEIVED

Waitangi Tribunal

20 Nov 24Ministry of Justice
WELLINGTON**BENNION
LAW**Barristers and Solicitors
L1, 1 Ghuznee Street
PO Box 25433
Panama Street
Wellington 6011Counsel: Tom Bennion / Emma Whiley / Kudrat
tom@bennion.co.nz / emma@bennion.co.nz / kudrat@bennion.co.nz

MAY IT PLEASE THE TRIBUNAL**Introduction**

1. This memorandum of counsel is filed on behalf of:
 - a. A claim by Aaron Smale on behalf of himself (Wai 1911);
 - b. A claim by Timothy Tukapua and Dennis Greenland on behalf of Muaūpoko and the Muaūpoko Tribal Authority (Wai 2139);
 - c. A claim by Steven Wilson and Karen Pointon on behalf of Ngāti Turi (Māori Deaf) (Wai 2143);
 - d. A claim by Tania Kingi on behalf of Te Roopu Waiora (Wai 3073); and
 - e. A claim by Anne Waapu and Te Raukura O'Connell Rapira on behalf of rangatahi of today and future generations (Wai 3163).

(together "the claimants")
2. And in response to memorandum-directions dated 5 Noema 2024 on the following issues:¹
 - a. The remaining issues to be heard and determined in this inquiry;
 - b. Any priority matters demanding early attention; and
 - c. The readiness of the claimants and Crown to proceed.
3. Counsel apologises for the slight delay in filing and seeks leave to do so.

Claims seeking to participate in this inquiry*Wai 1911 (a claim by Aaron Smale)*

4. The Wai 1911 claim concerns the health and wellbeing of tamariki Māori. Core issues include the removal of tamariki Māori from their whakapapa via State Care, Adoption, and Youth Justice processes. Claim issues concerning these matters are included within the Wai 3060 Justice Kaupapa Inquiry and will be included in the Social Services and Identity and Culture Inquiries.

¹ Wai 3310, #2.5.5 at [27].

5. However, the claimants submit that an overlap with the Education inquiry exists. The imposition of the Native Schools Act 1867 and its effect in the indoctrination and assimilation of Māori children is still felt today.
6. Issues in relation to education are set out more fully in the Wai 1911 amended statement of claim.² Tamariki Māori are still not fully included within the education system. It is known that education lowers contact with the criminal justice system. However, by secondary school, Māori students are more than half a curriculum level behind their NZ European peers.³
7. In 2017, the Department of Corrections reported that within prison, education disparity is further pronounced. The majority of those in prison facing significant to severe literacy and numeracy challenges in their everyday lives. If left unsupported these challenges will likely impact on rates of reoffending and longer socio-economic trajectory.⁴

Wai 2139 (a claim on behalf of the Muaūpoko Tribal Authority)

8. The Wai 2139 amended statement of claim was filed on 18 April 2024.⁵
9. The claim is currently consolidated into the Wai 2200 inquiry. However, issues of national significance to Māori are raised which are sought for inclusion in this inquiry as follows:
 - a. Issues relating to the Native Schools Act 1867 and the ongoing effects of English being the only language taught in the education of tamariki Māori.
 - b. The failure of the mainstream education system to support tamariki and rangatahi Māori.
 - c. Lack of resources for kohanga reo, kura kaupapa Māori, kura a-iwi and wananga.
10. These issues have not been inquired into. A request to aggregate the claim from the Wai 2200 inquiry is being sought from the Wai 2200 Presiding Officer, Chief Judge Fox, so that the Wai 2139 claim can also be included for aggregation into this inquiry.

² Wai 1911, #1.1.1(d) at [51] – [64].

³ Wai 1911, #1.1.1(d) at [57].

⁴ Wai 1911, #1.1.1(d) at [59].

⁵ Wai 2139, #1.1.1(f).

Wai 2143 and Wai 3073 (Taangata Turi and Te Roopu Waiora)

11. The Wai 2143 and Wai 2037 claims concern the health and wellbeing of whaanau hauaa who are a diverse community, inclusive of Maaori with physical, intellectual, and sensory impairments.
12. The Wai 2143 and Wai 2037 claims primarily fall within phase one of stage two of the Wai 2575 Health Inquiry. However, important education issues remain in respect of whaanau hauaa.
13. Significant issues related to the institutionalisation of Turi Maaori into specialist schools remain. In addition, New Zealand Sign Language education remains underfunded and there is limited support for sign language development within the home and the classroom.
14. Although Taangata Turi are overrepresented in deafness statistics, Māori perspectives in deaf educational policies remains lacking.⁶

Wai 3163 (a claim by Anne Waapu and Te Raukura O'Connell Rapira)

15. The 3163 claim is included in the preliminary list of claims relevant to the inquiry.⁷

Remaining issues to be heard and determined in this inquiry

16. Issues raised by the claimants broadly fall under the themes identified by the Tribunal.⁸ At this stage, there are no additional themes are suggested.

Any priority matters demanding early attention

17. With regard to priority matters, counsel are supportive of the submission made by counsel for Wai 682, Wai 1464/1546 that politics in the Coalition Government could necessitate priority.⁹

⁶ Wai 2143, #1.1.1(a).

⁷ Wai 3310, #2.5.5(a).

⁸ Wai 3310, #2.5.5 at [15].

⁹ Wai 3310, #3.1.12 at [5].

Readiness of claimants to proceed

18. The claimants will abide by the Tribunal's decision and will be ready to proceed in accordance with the Tribunal's usual process following the completion of the Tribunal's assessment of eligibility of claims.

Dated at Wellington this 20th day of November 2024

Handwritten signatures of Tom Bennion, Emma Whiley, and Kudrat in blue ink.

Tom Bennion / Emma Whiley / Kudrat
Counsel for the claimants