

I TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI  
IN THE WAITANGI TRIBUNAL

Wai 3310

KEI RARO I TE MANA O

te ture o te Tiriti o Waitangi 1975

Ā

I TE TAKE O

the Education Services and  
Outcomes Kaupapa Inquiry  
(Wai 3310)

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**MEMORANDUM OF COUNSEL TO PRIORITISE A KAIAKO MĀORI  
RECRUITMENT INQUIRY**

**Dated 20 December 2024**

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Waitangi Tribunal

**13 Jan 25**

Ministry of Justice  
WELLINGTON

## MAY IT PLEASE THE TRIBUNAL

### INTRODUCTION

1. This Memorandum of Counsel is filed on behalf of Te Urunga Evelyn Aroha Kereopa, for and on behalf of the Kereopa whānau and members of Te Ihingārangi, hapū of Ngāti Maniapoto (Wai 762) (the “claimants”).
2. By Memorandum-Directions dated 25 September 2023, Chief Judge Fox commissioned the Education Services and Outcomes Kaupapa Inquiry (Wai 3310) appointing Judge Rachel Mullins as presiding officer.<sup>1</sup>
3. In Memorandum-Directions dated 5 November 2024,<sup>2</sup> the Presiding Officer Judge Mullins directed the convening of a judicial conference on 22 November 2024 to discuss remaining issues to be heard and determined, priority matters demanding early attention, and the readiness to proceed.<sup>3</sup>
4. On 19 November the Crown sought a timetable directing when the Crown should file responses to any applications seeking to prioritise certain issues within this inquiry.<sup>4</sup>
5. At the judicial conference it was agreed that that the Crown be provided four weeks to file a response to submissions on any prioritization of issues being sought<sup>5</sup> which included:<sup>6</sup>
  - a. Issues relating to Māori boarding schools, their creation, development and treatment;

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<sup>1</sup> Waitangi Tribunal, *Memorandum-Directions of the Chairperson Commencing a Kaupapa Inquiry into Claims Concerning Education Services and Outcomes* 25 September 2023 Wai 3310, #2.5.1 at [1]

<sup>2</sup> Waitangi Tribunal, *Memorandum-Directions of Presiding Officer Judge Mullins Regarding Next Steps for the Inquiry* 5 Noema 2024 Wai 3310, #2.5.5 at [27].

<sup>3</sup> Waitangi Tribunal, *Memorandum-Directions of Presiding Officer Judge Mullins Regarding Next Steps for the Inquiry* 5 Noema 2024 Wai 3310, #2.5.5 at [27].

<sup>4</sup> Irwin, *Memorandum of Counsel for the Crown in preparation for judicial conference on 22 November 2024*, 19 November 2024, Wai 3310, #3.1.10

<sup>5</sup> Waitangi Tribunal, *Memorandum-Directions of Presiding Officer Judge Mullins the hearing – He Tumu Herena Kōrero – and Judicial conference of 22 November 2024*, 3 Tihema 2024 Wai 3310, #2.6.001 at [14] and [15].

<sup>6</sup> Waitangi Tribunal, *Memorandum-Directions of Presiding Officer Judge Mullins the hearing – He Tumu Herena Kōrero – and Judicial conference of 22 November 2024*, 3 Tihema 2024 Wai 3310, #2.6.001 at [12].

- b. Coalition government policies, specifically decisions to remove approximately \$30m worth of funding from the Te Ahu o Te Reo Māori programme and restoring balance to the Aotearoa New Zealand histories curriculum; and
  - c. Crown policy for the recruitment of teachers of te reo Māori.
6. The Presiding Officer directed that claimant counsel are to file any further submissions concerning claim issues that should be prioritised within this inquiry by **5pm, Friday 20 December 2024**.<sup>7</sup>
7. The memorandum of counsel provides submissions regarding the prioritisation of claim issues concerning Crown policies for the recruitment of Kaiako Māori.
8. A case for inquiry prioritisation is set out below. The language's struggles are described, as is the need for more teachers of te reo Māori and the Crown's ongoing failure to meet that need. There should be hearing prioritisation to remove te reo Māori from the "life support"<sup>8</sup> system that it is on.

## EXECUTIVE SUMMARY

9. The retention and revitalisation of te reo Māori is of the utmost importance to the claimants. They view the Māori language as a taonga. It is at the very heart of their culture and identity. Unfortunately, the continued use of te reo Māori is in a precarious state. Further language decline and even language extinction beckon.<sup>9</sup> Te reo Māori's pronounced vulnerability is wholly attributable to the acts and omissions of the Crown, especially its English only policy in New Zealand schools from the 1840s through to the 1970s. The Crown's pivotal role in the language's demise should compel the Crown

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<sup>7</sup> Waitangi Tribunal, *Memorandum-Directions of Presiding Officer Judge Mullins the hearing – He Tumu Herena Kōrero – and Judicial conference of 22 November 2024*, 3 Tihema 2024 Wai 3310, #2.6.001 at [15].

<sup>8</sup> Waitangi Tribunal, *Ko Aotearoa Tēnei – A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, vol 2 at [xxv]. According to the Wai 262 Tribunal, te reo Māori is in need of "life support".

<sup>9</sup> M Plank, R Ka'ai-Mahuta, *Brief of evidence*, dated 15 May 24, Wai 3327, #A17, at [7].

to take especially vigorous action to protect the status and use of te reo Māori,<sup>10</sup> but it doesn't.

10. A crucial step with language revitalisation is the recruitment of a sufficient number of suitably qualified te reo Māori teachers and yet despite the language's struggles and the readily apparent need for more teachers, the Crown's track record with recruiting te reo Māori teachers is appalling.<sup>11</sup> In the interests of language, culture and identity preservation, the Waitangi Tribunal is urged to prioritise an inquiry into the Crown's failure to recruit, train and employ a sufficient number of suitably qualified kaiako Māori.

## VULNERABLE STATE OF TE REO MĀORI

### Predicted extinction

11. The main impetus for inquiry prioritisation stems from the fragile state of te reo Māori. We substantiate its fragility below.
12. We refer to a study published in the *Journal of the Royal Society* on 8 January 2020 entitled '*Kia kua te reo e rite ki te moa, ka ngaro: do not let the language suffer the same fate as the moa*' ("**rite ki te moa research**"),<sup>12</sup> wherein researchers applied a complex mathematical model to language transmission in Wales and New Zealand. The countries' respective populations were divided into language proficiency categories and dynamically quantified transition rates between categories were calculated. 2013 census data was used. The developed model can predict changes in proficiency levels over time (upwards of 300 years) and, ultimately, whether a given endangered language is on a long-term trajectory towards extinction

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<sup>10</sup> *New Zealand Māori Council v Attorney-General [Broadcasting assets case]* [1994] 1 NZLR 513 at 5.

<sup>11</sup> Waitangi Tribunal, *Ko Aotearoa Tēnei – A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, Legislation Direct, Volume 1, at 164 and 165.

<sup>12</sup> Barrett Walker, T., Plank, M.J., Ka'ai-Mahuta, R., Hikuroa, D. and James, A., *Kia kua te reo e rite ki te moa, ka ngaro: do not let the language suffer the same fate as the moa*, 8 January 2020, *The Royal Society Publishing*— <https://royalsocietypublishing.org/doi/10.1098/rsif.2019.0526#d3e417>

or recovery. Some of the finely-balanced consideration that was given to formulating the model is set out below:<sup>13</sup>

The second type of modelling approach, into which this study falls, assumes that the language is fixed and models trends in the number of speakers of that language over time due to shifts in individuals' language use. This approach was popularized by [Abrams & Strogatz], who assumed that two languages compete for speakers and an increase in the number of speakers or in the perceived status of one language increases its attractiveness. In this model, one language will ultimately dominate and push the other to extinction. It was subsequently shown that including other factors, such as spatial heterogeneity modelled by a reaction–diffusion equation or population dynamics modelled by a reproduction term, could allow the languages to coexist. Spatially explicit models allow the spread or regression of a language over time to be investigated and have been applied to the geographical range of Gaelic in Scotland and Slovenian in Austria. Other extensions to consider included a wider range of societal conditions and parameters including bilingualism and intergenerational transmission. Modelling based on these works has been applied to te reo Māori, where the amount of te reo Māori heard, family contribution and community contribution were recognized as influential factors. In addition to these differential equation models, agent-based models have been used to add finer-scale information and environmental factors onto the same underlying mechanism of competition between a dominant and a minority language. Mathematically, these models are of the Lotka–Volterra type with a mixture of competitive and predator–prey interactions.

13. The model data for Wales showed that with current learning rates, the Welsh language will thrive in the long-term. When applied to the Māori population, the model showed that with current learning rates, te reo Māori is on a pathway to extinction. The downward trajectory projection is consistent with census data showing a decline in the proportion of Māori under the age of 24 who are able to speak the language from 21% in 2001 to 16% in 2013.

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<sup>13</sup> Barrett Walker, T., Plank, M.J., Ka'ai-Mahuta, R., Hikuroa, D. and James, A., *Kia kaua te reo e rite ki te moa, ka ngaro: do not let the language suffer the same fate as the moa*, 8 January 2020, *The Royal Society Publishing*— <https://royalsocietypublishing.org/doi/10.1098/rsif.2019.0526#d3e417>

When just the Māori population is considered, language revitalization will be successful in the long-term if similar learning rates to those in Wales can be achieved. Unfortunately, Māori participation rates in language learning programmes are substantially lower than in Wales, which suggests that learning rate parameters for te reo Māori by Māori are lower than for the Welsh.

14. Statistics broken down by age brackets suggest that adult learning of te reo is relatively strong but school-age learning lags behind. This suggests that strategies targeting learning at schools are likely to have the highest potential benefits. “Government measures” that have contributed to the Welsh language revitalisation were suggested by the researchers for application here in New Zealand, such as the provision of language-medium early childhood education, the integration of the language into the primary and secondary school curriculum, investment in language-immersion education, development of the quantity and quality of teachers and the use of Welsh in the public and institutional spheres. Most if not all of the suggested measures are being taken here in Aotearoa. The point being made was moreso that the scale and intensity of the suggested measures need to be increased in order for Māori to achieve the necessary language learning rates.
15. Pursuant to Te Ture mo te Reo Act 2016, the Crown and Māori are in an active partnership to promote the use of te reo Māori. The partnership is expressed through the metaphor of Te Whare o Te Reo Mauri Ora. The two sides of the partnership are represented by the maihi (bargeboards) on each side of the whare. Te Ture mo te Reo Act 2016 established Te Mātāwai to represent “iwi, hapū, whānau, Māori and communities” in the relationship.<sup>14</sup> They are depicted on the left side of the whare, with the Crown on the right side. Under the 2016 Act, the Minister for Māori Development is required to issue a Maihi Karauna strategy on behalf of the Crown, and Te Mātāwai is required to issue a Maihi Māori strategy. The Crown published a Maihi Karauna strategy for Māori language revitalisation in February 2019. It

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<sup>14</sup> *Maihi Karauna: The Crown's Strategy for Māori Language Revitalisation 2019-2023*, Te Puni Kokiri, February 2019, at 6.

included a language goal that, by 2040, 150,000 Māori aged 15 and over will use te reo Māori as much as English.<sup>15</sup>

16. The rite ki te moa research showed that the Maihi Karauna<sup>16</sup> target of 150,000 bi-lingual Māori by 2040 will require a learning rate that is approximately 50% higher than the Welsh learning rate. At the present learning rate for Māori, the 2040 target will not be achieved.
17. Furthermore, the Maihi Karauna proposal to spread the pool of kaiako Māori across the population of New Zealand as a whole has been criticised; the concern being that “the limited pool of teachers is spread too thinly”.<sup>17</sup> Where teacher capacity is limited, it was thought that the emphasis should be on learning among Māori.

#### More recent decline data

18. The claimants were an interested party in the Te Reo i Te Kāwanatanga Ruku Tātari Ohotata/Te Reo in the Public Sector Urgent Inquiry (Wai 3327) held earlier this year.<sup>18</sup> Rite ki te moa research co-authors, Drs Plank and Ka'ai-Mahuta,<sup>19</sup> gave evidence in that inquiry on the claimants' (and others) behalf.<sup>20</sup> A copy of their evidence is **attached** and marked 'A'. Whilst geared at the public sector language issue that was the subject of the Wai 3327 inquiry, the witnesses' evidence of language fragility is highly germane to the claim prioritisation that is sought.<sup>21</sup>

Internationally recognised language classification schemes and data on the number of speakers of te reo Māori in Aotearoa New Zealand indicate that te reo Māori is in a highly precarious state

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<sup>15</sup> *Maihi Karauna: The Crown's Strategy for Māori Language Revitalisation 2019-2023*, Te Puni Kokiri, February 2019, at 14.

<sup>16</sup> Published in February 2019, *Maihi Karauna* is the Crown's strategy for Māori language revitalisation 2019 – 2023—see <https://www.tpk.govt.nz/mi/a-matou-kaupapa/maihi-karauna>

<sup>17</sup> Barrett Walker, T., Plank, M.J., Ka'ai-Mahuta, R., Hikuroa, D. and James, A., *Kia kua te reo e kite ki te moa, ka ngaro: do not let the language suffer the same fate as the moa*, 8 January 2020, *The Royal Society Publishing*—<https://royalsocietypublishing.org/doi/10.1098/rsif.2019.0526#d3e417>

<sup>18</sup> The report of the Waitangi Tribunal (Wai 3327) is not yet published.

<sup>19</sup> Dr Plank is an Applied Mathematician and a Professor in Te Kura Pāngarau, School of Mathematics and Statistics at Te Whare Wānanga o Waitaha. Dr Ka'ai-Mahuta is an Associate Professor in Te Ipukarea Research Institute (previously the National Māori Language Institute).

<sup>20</sup> M Plank, R Kai'ai-Mahuta, *Brief of Evidence* dated 15 May 2024, Wai 3327, #A017. Also see the appendices to witnesses' Brief of Evidence, document #A17(a).

<sup>21</sup> M Plank, R Kai'ai-Mahuta, *Brief of Evidence* dated 15 May 2024, Wai 3327, #A017 at [7].

and there is a risk of further language decline or even language extinction.

And also:<sup>22</sup>

More recent data and research paint a mixed picture as to the trajectory of te reo Māori, but overall, it is clear that the number of proficient speakers remains dangerously low and any nascent recovery is extremely fragile.

19. Te reo Māori is classified as “Endangered” on one international scale and “Definitely Endangered” on another.<sup>23</sup>
20. In their evidence, the experts also discussed language developments since the rite ki te moa research was published in 2018.<sup>24</sup> Some “green shoots of recovery in certain areas since 2018” were recorded, such as how the number of Māori students in Māori medium education increased by 26%, the number studying Māori language in English medium education increased by 39%, and those who can speak “more than a few words or phrases” of te reo Māori increased from 21% in 2016 to 30% in 2021. Unfortunately, the key language health indicator of those who could speak te reo “well or very well” decreased from 10.6% to 7.5% between 2013 and 2018, and the proportion who could speak “more than a few words or phrases” fell from 54.7% to 48.5%.<sup>25</sup>
21. According to Professor Rawinia Higgins, Chair of Te Taura Whiri i te Reo Māori, te reo Māori remains an endangered language despite the recent learning developments.<sup>26</sup> The fragile state that te reo Māori is in was acknowledged by Crown witness, Hannah Cameron, during the Wai 3327 urgency hearing.<sup>27</sup> Ngahiwi Apanui stated in evidence that te reo Māori is

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<sup>22</sup> M Plank, R Kai'ai-Mahuta, *Brief of Evidence* dated 15 May 2024, Wai 3327, #A017 at [11].

<sup>23</sup> M Plank, R Kai'ai-Mahuta, *Brief of evidence* dated 15 May 2024, Wai 3327, #A017 at [14] and [15].

<sup>24</sup> M Plank, R Kai'ai-Mahuta, *Brief of evidence* dated 15 May 2024, Wai 3327, #A017 at [27]-[32].

<sup>25</sup> M Plank, R Kai'ai-Mahuta, *Brief of evidence* dated 15 May 2024, Wai 3327, #A017 at [32].

<sup>26</sup> M Plank, R Kai'ai-Mahuta, *Brief of evidence* dated 15 May 2024, Wai 3327, #A017 at [33].

<sup>27</sup> Waitangi Tribunal, *Te Reo i te Kāwanatanga Ruku Tātari Ohotata- Te Reo in the Public Sector Urgent Inquiry Hearing Week 1 Draft Transcript* dated 27 June 2024, Wai 3327, #4.1.7, at 457.

still at risk.<sup>28</sup> Crown counsel readily admitted that the language remains in a fragile condition.<sup>29</sup>

## CROWN DUTY TO TAKE VIGOUROUS ACTION

22. The purpose of this section is to establish that there is a duty on the Crown to take vigorous action to arrest language decline.
23. The interested parties submit that the treaty principle of active protection is a vital consideration in this inquiry. Te reo Māori has been recognised as a taonga by both the Tribunal<sup>30</sup> and the Courts alike.<sup>31</sup> In the *Broadcasting Assets* case, the Privy Council considered that where a taonga is in a vulnerable state, honouring Te Tiriti:<sup>32</sup>

[...] may well require the Crown to take especially vigorous action for its protection. This may arise, for example, if the vulnerable state can be attributed to past breaches by the Crown of its obligation, and may extend to the situation where those breaches are due to legislative action. Indeed, any previous default of the Crown could, far from reducing, increase the Crown's responsibility.

### ("Privy Council finding")

24. It is important to note that the vigorous action duty In the Privy Council finding arises especially when the vulnerable state that a tāonga is in "can be attributed to past breaches of the Crown" . . . "where those breaches are due to legislative action". That is precisely the case here. The language's decline can be traced to a statutory and related policy regime that spanned more than 100 years.
25. Any examination of the fate of te reo Māori leads inevitably to a focus on New Zealand's education system. The hegemonic propagation of the

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<sup>28</sup> Waitangi Tribunal, *Te Reo i te Kāwanatanga Ruku Tātari Ohotata - Te Reo in the Public Sector Urgent Inquiry Hearing Week 1 Draft Transcript* dated 27 June 2024, Wai 3327, #4.1.7, at 523.

<sup>29</sup> Waitangi Tribunal, *Te Reo i te Kāwanatanga Ruku Tātari Ohotata - Te Reo in the Public Sector Urgent Inquiry Hearing Week 1 Draft Transcript*, dated 27 June 2024, Wai 3327, #4.1.7, at p 719 Line 1.

<sup>30</sup> See for example, Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Māori Claim* (Wai 11, 1986), at 20; Waitangi Tribunal, *Ko Aotearoa Tēnei*, Vol 2 (Wai 262, 2011), at 388.

<sup>31</sup> *New Zealand Māori Council v Attorney-General [Broadcasting assets case]* [1994] 1 NZLR 513 (PC).

<sup>32</sup> *New Zealand Maori Council v Attorney-General [Broadcasting assets case]* [1994] 1 NZLR 513 (PC), at 5.

English language by the Crown in public and Native schools was far more injurious to the retention and use of te reo Māori than any other Crown-related activity. The Crown initiated and pursued a deliberate policy of language annihilation—a policy of linguicide. There was no intention to preserve te reo Māori at all. Language homogeneity was the goal and there's no room for bi-lingualism in this colonial project.

26. Dr Phillipson of Copenhagen University gave evidence in Wai 3327 inquiry on the claimants' (and others) behalf about linguicide in particular.<sup>33</sup> A copy of Dr Phillipson's evidence is **attached** and marked '**B**'.

### **Education ordinances of the 1840s**

27. The Crown sounded the death-knell for te reo Māori when its English-only policy for Māori pupils was first implemented in the mid-19<sup>th</sup> century. Assimilation has been the cornerstone of the Crown's education policy for Māori since Governor Fitzroy's *Native Trust Ordinance* of 1844.<sup>34</sup> The English-only agenda was confirmed with the provision that land and funds were to be set aside to develop schools "[f]or the instruction of the Native people in the English language, and for a systematic course of the industrial and moral training in English usages, . . .".<sup>35</sup>
28. Although the *Native Trust Ordinance* was allowed to lapse, in 1847 Governor Grey provided for, inter alia, mandatory "instruction in the English language" in *An Ordinance for Promoting the Education of the Youth of the Colony of New Zealand* ("the Education Ordinance").<sup>36</sup> Whilst applicable to both races, Barrington noted that Grey applied its provisions to the education of Māori and half-caste children.<sup>37</sup> A number of Māori schools were established as a result, including Te Aute College, St Stephens, St Mary's<sup>38</sup> and Wesley College.

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<sup>33</sup> Dr Robert Henry Lawrence Phillipson, *Brief of Evidence* dated 13 May 2024, Wai 3327, #A016.

<sup>34</sup> *Statutes of New Zealand*, 1841-1853, at 140.

<sup>35</sup> *Statutes of New Zealand*, 1841-1853, at 117.

<sup>36</sup> <https://paperspast.natlib.govt.nz/newspapers/NENZC18480129.2.9> Although the Education Ordinance did not apply on the ground in the Mokai-Patea region, the assimilation agenda that it first propounded would eventually apply in the region. In this regard, submissions concerning the Education Ordinance are relevant to this inquiry.

<sup>37</sup> Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 26.

<sup>38</sup> St Mary's was established in Freeman's Bay, Auckland, pursuant to the Takapuna Crown Grant. It eventually became Hato Petera College in 1928.

## Early English only statutes—Native Schools Act 1858

29. The trajectory towards a monolingual society was continued in the Native Schools Act 1858 (“the 1858 Act”). Under the 1858 Act, the Crown funded missionary run boarding schools “for the Education of persons of the Aboriginal Native Race (whether children or adults) and of Half-cast children being Orphans, or the Children of indigent persons.” “Instruction in the English language and in the ordinary subjects of the English primary education, and industrial training”<sup>39</sup> were required. Dr Simon provided evidence concerning the 1858 Act’s subjugative purpose:<sup>40</sup>

Dr Simon believed that the Government was using the schooling of Māori as a means of social control and assimilation, and for the establishment of British law. She provided as evidence a report by school inspector Hugh Carleton, who said in 1862 that schools were ‘aiming at a double objective, the civilisation of the race and the quietening of the country’ . . .

30. Carleton’s complaints about the 1858 Act reveal the legislation’s social control purpose:<sup>41</sup>

It fails to civilise the race, because, as before observed, it does not reach the masses. It fails to keep down the insurrectionary feeling, for it needs something more than school-boy’s lessons to reconcile men to the idea of lost nationality.

31. The Waananga Capital Establishment Tribunal accepted that Māori schools were “vehicles of social control”:<sup>42</sup>

Others, according to Dr Simon, were motivated by the opportunities that schools presented as vehicles of social control. She again cited Hugh Carleton, who asserted that ‘things had now come to pass that it was necessary to either exterminate the Natives or to civilise them’, as well as Major Heaphy, who stated that ‘Any expenditure in this direction would be true economy, as

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<sup>39</sup> Native Schools Act 1858, section IX.

<sup>40</sup> Waitangi Tribunal, *Waananga Capital Establishment Report*, 1999, at 5.

<sup>41</sup> *Appendices to the Journals of the House of Representatives*, 1862 Session I: Being the 2<sup>nd</sup> session of the 3<sup>rd</sup> Parliament of New Zealand, E4 Native Schools, Reports of Inspectors, at 18.

<sup>42</sup> Waitangi Tribunal, *Waananga Capital Establishment Report*, 1999, at 6.

the more Natives were educated the less would be the future expenditure in police and gaols.

Other educationalists have acknowledged the social control purpose of the assimilation agenda<sup>43</sup>—a purpose that would be achieved through an English-only curriculum at the expense of te reo Māori. Professor Ranginui Walker considered that Māori were invaded by the assimilationists:<sup>44</sup>

Beginning with the missionaries, the founding fathers of the new nations state were therefore committed to the policy of assimilation. To this end, the missionaries, and later the state, used education as an instrument of cultural invasion.

32. Growing concerns with the 1858 Act and with missionary-based schooling in general led to more forceful calls to expunge the Māori language from society altogether. According to school inspector Henry Taylor:<sup>45</sup>

The Native language itself is another obstacle in the way of civilisation. So long as it exists there is a barrier to the free and unrestrained intercourse which ought to exist between the races.

Hugh Carleton was just as adamant:<sup>46</sup>

I consider that too much stress cannot be laid on the requirement of the English language . . . civilisation cannot be advanced beyond a very short stage through means of the aboriginal tongue. The Māori tongue has sufficed for the requirements of a barbarous race, but apparently would serve for little more.

### **Native Schools Act 1867**

33. Widespread dis-satisfaction with missionary-based schooling saw the Crown wrest control of Māori education (and the language annihilation programme) from the churches with the enactment of the Native Schools Act 1867 (“the 1867 Act”). Schools established under the 1867 Act were specifically for Māori. No school would receive Crown funding unless “the

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<sup>43</sup> Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand’s Educational History*, The Dunmore Press: Palmerston North 1993, at 40.

<sup>44</sup> Walker, Ranginui. *Ka Whawhai Tonu Matou: Struggle Without End*, 1990, at 145.

<sup>45</sup> *Appendices to the Journals of the House of Representatives*, 1862 Session I: Being the 2<sup>nd</sup> session of the 3<sup>rd</sup> Parliament of New Zealand, E4 Native Schools, Reports of Inspectors, at 35.

<sup>46</sup> *Appendices to the Journals of the House of Representatives*, 1862 Session I: Being the 2<sup>nd</sup> session of the 3<sup>rd</sup> Parliament of New Zealand, E4 Native Schools, Reports of Inspectors, at 77.

English language and the ordinary subjects of primary English education are taught by a competent teacher and the instruction is carried out in the English language as far as practicable.”<sup>47</sup> Barrington would write:<sup>48</sup>

. . . the policy of excluding te reo Māori from Crown primary schools for the next 100 years can be viewed as probably the single most damaging aspect and legacy of its schooling policies.

34. The monolingual tenet of the 1867 Act would apply in Native schools for the next century or so. Monolingualism was also at the heart of the public school system. This is significant because over the years, the vast majority of Māori children attended public schools.
35. It is appropriate to examine the 1867 Act’s underpinnings as they were expressed by those who saw its passage through Parliament. All who spoke in favour of the Native Schools Bill supported the mandatory, English-only policy. When it came to a choice, Carleton preferred to subjugate Māori through the education process—wars were too costly:<sup>49</sup>

. . . another serious war would not only cripple the Colony, but would actually break its back. . . . All that the Government must do with the Natives must be done by moral influence, nothing could be done by force, for the Māoris were men who did not fear death. They could be crushed, they could be exterminated, but they could not by force be brought into subjection.

He then sounded the death-knell for te reo Rangatira:<sup>50</sup>

They could never civilise through the medium of a language that was imperfect as a medium of thought. If they attempted it, failure was inevitable; and civilisation could only be eventually carried out by means of a perfect language.

36. According to Carleton, and others of the day, a colonising power can and should educate for security by “civilising” a people in a process where the English language was the only one to be spoken. Whilst that might be a plan

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<sup>47</sup> Native Schools Act 1867, section 21.

<sup>48</sup> Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 49.

<sup>49</sup> New Zealand Parliamentary Debates, 10 September 1867, Volume 1, Part 2, at 863.

<sup>50</sup> New Zealand Parliamentary Debates, 10 September 1867, Volume 1, Part 2, at 863.

for subjugating a people, it cannot be an appropriate plan for educating them. The Crown breached the Treaty principle of active protection by promoting a learning policy that was based more so on social control through cultural suppression than it was on education. A better course would have been to provide Māori with an education that was bi-cultural and bi-lingual.

37. As discussed, the policy of assimilation was borne out of an era of fear and insecurity. Its historical roots lie in the Education Ordinance. When it was enacted in 1847, Pākehā were a conspicuous minority in New Zealand and the military advantage lay with Māori. Assimilation was devised by Grey in the (vain) hope of addressing the power imbalance without recourse to costly wars. Acquiring *de facto* sovereignty would be achieved on the cheap through the promotion of western ideology and practice in schools. The emphasis on the education process was not cognitive learning. The emphasis was on disempowerment. This would be achieved by devaluing Māori culture and te reo Rangatira through the overt elevation of all things Pākehā including, in particular, the English language. Dr Simon's evidence before the Waananga Capital Establishment Tribunal was to this effect.<sup>51</sup>

According to Dr Simon, the structure of the Native School system served to promote Pākehā knowledge as more important and valid than Māori knowledge. She believed that Māori cultural values and institutions were both consciously and unconsciously denigrated, while Pākehā-dominant class ideas and values were promoted.

Given that the real purpose behind the assimilation agenda was Pākehā security, the policy's true objective then was the dismantling of Māori society. This would be achieved by denigrating or suppressing Māori values, knowledge and institutions. This is ironic, to say the least, because the education process is supposed to be a growth experience. However, there can be little real growth if the education system is purposefully designed to undermine a pupil's identity, their knowledge-base and their value system. Europeanising the Māori was akin to saying that being Māori was no longer relevant and nor was it of any importance. Thus, an entire culture and its

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<sup>51</sup> Waitangi Tribunal, *Waananga Capital Establishment Report*, at 6-7.

language would be invalidated and not by force of arms but by a supposed learning process.

38. Māori of the day were alive to the assimilation agenda and resistant to it. Henry Taylor relayed this awareness to Parliament.<sup>52</sup>

The present disturbed state of the country, and the hostility and mistrust with which the Natives regard the exertions [of the government] to promote their welfare, have alike combined to frustrate the good which the establishment of Schools was calculated to effect. Many children have either been prevented from entering or rashly withdrawn from our Schools, because the Schools were dependent upon Government for support, or because the Natives fancied the Government had some ulterior motive beyond the welfare of their children in establishing Schools.

39. The Crown would combat Māori resistance to the education system. Taylor noted the possibility that Māori resistance to schooling at the time, 1863, was because it was government funded. When promoting the 1867 Act a few years later, Carleton addressed Māori resistance to government funded schools by engendering a sense of ownership.<sup>53</sup>

So long as people have all done for them they remain listless and helpless. Give them a difficulty to overcome, a task to perform. Oblige them to seek us, in place of our seeking them. If we attempt to hunt them into education as we have hunted them into selling their lands, a spirit of resistance will naturally be engendered. Make education a part of the Runanga; give the direction of it to themselves; let them feel that it is their own work.

He also stated:<sup>54</sup>

The Natives like other men; they held cheap what cost them nothing, but what they paid for they valued.

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<sup>52</sup> *Appendices to the Journals of the House of Representatives*, 1862 Session I: Being the 2<sup>nd</sup> session of the 3<sup>rd</sup> Parliament of New Zealand, E9 Native Schools, Reports of Inspectors, at 1.

<sup>53</sup> *Appendices to the Journals of the House of Representatives*, 1862 Session I: Being the 2<sup>nd</sup> session of the 3<sup>rd</sup> Parliament of New Zealand, E4 Native Schools, Reports of Inspectors, at 17.

<sup>54</sup> *New Zealand Parliamentary Debates*, 10 September 1867, Volume 1, Part 2, at 863.

40. Consistent with Carleton's urgings, Māori parents were compelled by the Native Schools Act 1867 to provide land and other resources for the schooling of their children.<sup>55</sup> Not only would the Crown achieve buy-in from Māori to the social control agenda in this way but tangata whenua would also foot a part of the education bill as well. Having Māori "feel that it is their own work" so there would be buy-in to the Crown's control agenda was a manifested act of bad faith.

### **Native Schools Code of 1880**

41. When speaking in Parliament to the Native Schools Bill in 1867, Graham "thought the Bill did not go far enough, as they should first teach the natives to read and write in their own language".<sup>56</sup> Teaching new entrants in a language they could not hope to understand had obvious flaws. After some years of the English only rule, the Crown would relent. The Native Schools Code of 1880 ("the Code") would allow for the use of te reo Rangatira when teaching junior classes. It read:<sup>57</sup>

It is not necessary that teachers should, at their time of appointment, be acquainted with the Māori tongue. In all cases, English is to be used by the teacher when he is instructing his senior classes. In junior classes the Māori language may be used for the purpose of making the children acquainted with the meanings of English words and sentences. The aim of the teacher, however, should be to dispense with the use of Māori as soon as possible.

42. Te reo Māori became a learning bridge for younger pupils but no more than that. Although there was a degree of bilingualism in the Code, language eradication remained the agenda.<sup>58</sup> While there was a marked emphasis on practical education such as agriculture, woodwork and crafts, and although history, elementary science and formal grammar were omitted, the curriculum was similar to that prescribed for Standards I-IV in the public

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<sup>55</sup> Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 76.

<sup>56</sup> New Zealand Parliamentary Debates, 10 September 1867, Volume 1, Part 2, at 866.

<sup>57</sup> *Appendices to the Journals of the House of Representatives*, 1880, H-1f Education: Native Schools, *The Native Schools Code*, at 1.

<sup>58</sup> Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand's Educational History*, The Dunmore Press: Palmerston North 1993, at 47.

schools.<sup>59</sup> In other words, the curriculum remained Eurocentric despite the bilingual component.

43. Just 14 years after the enactment of the 1867 Act, James Pope was already expressing concern to Parliament about identity loss.<sup>60</sup>

At the end of [two years] they would be educated Māoris, able and probably willing to do much good among their own people, to whom they should always return. If an attempt is made to Europeanize them thoroughly, and to separate them from their relatives, the result will probably be that they will eventually become strong reactionists, or a sort of Māori-Pākehā, “neither flesh, fowl, nor good red-herring.”

William Bird, Pope’s successor, also stressed the importance of Māori returning to their communities.<sup>61</sup> Implicit in the officials’ views is an awareness of the destructiveness of assimilation.

44. Later in that same address to Parliament, Pope discussed the inevitability of Europeanisation; of culture and language loss. Monolingualism was assured. The plan was working.<sup>62</sup>

That the Māoris will ultimately become Europeanised and be absorbed into the general population does not admit of doubt. It is easy to see that the process has already commenced and that it is going on more or less with rapidity in most parts of New Zealand.

Although Europeanisation was assured, he urged his Parliamentary audience to be patient. Notably, Pope referred to “[p]ast experience” with “uncivilised peoples” and how they “cannot without imminent risk of extermination, give up their old ways of life all at once . . .”.<sup>63</sup> Obviously, the process of Europeanisation that was applied in New Zealand was not without precedent. Pope’s reference to “[p]ast experience” confirms the Crown’s

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<sup>59</sup> Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand’s Educational History*, The Dunmore Press: Palmerston North 1993, at 47.

<sup>60</sup> *Appendices to the Journals of the House of Representatives*, 1881 Session I: Being the 3rd session of the 7<sup>th</sup> Parliament of New Zealand, E7 Education: Native Schools, at 11.

<sup>61</sup> *Appendices to the Journals of the House of Representatives*, 1906 Session 2: Being the 2<sup>nd</sup> session of the 16<sup>th</sup> Parliament of New Zealand, E2 Education: Native Schools, at 14, per WW Bird.

<sup>62</sup> Inspector general of Schools James Pope “Report of the Inspector-General of Schools” [1881] I AJHR E7, at 11.

<sup>63</sup> Inspector general of Schools James Pope “Report of the Inspector-General of Schools” [1881] I AJHR E7, at 11.

prior knowledge of the destructive effect of assimilation and linguicide on the culture and language of indigenous peoples. It is clear from Pope's address however that he was under a great deal of pressure to hasten the process of Europeanisation.

### **'Direct method' of learning**

45. In 1902, official attitude hardened against the use of any Māori language. It was decided to dispense with bilingualism altogether in favour of the 'direct method' of learning. According to James Pope, Inspector-General of Schools, the "only way to teach English was through English."<sup>64</sup> This method of language teaching was based on the belief that the most effective way to learn a second language was to be totally immersed in it.<sup>65</sup> Use of the direct method would have disastrous consequences for Māori education as the level of post-primary participation fell away over the next 40-odd years. In 1938, the number of Māori pupils at Native and public schools was 20,049.<sup>66</sup> According to Barrington, the number of Māori enrolled in all types of state secondary schools in 1938 was 404,<sup>67</sup> or 2.01% of the total number of Māori attending school that year. In 1900, the total number of Māori attending Native schools was 2,762.<sup>68</sup> 1,436 Māori pupils attended public schools as at December 1900.<sup>69</sup> The number of Māori pupils receiving higher education in 1900 at schools such as Te Aute, Hukarere and St Joseph's was 207,<sup>70</sup> or 4.93% of the total number of Māori attending school that year. Despite the

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<sup>64</sup> *Appendices to the Journals of the House of Representatives*, 1903, E2 Education: Native Schools, at 18, per James Pope.

<sup>65</sup> Simon, Judith and Tuhiwai Smith, Linda (eds) *A Civilising Mission? Perceptions and Representatives of the New Zealand Native Schools System*, Auckland University Press: Auckland, 2001, at 165.

<sup>66</sup> *Appendices to the Journals of the House of Representatives*, 1939 Session I: Being the 1<sup>st</sup> session of the 26<sup>th</sup> Parliament of New Zealand, E3 Education of the Native Children. See Table H1 at 7—*Number of Native Schools Classified According to Grade, with Number of Teachers and Average Number of Children per Teacher*. The total average attendance at all Native Schools for the year ending 31 August, 1938 was 8,595. See also Table H5 at 8—*Māori Children Attending Public Schools, December, 1938*. The total number of Māori pupils attending public schools at the end of 1938 was 11,451. Thus, the combined number of Māori attending Native and public schools was 20,049.

<sup>67</sup> Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 333.

<sup>68</sup> *Appendices to the Journals of the House of Representatives*, 1901 Session I: Being the 2<sup>nd</sup> session of the 14<sup>th</sup> Parliament of New Zealand, E2 Education: Native Schools. See *Summary of Table No.5* at 24. The number of "European" and "between half-caste and European" pupils has been deducted from the total enrolment number of 3,109.

<sup>69</sup> *Appendices to the Journals of the House of Representatives*, 1901 Session I: Being the 2<sup>nd</sup> session of the 14<sup>th</sup> Parliament of New Zealand, E1 Education: Twenty Fourth Annual Report of the Minister of Education. See Table B2 at iv—*Māoris and Half-castes Attending Public Schools, December 1900*. We have added the total of "Pure Māoris" with the total of "Half-castes living as Māoris" for a combined total of 1436.

<sup>70</sup> *Appendices to the Journals of the House of Representatives*, 1901 Session I: Being the 2<sup>nd</sup> session of the 14<sup>th</sup> Parliament of New Zealand, E2 Education: Native Schools. See Table No.10 at 27. The number of Europeans and pupils who are "more European than Māori" has been deducted from the "Private Pupils" total of 151.

greater number of Māori pupils attending public and Native schools by 1938, since 1900 the number of Māori pupils going on to secondary schooling had decreased as a percentage of total enrolments. It can be concluded that when bilingualism was used at the junior level in Native Schools from 1880 on, Māori educational achievement was enhanced. This stands to reason. This conclusion is supported by the post-primary educational achievements at this time of Ngata, Buck, Pomare, Kohere, Wi Repa and others. Despite this, the Crown entrenched its policy of linguistic and, it is submitted, with the knowledge that bilingualism was a better learning process.

46. From 1909, Māori was included as an optional subject for Junior Scholarship holders at the denominational boarding schools for Māori boys. As discussed, very few Māori attended secondary school at this time and this was the case for many years thereafter. So, whilst the subject was now available, take-up of the language offer was limited at best. The piece-meal language offering was, at least in part, a response to a plea to include te reo in primary schools that was made by the Member of Parliament for Northern Māori, Hone Heke Ngāpua, in 1908:<sup>71</sup>

. . . the Māori tongue should be systematically taught in the native schools, as at present the people were in grave danger of losing their language altogether. This must be prevented at all costs, for if the language were not retained they would lose their nationhood and be neither one thing nor the other.

It is clear from Hone Heke Ngāpua's comments that as early as 1908, Māori leadership<sup>72</sup> was aware of the harm being caused to te reo Māori by the English-only education policy. Another observation we make concerns the "piece-meal" response to Ngāpua's plea. As we shall see, the Crown's inadequate response is typical.

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<sup>71</sup> Cited in Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 54.

<sup>72</sup> Henare Kaihau, MP for Western Māori, made a similar statement to the Dominion newspaper in August 1910:

. . . unless some scheme is brought into operation the Māori language, Māori tradition and customs will be lost to an irreparable extent before many years have gone. The real Native Language was fast passing away . . . and if it was to be preserved it must be systematically taught.

Cited in Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 58.

47. By 1918, the Māori language became a subject for matriculation. Papers in te reo Māori could be applied towards a Bachelor of Arts degree at the University of Auckland by 1929. In 1934 it was included as a subject for the school certificate examination. Despite these and other educational developments, use of te reo Māori continued to decline. Walker noted that over 90% of Māori school entrants spoke Māori in 1900 but that by 1960 this had fallen to 25%.<sup>73</sup> Dr Bruce Biggs gave similar figures to the Te Reo Māori Tribunal (Wai 11).<sup>74</sup>

### **20<sup>th</sup> century—monolingualism and corporal punishment**

48. In the early years of the 20<sup>th</sup> century, it became clear that use and retention of the Māori language was faltering. It was dying. The Crown was faced with a familiar situation—one it had previously encountered in Wales and Ireland for instance and yet despite the ominous signs of pending doom, the Crown continued nevertheless with the direct method of learning in a second language and with its policy of linguicide. In fact, the Crown deepened its efforts to eradicate the Māori language. When it was suggested in 1918 that Māori weaving and carving be introduced into the Native Schools, William Bird was unrelenting:<sup>75</sup>

I do not see that there can be much educational benefit to be derived from including in the curriculum a scheme for instruction in the art of weaving.

In the same way, the language itself must pass through the Maypole Soap process of mongrelism, as it is doing now in the more civilised parts, and finally disappear as a spoken language. Then, too, its interest will consist in the same fact as does that of specimens of old Māori work, viz., that it represents a lost art.

Bird maintained his influence in education circles even after his retirement. In May 1930, he advised a Native School teacher that the direct method

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<sup>73</sup> Walker, Ranginui. *Cultural domination of taha Māori: the potential for radical transformation* in Codd J., Harker R. and Nash R. (Eds) *Political issues in New Zealand Education*, The Dunmore Press Limited, Palmerston North, 1985, at 74.

<sup>74</sup> *Report of the Waitangi Tribunal on The Te Reo Māori Claim*, Wai 11, April 1986, Brookers (Wellington), at 3.3.2.

<sup>75</sup> Cited in Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 56. Bird was Senior Inspector of Native Schools at this time.

should be used in order to suppress the use of the Māori language in schools.<sup>76</sup>

49. Having entrenched monolingualism in Native School teaching methods and, needless to say, in the teaching methods that were used at the public schools, the Crown took its methods for imposing the English language to a violent, much more strident level. Monolingualism would be brutally enforced by teachers with rods, canes, straps, sticks or other weapons of choosing on their young and vulnerable charges. Other humiliating and malicious forms of non-violent punishment were also administered.
50. Despite the absence of official policy, there is no doubt that corporal punishment was adopted as a Crown policy in the education of Māori pupils. Barrington concluded that corporal punishment for speaking te reo Māori<sup>77</sup> was used widely in primary schools in New Zealand during the 19th and much of the 20th Century.<sup>78</sup> The Te Reo Māori Tribunal (Wai 11) concluded that “it was clearly at least a practice widely followed that during the first quarter of [the twentieth] century Māori children were forbidden to speak Māori in school ... and that they were punished if they did so.”<sup>79</sup> As the late Sir James Henare attested in that hearing, “[t]he facts are incontrovertible. If there was no such policy there was an extremely effective gentlemen’s agreement!”<sup>80</sup>
51. The reading material used in schools assaulted the Māori psyche and sense of self-worth.<sup>81</sup> This angle of attack was designed to devalue the Māori culture and te reo Māori and make it irrelevant. The Māori character was

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<sup>76</sup> Cited in Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 56.

<sup>77</sup> Cited in Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 57.

<sup>78</sup> Cited in Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 166.

<sup>79</sup> Waitangi Tribunal, Wai 11, *Report of The Waitangi Tribunal on the Te Reo Māori Claim* (Wellington, 1986), paragraph 3.2.8, at 9.

<sup>80</sup> Waitangi Tribunal, Wai 11, *Report of The Waitangi Tribunal on the Te Reo Māori Claim* (Wellington, 1986), paragraph 3.2.8, at 9.

<sup>81</sup> Dr Christoffel did not examine the reading materials that were provided to Māori pupils who were educated in the Taihape region—see *Education, Health and Housing in the Taihape Inquiry District, 1880-2013*, Wai 2180, #A41(d), at 10.

denigrated in widespread publications such as *The New Zealand School Journal*, whilst claims of white superiority were imprinted on young minds:<sup>82</sup>

A selective phraseology made careful use of adjectives, intensifiers, and metaphors to heighten images of colonial 'heroes' and Māori 'enemies'. In various situations Māoris were evaluated as 'treacherous', 'cunning', 'troublesome', 'distrustful', 'cruel', 'savage', 'wild', and 'fierce'. 'Native' was a term synonymous with 'Māori' and strongly implied images of inferiority and barbarism. Also, comparative and patronising adjectives such as 'little' and 'brown' portrayed Māoris in a discernible light to be ranked in a scale of negative value alongside the 'white', 'bold', 'fearless' and 'noble' colonial settlers. Moreover, 'white' conveyed symbolic and emotive connotations of cleanliness, purity, objectivity, rationality and normality, which 'black' and 'brown' did not share.

### **From cultural adaptation to the Hunn report**

52. In the 1930s, education officials such as Inspector of Native Schools Doug Ball were looking to address aspects of the system's failings. The Māori achievement rate had fallen to an appalling level (see above). The Māori culture and identity were dissipating. Alarmed by the increasing rate of language loss, Apirana Ngata sought change in the form of a bilingual education system.<sup>83</sup> In response, Ball instituted the policy of cultural adaptation in Native Schools from 1931.<sup>84</sup> The result was the incorporation of Māori cultural activities, such as carving, singing and poi dancing into the Native School curriculum. Significant for our purposes are Ball's concerns with the earlier assimilationist approach, the objective of which was, in his words, the "repudiation of the indigenous culture," the "divorce of Māori from all aspects of their culture," and the exclusion of "all things Māori from the scheme of (native) education."<sup>85</sup> Ball's view of assimilation is both

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<sup>82</sup> M Read, *Ideology, Hegemony and the New Zealand School Journal: A Comparative and Critical Analysis of Two Selected Topics 1907-1914, 1930-1940*, MA theses, University of Otago, 1988, at 162. Cited in Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 63-64.

<sup>83</sup> Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 261-2.

<sup>84</sup> Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand's Educational History*, The Dunmore Press: Palmerston North 1993, at 60.

<sup>85</sup> [1935] I AJHR E3, pages 1 and 3; See also Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand's Educational History*, The Dunmore Press: Palmerston North 1993, at 60.

illuminating and deeply concerning. He confirms its destructive intent—social control through cultural annihilation.

53. The policy of cultural adaptation saw Ball inveigling teachers to “restore to the Māori his pride of race, initiative and confidence.”<sup>86</sup> Later in 1940 he wrote that the Māori “cannot, and should not, spurn the past experience of his forefathers. Such a negation of all things Māori would be unnatural.”<sup>87</sup> Although Ball instituted the teaching of aspects of the Māori culture, all lessons were taught in English, including for new entrants. According to Christoffel, “[t]he language was never emphasised at all.”<sup>88</sup> Cultural adaptation would fall well short of Ngata’s aims for the Māori language. Māori were still punished for speaking Māori in Native Schools. In fact, Christoffel claimed that the rate of punishment for speaking te reo increased at this time, through into the 1940s and beyond.<sup>89</sup> Ball had no intention of revitalising te reo Māori. In particular, he criticised its utility in the 20<sup>th</sup> Century:<sup>90</sup>

. . . the language of a people living so long in isolation and in primitive conditions must be inadequate in vocabulary to meet the needs of a civilised community with all the modern inventions of science.

54. The Director of Education of the day, T.B Strong, sought to hasten te reo’s demise as well:<sup>91</sup>

The Native is gradually losing knowledge of his own language, and the question has been raised whether there is not good reason to introduce the teaching of the Māori tongue. Sentiment would incline one to say yes; but sentiment alone is not sufficient justification. Language is a means of communicating thought and is a social necessity. By its measure not only meeting the needs of daily association with our fellows but having the advantage of being able to study the thought of the best thinkers of the ages. From both points of view a knowledge of the Māori language is unnecessary to Natives who know only English. The Māori

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<sup>86</sup> Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand’s Educational History*, The Dunmore Press: Palmerston North 1993, at 61.

<sup>87</sup> Douglas Ball, ‘Māori Education’ in *The Māori Today*, pages 280-1.

<sup>88</sup> Hearing week 7 transcript, Wai 2180, #4.1.15, at 391, line 8.

<sup>89</sup> Hearing week 7 transcript, Wai 2180, #4.1.15, at 489, lines 29-31.

<sup>90</sup> Sutherland, I.L.G, edited. *The Māori People Today—A General Survey*, Wellington, 1940, at 299.

<sup>91</sup> Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 76.

language has no literature and consequently in this direction, too, the natural abandonment of the native tongue inflicts no loss on the Māori.

55. Simon and Smith considered that Ball's reforms "were largely a continuation of the assimilation policy".<sup>92</sup> According to Openshaw *et al*, "the new education policy initiative proved much less radical than it claimed to be".<sup>93</sup>

Later commentators viewed the change less optimistically. Whitehead, for example, described the new policy as 'largely rhetorical in nature', while Powell saw it as being 'too superficial ... an ordinary European education system garnished rather ineffectually by a few extras called Māori activities'. Barrington's assessment of what actually happened in the Native Schools and classrooms after the changes were implemented in 1931 points to several factors that impeded the progress of educational reform – inadequate consultation with, and preparation of teachers; the lack of a proper syllabus and a shortage of Māori teachers; a 'bits and pieces' (cultural engineering) approach to culture; economic depression and cost restraints (until 1935); and the exclusion of the Māori language.

Not only were the Claimants and their forebears being robbed of their identity, they were failing at school in droves. Systemic, perennial, educational apathy had set in, te reo Māori was a dying language and still the Crown persisted with Europeanising the Māori.

### **Native Schools abolition**

56. If cultural adaptation had gone on to improve the educational lot of the Claimants and their forebears, there may have been some redemption for the Crown and some justification for the new policy. But in 1955 for example, 95.9% of Māori left school without a qualification of any sort.<sup>94</sup> By 1955 there had been a sufficient amount of time for cultural adaptation to have set in and to have "worked its magic". However, the tinkering that Ball did was

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<sup>92</sup> Simon, Judith and Tuhiwai Smith, Linda (eds) *A Civilising Mission? Perceptions and Representatives of the New Zealand Native Schools System*, Auckland University Press: Auckland, 2001, pages 193-4.

<sup>93</sup> Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand's Educational History*, The Dunmore Press: Palmerston North 1993, at 62.

<sup>94</sup> Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand's Educational History*, The Dunmore Press: Palmerston North 1993, at 74.

ineffective. But Ball was up against it anyway. The die had long since been cast by Grey, Carleton and others. Education failure by Māori and language death had long since been assured by this time.

57. When the National Committee met in 1955, Doug Ball was now Assistant Director of Education and the National Committee's chairman. There was Māori participation for the first time in its history.<sup>95</sup> One of the recommendations was that instruction in Māori history, legends, song, art and crafts be given greater emphasis in the primary school curriculum. These measures were designed to strengthen Māori culture.<sup>96</sup> The National Committee's concern with strengthening Māori culture belies a concern with the devastating effect of linguicide on identity and learning processes. The fact that the National Committee should recommend an increase in the teaching of Māori culture is a clear sign of awareness that monolingualism was destructive and that it needed to be addressed as a learning mechanism. Despite that awareness, the National Committee did not move to terminate the policy. Instead, their efforts merely culminated in an attempted dilution.
58. The National Committee made the language situation much worse. Another of its recommendations was the abolition of Native Schools within "a generation or two" after "full consultation ... with the local Māori people."<sup>97</sup> All Māori pupils would attend public schools. The abolition decision was made despite research that indicated that most well-educated Māori came through the native school system and not through board schools.<sup>98</sup> As it turned out, the transfer of 105 native schools to public schools was completed by 1969. There was inadequate consultation with local Māori communities before it was done. Given the comparative potency of the form of assimilation that was applied in public schools, it is submitted that the National Committee's abolition recommendation was a step in the wrong direction.<sup>99</sup> The Native Schools should have been turned into bilingual or full immersion schools.

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<sup>95</sup> Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand's Educational History*, The Dunmore Press: Palmerston North 1993, at 70.

<sup>96</sup> Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand's Educational History*, The Dunmore Press: Palmerston North 1993, at 71.

<sup>97</sup> Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand's Educational History*, The Dunmore Press: Palmerston North 1993, at 71.

<sup>98</sup> Fitzgerald, T.K. *Education and identity—a study of the New Zealand Māori graduate*, NZCER, Wellington, at 11.

<sup>99</sup> See Judith Simon (ed), *Nga Kura Māori: the Native Schools System 1867-1969*, AUP: Auckland, 1998, page 19.

This was the appropriate measure to take if language decline was to be arrested and if education achievement was to be improved upon.

59. The National Committee's recommendation to strengthen Māori culture through history, legend, song, art and craft merely echoed the cultural adaptation theory of the 1930s. But the latter policy had not worked. Māori were still failing in droves by the time of the National Committee's recommendation. Cultural and language deprivation was even more deep-seated. The implementation of an already failed learning policy was another, typically inadequate response by the Crown. It amounted to an act of professional negligence (given its earlier failures). And as usual, it didn't work. Within five years, J.K. Hunn would report that Māori education and Māori society as a whole were in crisis.
60. Hunn recorded that Māori attendance rates in secondary schools had stopped increasing in the late 1950s.<sup>100</sup> A comparative lack of academic success amongst Māori children was noted.<sup>101</sup> The number of Māori receiving tertiary-level education was about one-eighth of what it should have been.<sup>102</sup> The policy of integration was introduced as a solution:<sup>103</sup>

. . . a dynamic process by which Māori and Pakeha are being drawn closer together in the physical sense of the mingling of the two populations as well as in the mental and cultural senses where differences are gradually diminishing. Remembering that the dictionary definition of the verb "to integrate" is "to make whole" we regard the integration of the Māori and Pakeha as the making of a whole new culture by the combination and adaptation of the two pre-existing cultures.

According to Harker, the imbalance of power between Māori and Pākehā meant that the less powerful would have to do the adapting.<sup>104</sup> The purpose of integration was "to combine (not fuse) the Māori and Pākehā elements to

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<sup>100</sup> Hunn "Report on Department of Māori Affairs" [1961] | AJHR G10, page 28.

<sup>101</sup> Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand's Educational History*, The Dunmore Press: Palmerston North 1993, at 72.

<sup>102</sup> Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand's Educational History*, The Dunmore Press: Palmerston North 1993, at 72.

<sup>103</sup> Booth J.M. and Hunn J.K.. *Integration of Māori and Pakeha*. Wellington, Government Printer, 1962, at 10.

<sup>104</sup> Harker, Richard. *Schooling and cultural reproduction* in: Codd J, Harker R and Nash R (Eds). *Political issues in New Zealand education*, The Dunmore Press Limited, Palmerston North, 1961, at 61.

form one nation wherein Māori culture remains distinct.”<sup>105</sup> The notion of cultural distinctiveness gave some hope to preserving te reo Māori. However, the overarching aim was the “full integration of the Māori people into the mainstream of New Zealand life.”<sup>106</sup> This smacked of the linguicidal agenda of homogeneity. Hunn was so pre-occupied with addressing racial segregation, a political issue at the time,<sup>107</sup> that it blinded him to his perpetuation of the assimilation agenda.

61. Whilst it is arguable that Māori education performance improved following the Hunn report on the basis that more Māori were leaving school with School Certificate,<sup>108</sup> it should be noted that the rules about School Certificate had been relaxed and a fail in one subject no longer meant overall failure. The disparities between Māori and non-Māori education achievement remained.

## **Conclusion**

62. There can be no doubt that the Crown effected the demise of te reo Māori through targeted legislation and policy. In accordance with the Privy Council finding and on this basis alone, there is a duty on the Crown to take vigorous action to address language decline. Furthermore however, both the fragile state of te reo Māori AND the fact that the language’s decline was purposefully wrought by the Crown makes language revitalisation a priority for the Crown.

## **CHRONIC TEACHER SHORTAGE**

63. In the following submissions, we contend that there is a chronic shortage of Māori language teachers and that as a consequence, te reo Rangatira is further imperilled.
64. The Wai 262 Tribunal analysed where the Crown went wrong. There was heavy criticism for not producing enough qualified teachers to meet the demand for kōhanga reo and Māori-medium primary education during the

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<sup>105</sup> Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand’s Educational History*, The Dunmore Press: Palmerston North 1993, at 72.

<sup>106</sup> Openshaw, Lee and Lee, *Challenging the Myths: Rethinking New Zealand’s Educational History*, The Dunmore Press: Palmerston North 1993, at 72.

<sup>107</sup> Barrington, John. *Northland Language, Culture and Education—Part One: Education*, Wai 1040, #A2, at 237.

<sup>108</sup> [1969] I AJHR E1, page 32.

1980s and 1990s. There was a “predictable bubble” and indeed a report commissioned by the Department of Education estimated in 1987 “that at least 1,000 more Māori-speaking teachers would be needed over the following decade to service the kōhanga generation”.<sup>109</sup> Although there was an effort to increase teacher numbers in the mid-1990s, it was too little too late. Māori parents and caregivers began to vote with their feet back to mainstream education. The Tribunal heaped the blame on the Crown:<sup>110</sup>

. . . a failure of imagination and planning in the education sector led to the major gulf between Māori-medium education supply and demand. Moreover, it was this very deficit of supply that drove demand down and may continue to drive it down.

65. In April 2018, the Tomorrow’s Schools Independent Taskforce was appointed by the Minister of Education (“**Taskforce**”). It was asked “to consider if the schooling system is fit for purpose, and to focus on developing a system that promotes equity and excellence and ensures that every learner achieves educational success”.<sup>111</sup> A review entitled *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini* was produced (“**Taskforce review**”). Diverse views, experiences of and information about the schooling system were gathered in a wide consultation with the people of New Zealand.
66. In a relentless critique of *Tomorrow’s Schools*, the Taskforce advised that provision to allow students to learn in te reo Māori is inadequate to meet Māori aspirations.<sup>112</sup> This was due to **the lack of proficient Māori language teachers**, resources and a coherent long-term plan. (emphasis added) Other identified barriers included bureaucratic hurdles, a lack of government investment and limited capacity among existing kura to expand. The

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<sup>109</sup> Waitangi Tribunal, *Ko Aotearoa Tēnei – A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, Legislation Direct, Volume 1, at 164.

<sup>110</sup> Waitangi Tribunal, *Ko Aotearoa Tēnei – A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Wai 262, 2011, Legislation Direct, Volume 1, at 165.

<sup>111</sup> *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow’s Schools Independent Taskforce*, Ministry of Education, November 2018, at 10.

<sup>112</sup> In 2017, 25 percent of the total school population, 192,430 students, identified as Māori. In 2017, 2.4 percent of all school students were enrolled in Levels 1-2 Māori medium. In English medium schools, 34 percent of Māori students received Levels 3-5 Māori language immersion. 18,994 (9.9 percent) of these Māori students were in Māori medium education (they were taught the curriculum in te reo Māori for at least 51 percent of the time (Māori language levels 1-2)). 5,930 of these students were attending the 62 Kura Kaupapa Māori, and 3,371 were attending the 27 Ngā Kura a Iwi. 58.7 percent (11,149) of Māori students in Māori medium education were in Māori medium schools (schools in which all students were involved in Māori medium)—see *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow’s Schools Independent Taskforce*, Ministry of Education, November 2018, at 140, footnote 45.

language learning options for many Māori children are unfairly limited, forcing them to transition from one setting to another. The growth of the teaching of te reo Māori in the English-medium state schooling sector has added to the strain on proficient Māori language teachers. Māori language pathways from early childhood education to tertiary are still not clearly visible across the country.<sup>113</sup> According to the Taskforce review, Māori language provision is fragile, often administered by a small unit within a school, with scarce staffing and resources “and a variable approach to pedagogy and learning”. Schools have had to close their bilingual units due to inadequate staffing. It was concluded that the teaching of te reo Māori needs to be better supported:<sup>114</sup>

We have heard that the schooling system needs teachers/kaiako with specific language and teaching expertise so that students have their language skills extended from one year to the next, and so that the languages are well taught. As an additional challenge, resources that were once being produced are no longer readily available. Teachers/kaiako in these settings require guidance, planning and national networks. In our view, low levels of kura and te reo Māori language provision (including kura auraki and kura reo rua) do not match the Crown’s commitments to action on Te Tiriti o Waitangi.

67. The critical failures in the teaching of te reo Māori lead to a recommendation by the Taskforce that a Te Tiriti o Waitangi-led planning strategy be developed by the Ministry in consultation with iwi, rūnanga and Urban Māori Authorities, as well as with early learning services, kura, tertiary organisations, regional development organisations and local government.<sup>115</sup> It was recommended that a national Education Hub dedicated to kaupapa Māori settings be formed to provide “a strong and coherent parallel pathway within the overall network”.<sup>116</sup> National guidelines should be developed for schools to become full-service sites that offer extensive wrap-around

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<sup>113</sup> *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow’s Schools Independent Taskforce*, Ministry of Education, November 2018, at 58.

<sup>114</sup> *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow’s Schools Independent Taskforce*, Ministry of Education, November 2018, at 59.

<sup>115</sup> *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow’s Schools Independent Taskforce*, Ministry of Education, November 2018, at 61.

<sup>116</sup> *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow’s Schools Independent Taskforce*, Ministry of Education, November 2018, at 66.

services in socio-economically disadvantaged communities.<sup>117</sup> In his response to the Taskforce review, which we discuss further below, then Education Minister Hipkins refused to implement the Taskforce's recommendations.

68. The efforts made to recruit new teachers and to attract former teachers to the profession as a whole were acknowledged by the Taskforce. Despite the efforts made however, it was observed that there are not enough teachers to fill shortage areas such as Māori-medium teaching and the teaching of te reo Māori in general. Furthermore, induction and mentoring are of variable quality. Up to a quarter of beginning teachers leave the profession after 5 years. The leaving rate is higher for Māori teacher graduates, who are often required to provide te reo Māori learning for the wider community and carry their classroom responsibilities out as well. When they start work, new kaupapa Māori teachers face larger responsibilities than is desirable for new teachers.<sup>118</sup> In light of these concerns, it was recommended that the Ministry work with the Teaching Council of Aotearoa New Zealand to ensure that there is a coherent workforce strategy. Initial Teacher Education provision should be future-focused and fit for purpose. A curriculum, learning, assessment and pedagogy unit should be formed at the Ministry of Education. More flexible guidelines for teacher appraisal should be developed. Although the Taskforce's teaching recommendations are applicable to teacher requirements in the Māori-medium sphere and although the Taskforce was highly critical of Ministry efforts to recruit te reo Māori teachers, no specific recommendations in this respect were made. For instance, no Māori language teacher recruitment targets were set.

69. In his response to the Taskforce review, Minister Hipkins stated that there are no **specific** plans for recruiting Māori language teachers in the Minister's foreword,<sup>119</sup> the executive summary<sup>120</sup> or in the principles for redesign.<sup>121</sup> In

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<sup>117</sup> *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow's Schools Independent Taskforce*, Ministry of Education, November 2018, at 67.

<sup>118</sup> *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow's Schools Independent Taskforce*, Ministry of Education, November 2018, at 89.

<sup>119</sup> *Supporting all schools to succeed: Reform of the Tomorrow's Schools system*, Ministry of Education, November 2019, per Minister Hipkins, at 3.

<sup>120</sup> *Supporting all schools to succeed: Reform of the Tomorrow's Schools system*, Ministry of Education, November 2019, per Minister Hipkins, at 4.

<sup>121</sup> *Supporting all schools to succeed: Reform of the Tomorrow's Schools system*, Ministry of Education, November 2019, per Minister Hipkins, at 14. The redesign principles that *may* provide for te reo teacher recruitment are:

the section entitled “*Providing instruction on te Reo Māori and Tikanga Māori*”, there is acknowledgement that “[t]here are currently insufficient numbers of te reo Māori teachers to ensure that every child can learn te reo Māori at school” and “current funding is insufficient to support all Māori educational institutions to meet potential demand.”<sup>122</sup> The Minister’s response was to encourage the shared use of virtual learning networks and correspondence school. A “culturally capable workforce” will be grown with “existing programmes, and other supports under development”. What the “supports under development” consist of is not discussed or elaborated upon in this section or later in the document. This is a concern. As discussed by the Taskforce, the “existing programmes” are inadequate and there are concerns with the effectiveness of virtual learning and correspondence when young children and teenagers are attempting to acquire a second language.

70. Later in the Minister’s response we are advised that a plan for “[s]trengthening the Māori medium pathway” will be developed. It must involve a partnership with Māori and be considered in the wider context of refreshing Ka Hikitia and Tau Mai Te Reo. It is disconcerting that a formulated plan did not already exist, some 30-plus years after the Te Reo Māori report of the Waitangi Tribunal and after numerous complaints by Māori, linguists, educationalists, academics and jurists about imminent language death. Not only is it patently obvious that no formulated plan exists for “[s]trengthening the Māori medium pathway” but heavy reliance will be placed on the maligned Ka Hikitia policy.
71. The Minister’s response is bereft of a teacher recruitment strategy. Despite awareness of the precarious state of te reo Māori by both the Taskforce and the Minister, neither party furnished concrete policy drivers to develop the stock of Māori language teachers.

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1. A strong focus on working with and supporting education providers (early learning services, kura, schools, wharekura, including transitions between these and tertiary), with an emphasis on teaching and learning; and
  2. Consistency with the Māori-Crown relationship will be designed into both the ESA and the redesigned centre of the Ministry. Resources will pivot to the delivery of front-line services relevant to achieving equity and excellence of learning outcomes.

<sup>122</sup> *Supporting all schools to succeed: Reform of the Tomorrow’s Schools system*, Ministry of Education, November 2019, per Minister Hipkins, at 24.

## The Taihape experience

72. There is Waitangi Tribunal evidence that at the time of Minister Hipkin’s response to the Taskforce Review in late 2019, no identifiable kaiako Māori Crown-generated recruitment policy existed. Before the Taihape Tribunal, then Secretary of Education Iona Holsted accepted the Crown’s recruitment responsibilities:<sup>123</sup>

The main thing that this Ministry can do to support the claim for te reo teaching is to recruit and train te reo teachers.

But, having said that, Ms Holsted’s evidence was that for “the last 30-odd years” . . . “the teaching workforce has been left up to market forces” and that “[t]here was no incentive or requirement to find people with [a] particular disposition. There was no expectation of the numbers of people that they would take into teaching, they would get funding anyway”.<sup>124</sup> Despite knowledge on the Crown’s part, for instance, that in 1987 1,000 te reo Māori teachers were required to meet the then learner demand, securing this essential ingredient for arresting language decline had been left to “market forces”.

73. Up until that point in time, there had been no targeted effort to seek out Māori language teachers. Given the fragile state of te reo Māori, a much more determined and calculated approach to Māori language teacher recruitment should have been carried out. Additionally, according to Ms Holsted, there was no “incentive” *for the Crown* to “find particular people with [a] particular disposition”.<sup>125</sup> We submit that this is because loss of te reo isn’t the rallying cry for the Crown that it is for the claimants. The Crown’s relative level of interest in teacher recruitment was fully revealed by this evidence from the Secretary for Education and it is this level of interest that foments perennial under-performance.
74. In response to questioning by Professor Temara, Ms Holsted advised of “a new strategic objective of increasing rangai Māori by 30% in 30 years, . . . ”.<sup>126</sup> This bold claim was not accompanied by any further detail at that point

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<sup>123</sup> Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 110, per Iona Holsted.

<sup>124</sup> Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 65, per Iona Holsted.

<sup>125</sup> Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 65, per Iona Holsted.

<sup>126</sup> Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 65, per Iona Holsted.

in the witness's testimony. However, later in the witness's presentation, Judge Harvey asked about "the Ministries (sic) approach to remedying deficien[cies] where teachers are [a] concern, . . . [W]e need a plan to boost up our numbers? How do you do that?"<sup>127</sup> Ms Holsted stated in reply, inter alia, that the Teaching Council of Aotearoa New Zealand had essential information that the Ministry could not access.<sup>128</sup> The inference seemed to be that the Teaching Council was holding the planning phase up. This was followed by a stark admission that teacher recruitment is ". . . an area that's been seriously under invested in for a very long time, so we're starting from the ground up".<sup>129</sup> This evidence of under-investment in preventing language death is disturbing, as is knowledge that the Crown teacher recruitment plan is fledgling at best. The latent effort on the Crown's part to recruit Māori language teachers confirmed similar evidence given earlier in the witness's presentation (and which was discussed above).

75. The Tribunal was then advised that the "30% in 30 years" statement provided to Professor Temara was a reference to a recruitment target of 3000 additional teachers by 2030. Had Judge Harvey not questioned the witness about teacher recruitment planning, the evidence provided to Professor Temara would have made it appear as if the Crown had Māori language teacher recruitment planning in hand. Other Crown evidence **about teacher recruitment** had a concerning veneer to it as well. Ms Holsted provided the following evidence in response to questions from Dr Soutar:<sup>130</sup>

Q. . . . going back to the recruitment of Te Reo Māori student/teachers. I mean its great to hear 270, but you still aren't able to fill the scholarships that you put out?

A. That's correct. We're oversubscribed in some and not undersubscribed but we don't fill others, and the reason for that is about the quality of te reo. So, we will not give scholarships unless they meet a particular threshold.

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<sup>127</sup> Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 133, per Judge Harvey.

<sup>128</sup> Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 133, per Iona Holsted.

<sup>129</sup> Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 133, per Iona Holsted.

<sup>130</sup> Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 58, per Iona Holsted.

Q. I see, So, doesn't that suggest already that we're at crisis point?

A. The – it's a question of how deep the crisis [is] because we are better than we have been in the past.

It appears to be agreed that there is a crisis but because the Crown is “better than we have been in the past”, the inference is that the crisis isn't as bad as it once was. The attempt to deflect attention from the seriousness of the situation is untenable. The language's future remains in crisis and yet the Crown's performance with regard to teacher recruitment remains an ongoing and significant concern.

76. Whilst 3000 teachers by 2030 is an admirable target, it was soon made clear that planning to achieve this target was formative, at best. It was not clear “if that's how many we need”, “[t]he plan is not fully formed and it's at the moment a bit of a patch work, it's a patchwork of scholarships, of drawing people back into the system”. And then:<sup>131</sup>

If you asked me am I 100 percent confident we're going to do it, as at today I'd have to say, no we're still working on it. That's why I remain very, very open to suggestions from any quarter, as to how we may boost the number and keep quality.

Again, once the surface is scratched away at, the actual situation was revealed. It was revealed that a “patchwork” level of organisation exists. It is unsettling for the claimants to know that it is in these hands, those of the Ministry of Education, that the fate of te reo Māori is held. Notably, the absence of a vetted teacher recruitment plan *was not* the subject of discussion in any of the Crown witnesses' pre-hearing evidential filings. This information only came to light as a result of Tribunal panel questioning.

77. At hearing, the following exchange then unfolded between Ms Holsted and Judge Harvey:

Q. . . . surely to incentivise our young people to go into Māori medium teaching, if they knew that they would be fully funded throughout their degree and have no

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<sup>131</sup> Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 134, per Iona Holsted.

student loan. Is that not one of the ways to incentivise that?

A. But that's certainly a policy option, it's not currently under consideration.

Q. That there tells me that it is not being taken seriously.

A. No, I think what its saying is, is that we'll work out what's working. So, growing scholarships is a way to help people through that the fees free policy that the Government introduce help to address that. Teacher[s] of te reo are [paid] an additional allowance, other things and I probably answered the questions incorrectly . . . Your suggestion is one that's certainly been discussed before and is in the mix.

Q. Sure, because surely the death of Māori language . . . was known long before today and that your predecessors ought to have been aware of that and should have come up with a plan before now.

A. One might think so, but in fact when the first couple of weeks I was in this job, it was when I discovered that there was a large – nobody seemed to know how many teachers we needed anywhere let alone down to the specificity of te reo. So, we have had a history of poor data gathering and poor systems to give us insight into what to do.

Q. I mean, surely that must strike you as appalling.

A. I was surprised.

Only when pressed about the integrity of the Crown's commitment to arresting language decline did Judge Harvey's incentive suggestion become a possible solution to teacher recruitment. A curious turn-around. The other evidence confirmed a lack of planning and organisation by the Crown around te reo-related teacher recruitment; a state of affairs alluded to earlier. These developments in the Crown's case do not augur well for the language's future. Although a target of 3000 teachers may have been set, there is very little confidence in the Crown's ability to achieve this recruitment goal. The

claimants are not the only party to express their lack of faith. The Tomorrow's Schools Independent Taskforce also expressed little confidence in the provision of Māori medium education, citing "scarcity of staffing" in particular.<sup>132</sup> Given the Crown's poor track record with recruiting Māori language teachers, it is appropriate to consider the merit of the Crown's continued role in this endeavour.

### ***No teacher recruitment strategy***

78. At the end of the Crown's education evidence presentation, Judge Harvey requested a copy of the Crown's teacher recruitment strategy. It was made clear as well that the information was wanted immediately.<sup>133</sup> The Crown did not object to the short timeframe given. Data on scholarship uptake and course completion rates was also sought by the Tribunal.<sup>134</sup> On 29 November 2019, the Crown filed a document in response entitled *Increasing the Number of Te Reo Māori Teachers in Schools* ("**Crown document**").<sup>135</sup> We have analysed the document. It raises numerous concerns. In our submission, it is not a teacher recruitment strategy *per se*. The Crown document merely lists current teacher supply initiatives and so, in effect, the Crown failed to comply with Judge Harvey's request for a recruitment strategy.
79. Furthermore, not long into the document we learn that the teacher recruitment strategy is a work in progress and that the work would not now be completed until 2020 and possibly not until 2021. There was patent vagary around the date of production and it should not go unnoticed. The Crown's response to the Tribunal's attempt to address the teacher recruitment issue is highly unsatisfactory. The unsatisfactory nature of the Crown's response is heightened by the Crown's historical role in language death and by the Crown's ongoing failure since the Te Reo Māori Report in 1986 to furnish a sufficient number of Māori medium teachers. The Crown's inability, or unwillingness, or both, to execute the relatively straightforward

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<sup>132</sup> *Our Schooling Futures: Stronger Together—Whiria Nga Kura Tuatinitini, Report by Tomorrow's Schools Independent Taskforce*, Ministry of Education, November 2018, at 58. We discuss the Tomorrow's Schools Independent Taskforce's report below and the Minister's response to their report.

<sup>133</sup> Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 136, per Judge Harvey.

<sup>134</sup> Waitangi Tribunal, *Transcript, Hearing Week 11*, Wai 2180, #4.1.19, at 136, per Judge Harvey.

<sup>135</sup> *Increasing the Number of Te Reo Māori Teachers in Schools*, Wai 2180, #M27(h).

task of teacher recruitment defies understanding. In this ongoing and unfortunate situation, the lack of progress by the Crown gives rise to the spectre of linguicide once again—a purposefully applied Crown policy to bring about language death.

80. It should be noted that the words “NOT GOVERNMENT POLICY” were featured at the top of each of the Crown document’s 13 pages. This is an unusual and confusing development. If we are not dealing with government policy, it is difficult to take the Crown document seriously. In fact, given that it is not government policy, any submissions on the content or substance of the material contained within are somewhat pointless because the Crown was not committed to any of the Crown document’s content.

#### **Request to MOE for teacher recruitment policies**

81. On Monday 9 December 2024, Mr Peter Wood of the MOE was asked to provide any official Crown teacher recruitment policies that had been implemented following the completion of the teacher recruitment strategy in either 2020 or 2021. Further approaches were made to Mr Wood on 16 December 2024 and twice on 18 December 2024. As at the filing of this application for inquiry prioritisation, Mr Wood has not furnished any of the requested information.
82. On 18 December 2024, an Official Information Act request was made to the MOE for the said information. Due to the Christmas holiday break, the MOE responded by stating that it had until Friday, 7 February 2025 to provide the requested information.
83. At 5.10 pm on Friday, 20 December 2024, the MOE responded to the OIA request in a letter that describes the initiatives that have been taken by the Crown since 2019 to address the teacher supply issue. Although a number of policies are referred to, no overarching kaiako Māori recruitment strategy was provided. This is disappointing. Ms Holsted confirmed that one would be produced by 2021 at the latest. It wasn’t.
84. Some of the initiatives referred to in the OIA response were critiqued by the witnesses, such as the Māori Immersion Teaching Allowance (MITA) and various scholarships including Te Waka Whakarākei and Te Tipu Whakarito. Notably, most of the initiatives appear to have been in place since 2019

which means that they have had time to ameliorate the problems they were designed to address. But they haven't. Their limited utility is apparent from the evidence provided by Ms Pomare and Ms Gilbert that teacher supply remains a burning issue.

### **Since Taihape**

85. The evidence is that, to this day, the Crown remains bereft of an effective kaiako Māori teacher recruitment strategy.

### ***At the coal face***

86. Ms Dianne Pomare taught at Te Kura Kaupapa o Ngā Maungarongo<sup>136</sup> since 1992 before finishing there as the kura's tumuaki at the start of 2024. Her brief of evidence is **attached**. In her brief of evidence in support of this application for priority, Ms Pomare described the teacher supply issue as a "crisis"<sup>137</sup> that is the most burning of all the pressing issues for kura:<sup>138</sup>

Over the years, I have observed systemic challenges affecting Kura Kaupapa Māori, particularly in the areas of teacher recruitment, teaching resources, and infrastructure. While each of these issues presents unique difficulties, the acute shortage of qualified teachers fluent in Te Reo Māori and knowledgeable about Te Aho Matua philosophy is the most urgent.

87. The witness records that "the pool of new graduate teachers is small every year".<sup>139</sup> It is evidenced that the Ministry of Education has "never assisted with recruitment efforts"<sup>140</sup> and so the onus is on the kura to find their own teachers.<sup>141</sup> Unfortunately, however, Kura Kaupapa Māori salaries are not all that attractive and so staff retention is difficult. Although the Ministry of Education does "have some funds" for teacher recruitment, "there are so many hoops to jump through that it is hardly worth the effort".<sup>142</sup> In these circumstances, contingency measures are taken to address the teacher

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<sup>136</sup> Formerly known as Te Kura Kaupapa o Maungawhau.

<sup>137</sup> Brief of Evidence of Dianne Pomare dated 20 December 2024, at [10].

<sup>138</sup> Brief of Evidence of Dianne Pomare dated 20 December 2024, at [9].

<sup>139</sup> Brief of Evidence of Dianne Pomare dated 20 December 2024, at [23].

<sup>140</sup> Brief of Evidence of Dianne Pomare dated 20 December 2024, at [25].

<sup>141</sup> Brief of Evidence of Dianne Pomare dated 20 December 2024, at [23].

<sup>142</sup> Brief of Evidence of Dianne Pomare dated 20 December 2024, at [26].

shortage such as online lessons, especially in maths, the use of Wharekura graduates as teacher aides and the use of Operational Funding for teacher salaries.<sup>143</sup> On top of all that, it is “impossible” to find teacher relievers,<sup>144</sup> teaching resources are deficient<sup>145</sup> and there are chronic, near insurmountable infrastructure issues.<sup>146</sup>

88. What is sought by Ms Pomare is the recruitment of teachers in accordance with the Te Aho Matua philosophy, a standalone Rūnanga teacher training programme, an expanding teacher pool and Ministry of Education support for addressing the teacher supply issue.<sup>147</sup>
89. Ms Tere Gilbert began her involvement with the Kōhanga Reo movement as “a mum” in 1984. Her brief of evidence is **attached**. In 1994, she became a kaiāwhina at Te Kōhanga Reo o Ngā Kuaka in Hamilton, where she remained until 2015, rising eventually to the position of tumuaki. That year, Ms Gilbert (and others) opened the first Puna Reo, Te Kōhao Kōhungahunga, offering pre-school education in te reo Māori and in English. In 2021, Ngā Puna Reo o Aotearoa was established. There are approximately 50 Puna Reo nationwide now, with 43 affiliated to Ngā Puna Reo o Aotearoa. Between 180 to 200 teachers are now teaching approximately 2000 tamariki.<sup>148</sup>
90. Not unlike Ms Pomare, Ms Gilbert tells a tale of woe when it comes to teacher supply:<sup>149</sup>

I have grave concerns for te reo Māori because:

- a. There are not enough qualified teachers who can speak Māori and fluently with tamariki;
- b. Puna Reo have to limit enrolments to ensure compliance with ECE regulations for 50% qualified staff;

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<sup>143</sup> Brief of Evidence of Dianne Pomare dated 20 December 2024, at [31]-[34].

<sup>144</sup> Brief of Evidence of Dianne Pomare dated 20 December 2024, at [23].

<sup>145</sup> Brief of Evidence of Dianne Pomare dated 20 December 2024, at [36]-[43].

<sup>146</sup> Brief of Evidence of Dianne Pomare dated 20 December 2024, at [44]-[46].

<sup>147</sup> Brief of Evidence of Dianne Pomare dated 20 December 2024, at [47]-[50].

<sup>148</sup> Brief of Evidence of Tere Gilbert dated 20 December 2024, at [7]-[10], [17], [18].

<sup>149</sup> Brief of Evidence of Tere Gilbert dated 20 December 2024, at [13].

- c. There are not enough kura or places in kura for our tamariki to continue their learning in te reo. This has been the case in Hamilton for over 10 years despite hui with the Ministry of Education. We now have kōhanga and puna graduands growing whānau. We will need at least 2-3 times as many kura.
- d. Whānau are having to pay to send their tamariki to Puna because the government funding does not provide enough to pay teachers for the work they do and with the higher bar they must be qualified and fluent in te reo Māori.
- e. Some Puna Reo are struggling with the critical teacher supply and some have had to close. Therefore, limiting choice for whānau and their tamariki. Not only in Puna Reo but their whole kaupapa Māori journey.
- f. Puna Reo have to 'grow their own' teachers by supporting fluent speakers into training for teaching qualifications – there are high costs for both the Puna Reo and the teacher-in-training.

91. Also:<sup>150</sup>

We have shown that this kaupapa breeds success for tamariki Māori who grow up confident in their language, identity and culture. It needs to be supported both at the Puna Reo level, kura, and Wharekura so it can grow and not be limited as it has been for a number of years. Assistance and incentives for training teachers and their Puna Reo/Kura are required. Growing more kura so that we are also growing more speakers ensuring our reo grows for our mokopuna and their mokopuna.

92. Teachers who speak Māori are very difficult to find or recruit.<sup>151</sup> The cost to train kaiako is immense,<sup>152</sup> and once trained, kaiako are often enticed away

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<sup>150</sup> Brief of Evidence of Tere Gilbert dated 20 December 2024, at [14].

<sup>151</sup> Brief of Evidence of Tere Gilbert dated 20 December 2024, at [24].

<sup>152</sup> Brief of Evidence of Tere Gilbert dated 20 December 2024, at [21]-[22].

to consultancies, Kura Kaupapa Māori, the MOE and elsewhere.<sup>153</sup> Teacher retention is difficult when Puna Reo kaiako are the lowest paid ECE providers of them all.<sup>154</sup> Ngā Puna Reo remains a going concern only because kaiako prepare their documentation in their own time.<sup>155</sup> Work conditions for Puna Reo kaiako are more demanding than elsewhere, leading to burn out over time.<sup>156</sup>

93. The Crown's response to the issues at hand has been underwhelming. The MOE has long since been aware of the pay disparity between Ngā Puna Reo, Kura Kaupapa Māori and Kindergarten but the issue has still not been addressed.<sup>157</sup> Ngā Puna Reo o Aotearoa representatives met with Associate Minister Seymour at a hui held in September 2024. No promises were made and there has been no follow up to the teacher supply complaint and other related issues that were raised.<sup>158</sup>

94. Te Aomihia Taua-Glassie is the Post-Primary Teachers' Association Te Wehengārua vice president. In a news article dated 18 September 2024 entitled '*More Teachers Needed to Keep Te Reo Māori Alive*', a copy of which is **attached** and marked '**C**', Ms Taua-Glassie is recorded to have stated the following:

The demand for te reo Māori speakers is creating significant gaps in our kura. Our teacher supply surveys find that te reo Māori teacher vacancies are consistently among the highest of all subject area vacancies.

And:

The shortage of te reo Māori teachers is a crisis that demands immediate attention. We are calling on the government to develop a teaching workforce strategy that ensures sufficient numbers of kaiako fluent in te reo Māori are trained, recruited and retained in our kura.

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<sup>153</sup> Brief of Evidence of Tere Gilbert dated 20 December 2024, at [20].

<sup>154</sup> Brief of Evidence of Tere Gilbert dated 20 December 2024, at [23]-[28], [49]-[59].

<sup>155</sup> Brief of Evidence of Tere Gilbert dated 20 December 2024, at [58].

<sup>156</sup> Brief of Evidence of Tere Gilbert dated 20 December 2024, at [14], [53], [54].

<sup>157</sup> Brief of Evidence of Tere Gilbert dated 20 December 2024, at [56].

<sup>158</sup> Brief of Evidence of Tere Gilbert dated 20 December 2024, at [40]-[41].

## **Budget analyses**

95. In the following submissions, we analyse two recent government budgets in order to establish that on the all-important funding front, the Crown continues to ignore the claimants' teacher supply needs.
96. Despite the promising sub-heading (see below), the education allowance in the 2024 budget provided no solace for the claimants.<sup>159</sup>

### **Teacher Supply Supports**

This initiative provides funding to continue to grow and maintain the pipeline of teachers by investing in the on-site training of teachers in state and state-integrated schools, encouraging the relocation of overseas-qualified teachers and New Zealand teachers based overseas and contributing towards overseas recruitment costs for schools and early learning services. Additionally, this funding supports the overseas recruitment of other child-facing education workforces and retention of the current workforce through targeted career development opportunities and continuing a programme that matches beginning teachers with schools experiencing recruitment and retention issues. Ongoing funding has been provided for this previously time-limited initiative.

97. Investment in on-site teacher training for state and state-integrated schools was heralded. However, since Ngā Puna Reo are neither state nor state-integrated schools, none of the promised investment will be going their way. As Ms Pomare pointed out, accessing any such funding when she headed Te Kura Kaupapa o Ngā Maungarongo was so difficult that it was “hardly worth the effort”.<sup>160</sup> Furthermore, the Crown's go-to strategy for addressing the teacher supply issue is to look overseas for recruits. As Ms Gilbert has attested, Ngā Puna Reo “are very disadvantaged by this policy” because, obviously, te reo speaking teachers are required.
98. There have been other criticisms of Budget 2024. Prime Minister Luxon and Finance Minister Willis stated that they delivered a ‘universal budget’

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<sup>159</sup> Budget 2024, ‘*Summary of Initiatives*’, Hon Nicola Willis, Minister of Finance, 30 May 2024, at 38 – see <https://www.treasury.govt.nz/sites/default/files/2024-06/b24-sum-initiatives.pdf>

<sup>160</sup> Brief of Evidence of Dianne Pomare dated 20 December 2024, at [26].

because that is a more fiscally responsible way to balance the country's books. However, "universal funding makes it difficult to identify direct benefits for Māori, which means measuring the outcomes against cost is difficult. Universality also ignores te ao Māori results and aspirations which is more than financial. It's about identity, connection, language, land as well as material wealth."<sup>161</sup> Liam Rutherford, NZEI Te Riu Roa national executive member and teacher, observed that the budget has no dedicated spending on Māori education initiatives, alongside cuts to programmes for students in Māori medium:<sup>162</sup>

For example, the Mauri Tū Mauri Ora programme was run from 2019 to 2023 has not been renewed under this Government. The programme provided for specific and tailored intervention for ākonga in Kaupapa Māori and Māori Medium settings, who had been identified as not achieving at the expected Te Reo Matatini (literacy) and (pāngarau) levels for Te Tīrewa Marautanga o Aotearoa. There is now a huge gap in provision, from a Government that is literacy and numeracy focused.

99. Budget 2023, the Well-being Budget, included provisioning for pay parity for early learning teachers.<sup>163</sup> Based on Ms Gilbert's evidence, it would appear that Ngā Puna Reo did not benefit from this initiative at all. Although Budget 2023 extended the 20 hours free ECE subsidy to two year-olds, there appeared to be no provisioning in the budget to address kaiako supply.

## CONCLUSION

100. The claimants' inquiry prioritisation application is based on, rather unfortunately, the fragility of the tāonga that is te reo Rangatira. We submit that it is that fragility which foments the sought inquiry. If something isn't done soon, we may go unwittingly past the point of no return with language preservation.
101. Priority is also engendered by the considerable onus that sits on the Crown, at law and at the behest of no less a judicial institution than the Privy Council,

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<sup>161</sup> <https://waateanews.com/2024/06/03/maori-biggest-losers-in-budget-2024/>, 3 June 2024.

<sup>162</sup> <https://www.nzeiteriuroa.org.nz/about-us/media-releases/budget-2024-is-effectively-a-frontline-funding-cut-for-schools>, 30 May 2024.

<sup>163</sup> <https://www.treasury.govt.nz/publications/summary-intiatives/summary-initiatives-budget-2023>, at 89.

to fix that which it has methodically **and purposefully** broken in circumstances where, despite ample opportunity to address its nigh unforgiveable wrongdoings, the Crown continues to fail miserably as a treaty partner. The tāonga is way past due for some vigorous active protection. The Tribunal is asked to cause the Crown to address the error of its ways once and for all.

**DATED at Tamaki Makaurau this 20<sup>th</sup> day of December 2024.**



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Darrell Naden  
**Counsel Acting**



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Siaosi Loa  
**Counsel Acting**



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Jessica Zhao  
**Counsel Acting**