

IN THE WAITANGI TRIBUNAL

WAI 3310

WAI TBC

CONCERNING

the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

the Education Services and
Outcomes Kaupapa Inquiry
(Wai 3310)

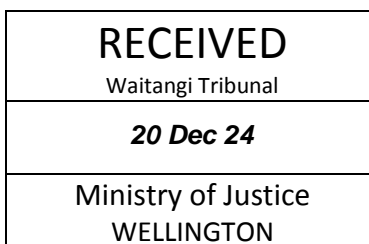
AND

IN THE MATTER OF

A claim by Ripeka Lessels and
O'Sonia Hotereni for and on
behalf of themselves and New
Zealand Educational Institute
(NZEI) Te Riu Roa

**MEMORANDUM OF COUNSEL FILING STATEMENT OF CLAIM AND MAKING
SUBMISSIONS ON PRIORITY ISSUES FOR INQUIRY**

Dated this 20th day of December 2024



Tania Te Whenua
Principal
P: 021 026 00026
E: tania@tewhenua.maori.nz

MAY IT PLEASE THE TRIBUNAL:

1. This memorandum of counsel is filed on behalf of Ripeka Lessels and O'Sonia Hotereni for and on behalf of themselves and New Zealand Educational Institute (NZEI) Te Riu Roa (herein referred to as the claimants).
2. The memorandum accompanies for filing a claim on behalf of the claimants and seeks leave for the claim to be heard within the Education Services Inquiry.
3. The memorandum also responds to the memorandum-directions of Judge Mullins issued following the hearing and judicial conference dated 3 December 2024, inviting counsel to file submissions outlining any issues they believe should be prioritised within this inquiry by 5pm, Friday 20 December 2024.¹

NZEI interest in the Education Services and Outcomes Inquiry

4. Ms Ripeka Lessels is the incoming Manukura of NZEI Te Riu Roa whilst Ms O'Sonia Hotereni is the NZEI Kuia.
5. NZEI Te Riu Roa is the professional organisation and union that represents the interests and issues of its nearly 50,000 members.
6. NZEI Members are employed as teachers and leaders in the early childhood education (ECE) and primary sectors (including Kura Kaupapa Māori and Wharekura), support staff in the early childhood, primary, intermediate, and secondary education sectors, school advisers employed by universities, and Learning Support staff employed by the Ministry of Education.

¹ Memorandum-directions of presiding Office Judge Mullins following the hearing – he tumu herenga koorero – and judicial conference of 22 November 2024, dated 3 December 2024 (Wai 3310, #2.6.1).

7. The main objective of NZEI Te Riu Roa is to advance the cause of quality public education generally while upholding and maintaining the just claims of its members individually and collectively.
8. NZEI Te Riu Roa is a values-led, Te Tiriti o Waitangi-based organisation.
9. This means that in all areas of work mokopuna Māori are considered first. This concept is called Mōku te Ao.
10. NZEI Te Riu Roa is one of the largest unions and professional bodies in Aotearoa and has a long history of playing a positive role in the education sector and on wider social issues affecting our members and the tamariki and whānau they serve.
11. Teachers, principals, and other staff employed in public schools have a unique relationship with the Crown.
12. Public schools are Crown Entities under the Crown Entities Act 2004 and are governed by Boards of Trustees.
13. Teachers are employed by Boards of Trustees, while their employment is covered by Collective Employment Agreements negotiated by the Secretary for Education.
14. Boards of Trustees have explicit obligations to 'give effect to Te Tiriti o Waitangi' as set out in section 127 of the Education and Training Act 2020.
15. Teachers work to the New Zealand Curriculum Te Marautanga o Aotearoa, which is promulgated by the Crown.
16. The Minister of Education has the power to issue curriculum statements under section 90 of the Education and Training Act 2020.
17. Curriculum statements are a form of secondary legislation as set out in Part 3 of the Legislation Act 2019.
18. To be registered and hold a current practicing certificate, teachers must meet the requirements of the Code of Professional Responsibility Ngā Tikanga Matatika, which sets out the high standards for ethical behaviour that are expected of every teacher; and the Standards for the Teaching

Profession Ngā Paerewa, which describe the expectations of effective teaching practice.

19. The Code and Standards are issued by the Teaching Council Matatū Aotearoa, an independent statutory agency with legislated powers and functions that are set out in subpart 4 of the Education and Training Act 2020.
20. The Code of Professional Responsibility Ngā Tikanga Matatika, and the Standards for the Teaching Profession Ngā Paerewa, involve explicit obligations toward Te Tiriti, including 4.2 of The Code of Professional Responsibility Ngā Tikanga Matatika, and the inclusion of 'Te Tiriti o Waitangi partnership' as a standard within the Standards for the Teaching Profession Ngā Paerewa.²
21. Under Te Tiriti o Waitangi NZEI has an obligation to operationalise a system that recognises and uplifts Māori people and their identity.
22. NZEI believe that a system based on Rangatiratanga centres children with rights to control their own aspirations and destiny and would work for all children through values of mutual benefit to society.
23. The claimants are therefore eligible to participate in this inquiry as they are Māori who claim that they and their broader claimant community have been and remain prejudicially affected by the acts and omissions, policies and practices of the Crown which were enacted, promulgated, formulated, undertaken, done or omitted to be done by the Crown in breach of the principles of the Treaty of Waitangi that have had and continue to dmote the status of Te Tiriti o Waitangi in New Zealand's education system and thereby have a detrimental impact on Māori as a result of inequities faced by Māori in education.
24. The Claimants submit that their claim falls within the scope of the inquiry which the Chairperson indicated, included but was not limited to:³

² <https://teachingcouncil.nz/assets/Files/Code-and-Standards/Our-Code-Our-Standards-Nga-Tikanga-Matatika-Nga-Paerewa.pdf>

³ Wai 3310, #2.5.1

- a) the Public Education system as a whole, which would include the primary and secondary school education issues, tertiary education, curricula and education finance issues; and
 - b) Kaupapa Māori education system and related issues.
25. The Claimants are further eligible to participate in the inquiry in that their statement of claim raises issues of a national scale and significance which are contemporary in nature, which have not previously been heard, consolidated for hearing, or settled in any inquiry, particularly due to the contemporary and ongoing nature of the breach.
26. Therefore, counsel respectfully requests that the statement of claim be accepted for filing to be aggregated and heard within the Wai 3310 Education Services and Outcomes Record of Inquiry.

Priority issues for consideration in this inquiry

27. The claimants note that the crux of their claim regards the *current* policies and practices of the Crown in taking proactive policy steps to demote Te Tiriti o Waitangi from its centrality to New Zealand's education system and therefore given the primacy and gravity of these matters, that they should be heard as a priority within the inquiry.
28. The particular policies of the Crown which require priority consideration are set out within the claim and repeated here for ease of reference.

Cuts to Te Ahu o Te Reo Māori

29. On 26 September 2024 the Minister of Education announced a \$30m cut to Te Aho o Te Reo Māori, in order to direct funding toward mathematics resources.⁴

⁴ <https://www.beehive.govt.nz/release/supercharging-schools-teach-maths>

30. Te Ahu o te Reo Māori is a national initiative offering specialist courses catering to all levels of te reo Māori proficiency, in multiple regions throughout Aotearoa.
31. The primary aim of the initiative is to support the Māori language development of the education workforce and to enhance the educational experience and outcomes of students throughout Aotearoa.
32. The nationwide rollout of the initiative began in July 2021, following a pilot programme between May 2019 and July 2020 in four regions.
33. Since its launch, Te Ahu o te Reo Māori has created around 30,000 language acquisition opportunities for the education workforce and whānau attached to learning settings throughout Aotearoa.
34. Te Ahu o te Reo Māori also aligns with broader strategic goals related to Māori language revitalisation and education.
35. Specifically, it supports the objectives of the Maihi Karauna (the Crown's Strategy for Māori Language Revitalisation 2019-2023) by supporting the Crown to create the conditions for te reo Māori to be learned through our education system.
36. It also aims to support the outcomes identified in Tau Mai Te Reo – the Māori Language in Education Strategy, and Ka Hikitia – Ka Hāpaitia, the Māori Education Strategy.
37. A recent Ministry of Education review of the programme captured in *Te Ahu o te Reo Māori Evaluation An integrated view of the Phase 1 and 2 reports* found it to be highly successful in meeting its aims and in its contribution to Māori language revitalisation.
38. The evaluation report noted that, 'in serving the education workforce, and particularly teachers, the ripple effect of this investment should not be underestimated. Simply put, the influence of teachers amplifies the impact of Te Ahu o te Reo Māori on Māori language revitalisation far beyond the obvious numbers of direct participants.'⁵

⁵ Te Ahu o te Reo Māori Evaluation An integrated view of the Phase 1 and 2 reports July 2024, Ministry of Education, p.48.

39. The cut was considered by cabinet on 2 September 2024. The accompanying cabinet paper noted that the programme had been ‘a significant contributor to implementation of Maihi Karauna, the Crown’s Strategy for Māori Language Revitalisation 2019–2023.’⁶
40. Despite this important strategic contribution towards te reo revitalisation the Government proceeded with the cut.
41. We are not aware of any external consultation taking place to inform the Government’s position.
42. Furthermore, the Australian Associated Press fact check found justifications used by the minister for cutting the programme to be misleading.⁷

Proposed changes to the Education and Training Act 2020

43. Proposed changes to the Education and Training Act 2020 seek to downgrade the standing of Te Tiriti o Waitangi within the Education and Training Act by making educational achievement the sole primary objective for school boards.
44. Current wording of section 127 of the Education and Training Act 2020 reads:

127 Objectives of boards in governing schools

- (1) A board’s primary objectives in governing a school are to ensure that—
 - (a) every student at the school is able to attain their highest possible standard in educational achievement; and
 - (b) the school—

⁶ Plan for tackling maths achievement.

⁷ <https://www.aap.com.au/factcheck/nz-ministers-justification-for-axing-maori-language-program-misleads/>

- i. is a physically and emotionally safe place for all students and staff; and
 - ii. gives effect to relevant student rights set out in this Act, the New Zealand Bill of Rights Act 1990, and the Human Rights Act 1993; and
 - iii. takes all reasonable steps to eliminate racism, stigma, bullying, and any other forms of discrimination within the school; and
 - (c) the school is inclusive of, and caters for, students with differing needs; and
 - (d) the school gives effect to Te Tiriti o Waitangi, including by—
 - i. working to ensure that its plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori, and te ao Māori; and
 - ii. taking all reasonable steps to make instruction available in tikanga Māori and te reo Māori; and
 - iii. achieving equitable outcomes for Māori students.
45. Thereby the proposed changes will remove or otherwise nominalise the obligation of public schools to give effect to Te Tiriti o Waitangi by working to ensure their plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori, and te ao Māori; taking all reasonable steps to make instruction available in tikanga Māori and te reo Māori; and achieving equitable outcomes for Māori students.

Charter Schools

46. Legislation reestablishing charter schools was introduced as part the Education and Training Amendment Bill 2024 which passed into law in September 2025.

47. Unlike legislation covering mainstream public schools, legislation enabling charter schools includes no specific Te Tiriti obligation.
48. According to the Ministry of Education, ‘there will be no formal requirement to ensure charter schools’ plans, policies and curricula reflect local tikanga Māori, mātauranga Māori and te ao Māori, or to take reasonable steps to make instruction in tikanga Māori and te reo Māori’.⁸
49. Teachers in charter schools are also not required to be registered or hold a current practicing certificate, which excludes these workers from the requirements of the Code of Professional Responsibility Ngā Tikanga Matatika, and the Standards for the Teaching Profession Ngā Paerewa and Te Tiriti obligations therein.
50. Because of this the Regulatory Impact Statement states that ‘charter schools could also reinforce existing inequities experienced by ākongā Māori, particularly if a schools leadership lacks the skills needed to address Māori concerns and inequities.’⁹

Ka Ora, Ka Ako School Lunch programme

51. The Ka Ora, Ka Ako school lunch programme includes an iwi and hapū social procurement and partnership model.
52. A 2023 review of this procurement model concluded that, ‘As it currently stands the model, operationalised by the Ministry of Education, gives substantial effect to a Tiriti-based model of working.’¹⁰
53. The 2023 evaluation further concluded that the iwi and hapū social procurement and partnership model:

⁸ Ministry of Education, ‘Departmental Disclosure Statement: Education and Training Amendment Bill’, 12 June 2024, p.10. Accessed 15 July 2024:
https://disclosure.legislation.govt.nz/assets/disclosures/bill_government_2024_66.pdf

⁹ Regulatory Impact Statement: Reinstating a New Zealand Model of Charter Schools, p.3.

¹⁰ *HE KAI KEI AKU RINGA Evaluation of the Iwi and Hapū Social Procurement and Partnership Model, under Ka Ora, Ka Ako | The Healthy School Lunches Programme*. Mana Pounamu Consulting, Ministry of Education. 2023. p. 46.

https://web-assets.education.govt.nz/s3fs-public/2024-11/He-Kai-Kei-Ringa_Evaluation-Report-FINAL-.pdf?VersionId=dPZvQn9SYITbKJ.2yTafs3oKB7FjWjqa

- a) Gives substantial effect to a Te Tiriti o Waitangi based way of working;
- b) Provides an equitable opportunity for iwi and hapū to become suppliers for Ka Ora, Ka Ako;
- c) Supports the development of iwi and hapū capability and capacity at local levels;
- d) Supports rangatiratanga and the mana of iwi and hapū in looking after their own tamariki and rangatahi;
- e) Supports the development and/or strengthening of relationships between schools/kura and iwi/hapū;
- f) Has enabled iwi and hapū to respond to the needs of ākongā;
- g) Has increased trust between iwi and hapū and the Ministry of Education; and
- h) Provides family-friendly employment opportunities for some whānau.

54. On 22 October 2024 the Government announced changes to the Ka Ora, Ka Ako school lunch programme, due to come into effect in January 2023.

55. The changes will mean that schools with Year 7+ learners are effectively prohibited from using the iwi and hapū social procurement and partnership model when giving effect to Ka Ora, Ka Ako school lunch programme.¹¹

Changes to the New Zealand Curriculum / Te Marautanga Aotearoa

56. One in four children in our schools are Māori.

¹¹ <https://www.beehive.govt.nz/release/smarter-healthy-school-lunches-programme-serves-130m-savings>

57. The significant majority of our tamariki Māori (93.5%) are in mainstream schooling.
58. This means that changes to the mainstream curriculum have a profound impact on ākongā Māori.
59. The Government has undertaken a significant reform of the curriculum for primary school age children following a review from a Ministerial Advisory Group (MAG) in late 2023 – early 2024.
60. Among the members of the MAG were individuals who have expressed open disdain for mātauranga Māori and the place of Te Tiriti o Waitangi in education.¹²
61. Following an initial review, the MAG and other curriculum writing teams redrafted the English learning area for Years 0-6 and the mathematics and statistics learning area for Years 0-8.
62. The mathematics learning area was open for consultation from 12 August to 9 September 2024, while the English learning area was open for consultation from 26 August – 20 September 2024.
63. In the draft English learning area for Years 0-6 and the draft mathematics and statistics learning area for Years 0-8, references to Te Tiriti o Waitangi are demoted from being central in the 2023 draft content to its near exclusion from the 2024 draft.
64. Te Tiriti references have been removed from both the Te Mātaiaho framework outline, the introduction and the English purpose statement.
65. The updated draft purpose statement has also removed all mention of mātauranga Māori, te ao Māori, Māori perspectives, bicultural Aotearoa.
66. Explicit references to mātauranga Māori have more generally been removed from the draft curriculum.
67. Under Mātairangi | The Guiding Kaupapa ‘The overarching kaupapa, expressing the centrality of Te Tiriti o Waitangi and its principles, and New

¹² <https://www.beehive.govt.nz/release/first-steps-100-day-plan-education-removing-distractions-and-teaching-basics-brilliantly>

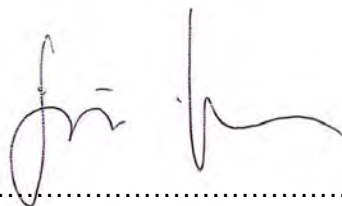
Zealand's vision for education' has been replaced with 'The overarching kaupapa guiding the curriculum, based on the science of learning and ensuring excellent and equitable outcomes for students'.

68. Te Tiriti o Waitangi is not replaceable with a theory of learning. The insertion of 'science of learning' should not be at the expense of Te Tiriti o Waitangi.

Changes to Marsden Fund

69. On 4 September 2024, the Government announced changes to the Terms of Reference for the Marsden Fund, stipulating that approximately 50 percent of funds 'go towards supporting proposals with economic benefits to New Zealand', and disbanding the humanities and social sciences panels meaning that research in these areas will no longer be supported by the fund.¹³
70. These two panels receive most of the proposals based on Māori knowledge, so this decision will reverse the progress that has been made in recent years towards funding for Māori research.
71. Of the 25 grants awarded by the fund for the 2024 round, 16 (64%) were for research that involved some form of Māori focus.¹⁴
72. Accordingly, the claimants seek that their claim and the matters raised within be prioritised for hearing within this inquiry.

DATED this 20th day of December 2024



T Te Whenua
Claimant Counsel

¹³ <https://www.beehive.govt.nz/release/marsden-fund-refocused-science-purpose>

¹⁴ <https://www.royalsociety.org.nz/what-we-do/funds-and-opportunities/marsden/awarded-grants/marsden-fund-awards-2024/>