
KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA
I TE TIRITI O WAITANGI

BEFORE THE WAITANGI TRIBUNAL

WAI 3310

IN THE MATTER OF

the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

the Education Services and Outcomes
Kaupapa Inquiry

MEMORANDUM OF COUNSEL FOR THE CROWN
ON PRIORITISATION

3 Huitanguru / February 2025



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o te Karauna**
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Waitangi Tribunal

3 Feb 25

Ministry of Justice
WELLINGTON

E TE RŌPU WHAKAMANA I TE TIRITI O WAITANGI – MAY IT PLEASE THE TRIBUNAL:

Hei tīmatanga, hei whakarāpopototanga | Introduction and summary

1. The purpose of this memorandum is to assist the Tribunal in deciding whether certain claims should be prioritised in this inquiry. For that purpose, this memorandum:
 - 1.1 sets out preliminary comments on some factors the Tribunal may wish to consider in deciding whether to prioritise any specific claim or issue; and
 - 1.2 provides a reasonable amount of background information by way of context to assist the Tribunal in deciding whether to prioritise any claim or issue suggested by claimants.
2. The Crown neither supports nor opposes the prioritisation of any particular claims, but does submit that the Tribunal should take real care before prioritising any particular claim or issue at this very early stage in this kaupapa inquiry. The Crown suggests the Tribunal may instead want to consider broader planning for how the inquiry should unfold, possibly taking into account the various innovations available to support kaupapa inquiry processes.
3. Counsel appreciates that there is a lot of information in this memorandum. The Crown has no issue with claimants who have sought priority filing submissions in reply.
4. This memorandum was due to be filed by 5pm on 31 January 2025. On 30 January counsel sought an extension until 5pm on 5 January, but that request was not addressed in time. As such, counsel seeks leave to file this memorandum late.

He whakaaro mō te whakaarotau me te whakamahere | Preliminary comments on priority and planning

5. As the Presiding Officer has already noted, this Tribunal panel has the power to regulate its procedure in such a manner as it sees fit.¹ The

¹ Wai 3310, #2.5.5 at [22]; Treaty of Waitangi Act 1975, Sch 2, cl 5(9).

Tribunal is not compelled to prioritise certain claims over others, but may choose to do so.²

6. This inquiry is at a very preliminary stage. New or amended statements of claim are yet to be filed.³
7. The Crown supports the aspiration that the overall inquiry process for Wai 3310 is streamlined. The Crown welcomes opportunities for planning and discussions to assist the Tribunal and claimants to realise this aspiration.
8. The Chairperson's general memorandum-directions of 4 October 2024 provide some assistance. That document sets out the various new and alternative processes that some kaupapa inquiries are following, such as:⁴
 - 8.1 wānanga;
 - 8.2 tūāpapa hearings;
 - 8.3 early evidential hearings;
 - 8.4 staged reporting; and
 - 8.5 the commissioning of pou tikanga/pou reo.
9. The Chairperson noted that these innovations were in part a direct response to the cumbersome and time-consuming procedural and interlocutory steps in the start-up of any Tribunal inquiry.⁵ Consistently with those innovations, this Tribunal panel (quite properly) held an early event to hear expert evidence from Tā Hirini Moko Mead. But otherwise, this Tribunal panel has not yet specified whether some of the above innovations might be followed as a next step in the inquiry process.
10. There is a risk in determining now what the priority issues for this inquiry will be before deciding how the entire Wai 3310 inquiry is to be structured or framed or unfold. It risks an immediate focus on specific issues, without

² See also the *Guide to the Practice and Procedure of the Waitangi Tribunal* at [3.15]-[3.16] which is discussed further below.

³ Wai 3310, #2.6.1 at [17]. The new or amended statements of claim are due in April 2025.

⁴ He pānui whakahau a te Tiamana / Memorandum-directions of the Chairperson, 4 Oketopa 2024 at [10].

⁵ He pānui whakahau a te Tiamana / Memorandum-directions of the Chairperson, 4 Oketopa 2024 at [12] and [13].

a context into which all the claims and issues before this Tribunal panel will be addressed. The Tribunal might also consider whether it would like to receive in evidence a broad overview of the current education system as a whole, before embarking into an inquiry into any given aspect of it. The system is complex and multifaceted. A broad understanding of the whole would be important context to any particular claim.

11. In considering whether to prioritise claims, the issue is not *whether* to inquire, but *when*. The Tribunal has a duty to inquire into all claims properly made to it.⁶ The Crown cannot (and does not seek to) avoid an inquiry into any claim submitted to the Tribunal. The issue is timing.
12. A question the Tribunal may ask itself is whether it would produce a report into a prioritised issue ahead of its report on all other claims? If the answer is no or that it would be unlikely, then one might question why the claim or issue needs to be prioritised now, given that the Tribunal must inquire into all claims made to it. Tribunal members will know what is involved and the time it takes to produce a Tribunal report into discrete issues.
13. It is accepted that there may be some claims where the circumstances suggest that an urgent or prioritised hearing is important, even though it may be out of a carefully planned sequence. Strictly speaking, there is no recognised or established set of principles for a given Tribunal panel to decide how to prioritise any given claim. The Tribunal's *Guide to Practice and Procedure* provides some guidance,⁷ but those factors are subject to the discretion of the relevant Tribunal panel.⁸ The Tribunal also has an established set of criteria for the holding of urgent inquiries.⁹ If the context here is that the Wai 3310 panel is deciding whether or not to hold urgent hearings for priority claims in 2025, then the criteria for urgency seem apposite: the Wai 3310 Tribunal panel would be diverting its resources urgently to hear certain prioritised claims.

⁶ See the Treaty of Waitangi Act 1975, s 6(2).

⁷ See the factors listed in the *Guide to The Practice and Procedure of the Waitangi Tribunal* at [3.16].

⁸ See the *Guide to The Practice and Procedure of the Waitangi Tribunal* at [3.15].

⁹ See the *Guide to The Practice and Procedure of the Waitangi Tribunal* at [3.28]-3.29].

14. Drawing together the comments above, the Crown suggests this Tribunal panel considers the following:
- 14.1 How does the Tribunal wish to embark on this inquiry? Does it want to use any of the innovations used in other kaupapa inquiries? Does it wish to hear from claimants about how the balance of the inquiry should proceed? Does it want to receive in evidence or as an introduction a broad overview of the current education system to help ground any inquiry into claims about any given part of the system?
 - 14.2 What is the total scope of all claims to be heard in this inquiry? Statements of claim are due in early April 2025. Does the panel want to receive advice about the scope of the issues raised in the claims and what the common issues are before deciding how to prioritise those claims? Does the Tribunal want to allow claimants to file claims after an interlocutory process?
 - 14.3 How would the hearing of any priority claims occur alongside any of innovations that this Tribunal panel wishes to employ?
 - 14.4 Bearing in mind that all claims will be heard at some stage, what particular reason demands that any given claim be heard in priority to all others? Is there a truly serious issue causing prejudice that needs to be addressed urgently?
 - 14.5 What does priority actually mean in the context of this inquiry? Does it mean commencing a hearing into identified claims now (in the first half of 2025?) through to the issue of a Tribunal report (perhaps in late 2025 or early 2026)? Or does it mean that once the Tribunal will commence hearings, whenever that will be, certain claims would be heard first? If the latter, and as above, does the Tribunal want to wait before deciding which claims are heard in which order until a) all claims have been filed and b) any innovative procedures have occurred?

- 14.6 What funding is available for this inquiry and what implications would priority hearings into certain claims have on the wider inquiry?

Te whakaarotau o ngā kerēme | Prioritising claims

15. Counsel understand that some claimants have suggested the following claims and issues be prioritised:
- 15.1 funding cut to Te Ahu o te Reo Māori;¹⁰
 - 15.2 changes to the history curriculum;¹¹
 - 15.3 changes to the English and maths curriculum;¹²
 - 15.4 Māori boarding schools;¹³
 - 15.5 charter schools;¹⁴
 - 15.6 proposed changes to s 127 of the Education and Training Act 2020;¹⁵
 - 15.7 recruitment of kaiako Māori;¹⁶
 - 15.8 kāpō Māori issues;¹⁷

¹⁰ Wai 682, Wai 1464 and Wai 1546 “He Manatu Rōia”, dated 19 November 2024 at [2(a)]; Te Whenua Law “Memorandum of Counsel Filing Statement of Claim and Making Submissions on Priority Issues for Inquiry”, dated 20 December 2024 at [29]; Wai 1795 “Memorandum of Counsel in Advance of the Judicial Conference”, dated 21 November 2024 at [12]; Wai 1630 “He Manatu Rōia”, dated 19 November 2024 at [6(a)].

¹¹ Wai 682, Wai 1464, Wai 1546 “He Manatu Rōia”, dated 19 November 2024 at [2(b)]; Wai 682, #1.1(ab) at [6.4(b)] and Wai 1630 “He Manatu Rōia”, dated 19 November 2024 at [6(b)].

¹² Te Whenua Law “Memorandum of Counsel Filing Statement of Claim and Making Submissions on Priority Issues for Inquiry”, dated 20 December 2024 at [61]-[68].

¹³ Wai 1456 and Wai 2332 “Submissions of Counsel in Advance of the Judicial Conference”, dated 18 November 2024 at [15] and Tamaki Legal, “Memorandum of Counsel in Support of Prioritising Māori Boarding Schools”, dated 18 December 2024 at [8].

¹⁴ Te Whenua Law “Memorandum of Counsel Filing Statement of Claim and Making Submissions on Priority Issues for Inquiry”, dated 20 December 2024 at [46] and Wai 682, #1.1(ab) at [6.4(a)].

¹⁵ Te Whenua Law “Memorandum of Counsel Filing Statement of Claim and Making Submissions on Priority Issues for Inquiry”, dated 20 December 2024 at [43].

¹⁶ Tamaki Legal “Memorandum of Counsel to Prioritise a Kaiako Māori Recruitment Inquiry”, dated 20 December 2024 at [7].

¹⁷ Wai 2109 “Memorandum of Counsel Filing Submissions Regarding Prioritisation”, dated 20 December 2024 at [3].

- 15.9 changes to the Ka Ora, Ka Ako | Healthy School Lunch programme;¹⁸ and
- 15.10 changes to the Marsden Fund.¹⁹
16. The Crown sets out below background information about these issues to provide the Tribunal with more context. This information has been provided to counsel from the Ministry of Education and other ministries where relevant. On some of the issues, counsel also makes some specific comments about priority, focused on whether there are any immediate or urgent issues about which the Tribunal should be aware. For clarity, and as above, the Crown is neutral on whether the Tribunal wishes to prioritise certain claims.

Funding cut to Te Ahu o Te Reo Māori

17. Ngāti Hine, Te Kapotai, Ngāti Kapu and the New Zealand Educational Institute have sought to prioritise funding cuts to Te Ahu o Te Reo Māori.²⁰ Other claimants support this priority issue.²¹ Claimants submit the decision was not made in a Tiriti-compliant process, the process was rushed, alternative options were not considered,²² and the Minister of Education was not fully informed about the Te Ahu o Te Reo Māori programme.²³
18. The Ministry of Education instructs us that:
- 18.1 The purpose of Te Ahu o Te Reo Māori (Te Ahu) was to lift the te reo Māori capability of the education workforce so that all support staff, teachers and leaders can use te reo Māori correctly

¹⁸ Te Whenua Law “Memorandum of Counsel Filing Statement of Claim and Making Submissions on Priority Issues for Inquiry”, dated 20 December 2024 at [51].

¹⁹ Te Whenua Law “Memorandum of Counsel Filing Statement of Claim and Making Submissions on Priority Issues for Inquiry”, dated 20 December 2024 at [72].

²⁰ Wai 682, Wai 1464 and Wai 1546 “He Manatu Rōia”, dated 19 November 2024 at [2(a)]; Te Whenua Law “Memorandum of Counsel Filing Statement of Claim and Making Submissions on Priority Issues for Inquiry”, dated 20 December 2024 at [29].

²¹ Wai 1795 “Memorandum of Counsel in Advance of the Judicial Conference”, dated 21 November 2024 and Wai 1630 “He Manatu Rōia”, dated 19 November 2024 at [6(a)].

²² Wai 682, Wai 1464 and Wai 1546 “He Manatu Rōia”, dated 19 November 2024 at [5], Te Whenua Law “Memorandum of Counsel Filing Statement of Claim and Making Submissions on Priority Issues for Inquiry”, dated 20 December 2024 at [40], Wai 1795 “Memorandum of Counsel in Advance of the Judicial Conference”, dated 21 November 2024 at [12] and Wai 1630 “He Manatu Rōia”, dated 19 November 2024 at [6(a)].

²³ Wai 682, Wai 1464 and Wai 1546 “He Manatu Rōia”, dated 19 November 2024 at [7].

and integrate te reo Māori into their students' learning. Te Ahu was intended to develop competency, accelerated language acquisition, and – through language revitalisation planning – support the education workforce to create and nurture safe opportunities for all staff and students to use te reo Māori every day.

- 18.2 The programme was, however, underperforming. The Ministry of Education's analysis is that there was a lack of quantitative evidence that the programme directly improved student progress and achievement aligned with the government's priorities for education or of the impact the programme had on te reo Māori use in the classroom. In addition, data from the 2023 Curriculum Insights and Progress Study indicated that too many students have gaps in their maths learning and are not where they need to be for their age. For instance, overall, less than a quarter of students were meeting the expected curriculum level for their age in maths (22% at Year 8).
- 18.3 As such, in August 2024 Cabinet decided to discontinue the Te Ahu programme (from the end of the 2024 calendar year) and to reprioritise the funding towards the provision of maths and pāngarau teaching resources.
- 18.4 Pāngarau is one of eight wāhanga ako or learning areas within Te Marautanga o Aotearoa²⁴ and is the equivalent to Mathematics and Statistics in the New Zealand Curriculum. Maths and pāngarau cover pāngarau, mathematical, and statistical knowledge, skills, and dispositions that enable students to be numerate, to solve problems, identify patterns, and apply maths and pāngarau knowledge and skills in everyday social, economic, and cultural contexts and situations.

²⁴ Te Marautanga o Aotearoa is the curriculum for those teaching and learning through te reo Māori.

- 18.5 The new resources will provide teachers and students with high-quality, curriculum-aligned mathematics and pāngarau materials to support the implementation of the new Mathematics & Statistics learning area and Pāngarau wāhanga ako for Year 0 to 8 students from Term 1 2025. Investing in both mathematics and pāngarau provides assurance that all students have equitable access and opportunities to strengthen their maths and pāngarau knowledge.
- 18.6 Funding of \$3.500 million per annum is currently available for teachers and kaiako to grow their te reo Māori capability.
- 18.7 Finally, the Ministry of Education is currently preparing advice for the Minister of Education to consider te reo Māori training for teachers and staff. This is still in the early stage of development, so no timeframes or changes have been determined.
19. In terms of whether there are any issues of urgency or priority about this decision, counsel notes that:
- 19.1 Yes, the government has decided to discontinue the Te Ahu programme and to reprioritise the funding that was available towards maths and pāngarau teaching resources.
- 19.2 The rationale for making use of funding earmarked for Te Ahu was the underperformance of the programme when assessed against specific performance criteria and its high cost relative to similar programmes.
- 19.3 Policy work is currently underway on te reo Māori training for teachers and staff.
- 19.4 There is current funding available for te reo Māori Professional Learning Development for te reo Māori teachers and for kaiako working in Māori medium and kaupapa Māori education.
- 19.5 Ngāti Hine and Te Kapotai claimants submit that claims concerning the Te Ahu programme should be heard in the context

of other policies being initiated by the present government concerning te reo Māori.²⁵ That makes sense. It does suggest, however, that claims concerning the Te Ahu programme should be heard in the context of other related claims.

Changes to the history curriculum

20. Ngāti Hine, Te Kapotai and Ngāti Kapu seek priority for claims concerning changes to the history curriculum.²⁶ Claimants suggest that changes to the history curriculum will mean Māori history could be overlooked or rewritten.²⁷ They also submit that a Tribunal report on the changes to the curriculum could be helpful to the development and implementation of this updated curriculum.²⁸

21. The Ministry of Education instructs us that:

21.1 “Restore balance to the Aotearoa New Zealand Histories curriculum” is a policy in the Coalition Agreement National Party & ACT New Zealand.

21.2 A report of April 2024 from the Education Review Office confirmed that improvements are needed to Aotearoa New Zealand’s histories (ANZH). The report highlighted the variability in terms of curriculum implementation and teacher confidence and capability. Key findings included that:

21.2.1 schools had been prioritising ANZH at the expense of other subjects that are also part of the social sciences learning area, in which ANZH curriculum content sits;

21.2.2 within ANZH, not all the content is being taught yet; and

²⁵ See he manatū rōia, 20 Tihema 2024, filed for Wai 682 and Wai 1464/1546 at [9].

²⁶ Wai 682, Wai 1464, Wai 1546 “He Manatu Rōia”, dated 19 November 2024 at [2(b)]; Wai 682, #1.1(ab) at [6.4(b)]; and Wai 1630 “He Manatu Rōia”, dated 19 November 2024 at [6(b)];

²⁷ Wai 682, Wai 1464, Wai 1546 “He Manatu Rōia”, dated 19 November 2024 at [11], Te Whenua Law “Memorandum of Counsel Filing Statement of Claim and Making Submissions on Priority Issues for Inquiry”, dated 20 December 2024 at [56]-[68], Wai 3310, #2.6.1 at [6.4(b)] and Wai 1630 “He Manatu Rōia”, dated 19 November 2024 at [6(b)].

²⁸ Wai 682, Wai 1464, Wai 1546 “He Manatu Rōia”, dated 19 November 2024 at [12].

- 21.2.3 students are more than twice as likely to enjoy ANZH when they are learning more about New Zealand's place in the world.
- 21.3 In December 2024 Cabinet decided to restore balance to ANZH. The planned approach is informed by the ERO findings and updates to ANZH curriculum content will provide clearer expectations on what needs to be consistently covered in ANZH and ensure that New Zealand's broad cultural diversity and the histories and traditions of all its people are reflected in the curriculum content. The revised ANZH curriculum will involve a balance of local, national and international content, with students given the opportunity to learn about key aspects of New Zealand's history, as well as opportunities to connect this learning to global events. There will also be an intentional rebalance of the time that teachers spend teaching ANZH in relation to other areas of the social sciences curriculum (e.g. geography and economics) so that coverage is proportional and students do not miss out on key learning.
- 21.4 ANZH sits within the social sciences learning area of the New Zealand Curriculum. The equivalent area for Te Marautanga o Aotearoa, Te Takanga o Te Wā, sits within the tikanga ā-iwi wāhanga ako. The curriculum work programme to update the New Zealand Curriculum and Te Marautanga o Aotearoa includes work planned for 2025 to strengthen these curriculum areas so they are knowledge-rich, based on the science of learning, and internationally comparable. The improvements to ANZH, however, will not affect Te Takanga o Te Wā.
- 21.5 By the end of Term 4 2025 (19 December 2025) a draft of the updated social sciences learning area (with updated ANZH curriculum content), as well as the equivalent wāhanga ako for TMOA, will be completed and released for consultation.

22. In terms of whether there are issues of urgency and/or priority about changes to the ANZH curriculum, counsel notes that:
- 22.1 No decision has been made to overlook or rewrite Māori history.
 - 22.2 The detail of the changes to the ANZH curriculum is being developed over the course of 2025 and will be ready for consultation at the very end of 2025.
 - 22.3 It is difficult to see what useful inquiry could occur into this issue until the revised ANZH curriculum is prepared.
 - 22.4 The Crown can update the Tribunal once changes have been developed for consultation. This would likely be the very end of 2025.

Changes to the English and Maths curricula

23. The New Zealand Educational Institute has sought priority for claims concerning changes to the English and Maths curricula.²⁹ The Institute says that the new curricula have removed references to Te Tiriti o Waitangi, mātauranga Māori, te ao Māori, Māori perspectives and a bicultural Aotearoa.³⁰ The Institute says Te Tiriti is not replaceable with a theory of learning.³¹
24. The Ministry of Education instructs us that:
- 24.1 The English and mathematics and statistics (Maths) learning areas of the New Zealand Curriculum were last updated in 2007, then refreshed in 2022–2023.
 - 24.2 A Ministerial Advisory Group (MAG) was established in December 2023 to review the English and Maths learning areas for Years 0 to

²⁹ Te Whenua Law “Memorandum of Counsel Filing Statement of Claim and Making Submissions on Priority Issues for Inquiry”, dated 20 December 2024 at [61]-[68].

³⁰ Te Whenua Law “Memorandum of Counsel Filing Statement of Claim and Making Submissions on Priority Issues for Inquiry”, dated 20 December 2024 at [63]-[65].

³¹ Te Whenua Law “Memorandum of Counsel Filing Statement of Claim and Making Submissions on Priority Issues for Inquiry”, dated 20 December 2024 at [68].

10. The MAG provided advice to the Minister of Education in March 2024.

24.3 Writing groups consisting of experts and teacher practitioners were then established to strengthen the English and Maths learning areas, so that they meet the following design principles agreed by the Minister:

24.3.1 Underpinned by the science of learning

24.3.2 Knowledge-rich

24.3.3 Inclusive of evidence-informed teaching practices

24.3.4 Clear and easy to use

24.3.5 Internationally comparable

24.3.6 Supportive of the development of key competencies

24.4 Key characteristics of how people learn have informed the development of the new curriculum. These characteristics are:

24.4.1 We learn best when we experience a sense of belonging in the learning environment and feel valued and supported.

24.4.2 A new idea or concept is always interpreted through, and learned in association with, existing knowledge.

24.4.3 Establishing knowledge in a well-organised way in long-term memory reduces students' cognitive load when building on that knowledge. It also enables them to apply and transfer the knowledge.

24.4.4 Our social and emotional wellbeing directly impacts on our ability to learn new knowledge.

24.4.5 Motivation is critical for wellbeing and engagement in learning.

24.5 An additional criterion was also agreed:

The New Zealand Curriculum recognises that all learners should be supported to reach their full potential. The curriculum is brought to life through context in the classroom, where teachers are supported by a curriculum that allows them to focus on inspiring learning through rich and engaging local, national and global contexts. This includes the use of te reo Māori, tikanga Māori, and contexts that matter for all learners, recognising the wide variety of languages, cultures, and identities of Aotearoa New Zealand.

- 24.6 Drafts of the Years 0-6 English and Years 0-8 Maths were tested with the sector in August–September 2024. Improvements were made based on feedback received and the final versions were issued in the New Zealand Gazette. Requirements to teach these learning areas came into effect on 1 January 2025.
- 24.7 Work is continuing on the development of the Years 7-13 English and Years 9-13 Maths. These are currently planned to be released for sector and public consultation in Term 1, 2025, and for implementation to be required from the beginning of 2026.
- 24.8 Compared to the previous 2023 drafts, the updated knowledge-rich English and Maths learning areas do contain fewer direct references to Te Tiriti o Waitangi | the Treaty of Waitangi, te ao Māori and mātauranga Māori.
- 24.9 The new curriculum does, however, provide greater clarity through content, teaching practices, and examples including the use of te reo Māori, tikanga Māori, and contexts that matter for all learners. This change responds to feedback that teachers needed more guidance and support to provide authentic learning experiences. Examples include references to te ao Māori and Māori perspectives, Māori and Pacific voyagers and kōwhaiwhai patterns.
- 24.10 The curriculum framework for the New Zealand Curriculum, titled Te Mātaiaho, has not been fully developed yet. What has been released alongside Years 0-6 English and Years 0-8 Maths is only the skeleton of this overarching framework. The Ministry is developing Te Mātaiaho this year, and the curriculum framework

will be consulted on in the same way as all the learning areas are, be tested in schools, and refined based on feedback received. An updated draft of Te Mātaiaho is planned to be released for consultation with the remaining learning areas, and the fully refreshed curriculum, including the framework, required from the beginning of 2027.

24.11 The reasons for the changes are as follow:

24.11.1 Changes to the English and Maths learning areas (and wider New Zealand Curriculum) are being made in line with the Government’s “Teaching the Basics Brilliantly” policy and its priority for education to ‘establish a knowledge-rich curriculum grounded in the science of learning.’ This also supports the target of 80% of Year 8 students being at or above the expected curriculum level for their age in reading, writing and maths by December 2030. These changes are supported by a range of other actions across the education system that are aimed at closing the equity gap in student progress and achievement, which disproportionately impacts Māori learners.

24.11.2 As recorded in achievement data from national benchmark studies³² and NCEA co-requisite data, New Zealand has long-standing excellence and equity challenges to deliver education success for Māori. The clarity and consistency of a well-sequenced curriculum that includes year-by-year progressions specifying core content is intentionally designed to address the challenge of variability and drive equitable outcomes for all students, in particular Māori. The year-by-year progression is a significant shift from both the 2007 New

³² Curriculum Insights and Progress Study and previously NMSSA.

Zealand Curriculum and the 2023 versions of the English and Maths learning areas. It sets out in detail what to teach and when, each year of learning (Years 0-13), as well as the evidence-informed practices to use.

24.11.3 The changes to the English and Maths learning areas were informed by advice from the MAG and built on work from the 2023 versions, as well as work undertaken to develop a common practice framework that is clear for teachers about the evidence-informed teaching practices that best support all students to progress and achieve. The provision of a year-by-year progression aims to make sure students who are not meeting critical progress milestones are identified and appropriate responses are put in place. This includes additional supports to accelerate learning in line with curriculum expectations in the foundational areas of reading, writing and maths.

25. In terms of urgency and/or priority, counsel submits:

- 25.1 Yes, there are now fewer direct references to Te Tiriti and associated te reo Māori words and concepts in the curricula for Years 0-6 English and Years 0-8 Maths.
- 25.2 Te Tiriti has not been written out of either curriculum. As above, the new curricula provide greater clarity through content, teaching practices, and examples including the use of te reo Māori, tikanga Māori, and contexts that matter for all learners.
- 25.3 It is difficult to see that the changes to the curricula will have a negative impact on the teaching of te reo Māori in schools, but it is accepted that the Tribunal may wish to consider that point. The changes are designed to improve how English and Maths are taught. Further, the changes are supported by a range of other actions across the education system that are aimed at closing the equity gap in student progress and achievement, which

disproportionally impacts Māori learners. The redesign is intended to address the challenge of variability and drive equitable outcomes for all students, in particular Māori.

25.4 Drafts of the Years 7-13 English and Years 9-13 Maths learning areas are planned to be available for consultation in Term 1, 2025, and would become part of the curriculum from the beginning of 2026.

25.5 Te Mātaiaho, the curriculum framework, is being developed this year. An updated draft is yet to be released for consultation. The fully refreshed curriculum, including the framework, would be required from the beginning of 2027.

Māori Boarding Schools

26. Claimants Te Aute College and Māori of Aotearoa, and past and present students of Te Aute College and their whānau, except Māori affiliated to Heretaunga-Tamatea, raised Māori boarding schools as a priority issue.³³ Ngā Tauria Tawhito o Hato Petera support priority for this claim.³⁴
27. Claimants note Māori boarding schools constitute a unique subset of Māori education as the boarding schools were organised in a way which meant that Māori children were treated differently in this environment than they were in state schools.³⁵ Though the boarding schools were not church schools, they were still in association with Christian denominations.³⁶ This association was varied and fraught. Claimants wish to put the issue of the misappropriation and misuse of the schools' lands and resources before the Tribunal.³⁷ Māori boarding schools are said to be in a "precarious

³³ Wai 1456 and Wai 2332 "Submissions of Counsel in Advance of the Judicial Conference", dated 18 November 2024 at [1].

³⁴ Tamaki Legal, "Memorandum of Counsel in Support of Prioritising Māori Boarding Schools", dated 18 December 2024 at [1].

³⁵ Wai 1456 and Wai 2332 "Submissions of Counsel in Advance of the Judicial Conference", dated 18 November 2024 at [12].

³⁶ Wai 1456 and Wai 2332 "Submissions of Counsel in Advance of the Judicial Conference", dated 18 November 2024 at [12].

³⁷ Wai 1456 and Wai 2332 "Submissions of Counsel in Advance of the Judicial Conference", dated 18 November 2024 at [12].

situation” and require Tribunal findings and recommendations to prevent further closure of these schools.³⁸

28. The Ministry of Education instructs us that:

28.1 There are currently four Māori boarding schools open (Te Aute College, Hukarere Māori Girls’ School, St Joseph’s Māori Girls’ College and Hato Paora). Tipene, St Stephens, is set to re-open in 2025 as a charter school.

28.2 The Ministry of Education is not aware that any of the current Māori boarding schools or their associated hostels are in a precarious situation or that there is any issue relating to their operations that could result in closure or threaten viability.

28.3 The four current schools are State integrated schools. These are former private schools that have joined the state education system while keeping their unique educational philosophy or faith-based character. State integrated schools receive funding on the same basis as State schools, with the exception of attendance dues and funding for property. Like State schools, they may also ask families for a voluntary donation.

28.4 State integrated schools can charge attendance dues to cover property-related costs, which State schools cannot. Attendance dues cannot be increased without approval from the Minister of Education.³⁹

28.5 School boards are responsible for day-to-day maintenance of State integrated school property. School boards receive a property maintenance grant for general maintenance paid quarterly. The grant is based on the amount of integrated property and has a maximum gross square metre envelope.

³⁸ Tamaki Legal, “Memorandum of Counsel in Support of Prioritising Māori Boarding Schools”, dated 18 December 2024 at [11] and Wai 1456 and Wai 2332 “Submissions of Counsel in Advance of the Judicial Conference”, dated 18 November 2024 at [17].

³⁹ The Education and Training Act 2020, Sch 6, cl 30 sets out what attendance dues may be used for.

- 28.6 Proprietors are responsible for capital works on the school property, including major repairs, refurbishments and upgrades. The Ministry provides 'Policy One' funding for this type of work. Policy One funding is also used for learning support property modifications and most health and safety upgrades. It cannot be used for new buildings or extensions. The proprietor must use their own funding for this.
- 28.7 Boarding schools also operate hostel facilities to accommodate students. Hostels must be licensed and are regulated by the Education (Hotels) Regulations 2005. The regulations cover governance and management of hostels as well as minimum standards for hostel premises and facilities.
- 28.8 The Ministry does not provide funding to school hostels, aside from administering the boarding allowance for students in years 9-13 and aside from the funding noted below. The boarding allowance is a contribution to an eligible student's fees while they live at a boarding school hostel.
- 28.9 Budget 2021 allocated \$20 million over a two-year period (2021/22 and 2022/23) to support the four current boarding schools to address significant critical infrastructure issues. The funding was intended to improve the quality of the property infrastructure, particularly boarding facilities, to ensure students are safe and well housed. The following funding was provided:

School	Funding Allocation
St Joseph Māori Girls' College	\$8.7m
Hato Pāora	\$5.2m
Te Aute	\$5.1m
Hukarere	\$1.0m
Total	\$20m

- 28.10 In addition, Hukarere Girls' College, St Joseph's Māori Girls' College and Te Aute College received government funding following Cyclone Gabrielle. As per the table below, Regional

Response Fund funding of \$29,407 was provided to Hukarere Girls' College and \$58,305 to St Joseph Māori Girls' College, related to bus travel / transport support. All three schools received North Island Weather Event Funding.

28.11 Approximately \$81k of additional support through the national school transport assistance funding has been shared across the three schools. School Transport responded to all schools affected by the Cyclone either by providing a Temporary Conveyance Allowance to affected whānau or with amending bus routes. Funding was provided as follows:

28.11.1 Te Aute College: the Ministry-funded bus route from Hastings to Te Aute College was amended due to public transport changes after the Cyclone. This route returned to the usual route and timetable in 2024.

28.11.2 Hukarere Girls' College: the Ministry-funded bus route was changed numerous times to accommodate the many school site changes until they found a permanent site in Havelock North from 2024.

28.11.3 St Joseph Māori Girls' College: the school was allocated a temporary bus service from Hastings to their school in 2023. This temporary bus service is expected to cease in 2025.

	Regional Response Fund	North Island Weather Event Funding	Special Reasons Staffing: Cyclone	Total
St Joseph Māori Girls' College	\$58,305	\$18,331	\$ -	\$76,636
Te Aute College	\$ -	\$7,476	\$ -	\$7,476
Hukarere Girls' College	\$29,407	\$14,483	\$88,462	\$132,352
Total	\$87,712	\$40,291	\$88,462	\$216,464

28.12 The Ministry also supports attendance at Māori boarding schools through the Puāwaitanga Scholarships. These scholarships were

first offered in 2014 with a maximum of 15 scholarships for each of the six boarding schools operating at that time. Each school administers their own scholarships, including criteria and selection of recipients. It is estimated that the Puāwaitanga Scholarships scheme will cost \$1.12 million per year.

29. In terms of urgency and/or priority, counsel notes the following:
- 29.1 It is accepted that claims relating to Māori boarding schools have been on the Tribunal's books for some time now. That may be because their inquiry has been awaiting the commencement of this kaupapa inquiry.
 - 29.2 Some of those claim issues are about historical matters: how the schools were originally established and how, over time, school lands have been administered and/or alienated. That historical inquiry does not necessitate a prioritised hearing in 2025.
 - 29.3 The claims do, of course, need to be heard during the course of this inquiry.
 - 29.4 As above, the Ministry of Education is unaware of any issues that suggest any of the schools is under threat of closure. Indeed, Tipene (St Stephen's) is due to re-open this year. Claimant counsel have not identified any particular school that is in actual threat of closure.
 - 29.5 In context, it may be preferable to consider claims relating to Māori boarding schools having already inquired into, or received evidence about, the overall education system. For instance, understanding how Māori boarding schools currently operate requires an understanding of the range of schools that are now available and the choices that parents and children make about which school to attend, be it an established Māori boarding school, kaupapa Māori kura, a new charter school (which might focus on kaupapa Māori) or a State school (that offers tuition in te reo and tikanga Māori).

Charter schools

30. The New Zealand Educational Institute seeks priority for claims relating to charter schools.⁴⁰ Ngāti Hine support this claim.⁴¹ The institute says:⁴²
- 30.1 there is no specific Te Tiriti obligation in the legislation enabling charter schools;
- 30.2 there are no formal requirements to ensure charter schools' planning documents reflect local tikanga Māori or take reasonable steps to make instruction in tikanga and te reo Māori;
- 30.3 charter school teachers are not required to be registered or hold a current practising certificate; and
- 30.4 charter schools may reinforce inequities experienced by ākonga Māori, particularly if a charter school's leadership is lacking.
31. Charter schools were reintroduced through the insertion of subpart 6A to the Education and Training Act 2020. This occurred in October 2024.
32. There is no Treaty-specific clause in subpart 6A. Section 4(d) of the Act would, however, apply to charter schools. Section 4(d) provides that one of the purposes of the Act is to establish and regulate an education system that "honours Te Tiriti o Waitangi and supports Māori-Crown relationships".
33. The Ministry of Education instructs us that:
- 33.1 There is an expectation that charter schools will improve achievement and progress for students, including Māori. While there are no specific provision requiring charter schools to ensure planning documents reflect local tikanga Māori or take reasonable steps to teach tikanga and te reo Māori, this does not preclude charter school sponsors from including these approaches and

⁴⁰ See Te Whenua Law "Memorandum of Counsel Filing Statement of Claim and Making Submissions on Priority Issues for Inquiry", dated 20 December 2024 at [46]-[50].

⁴¹ Wai 682, #1.1(ab) at [6.4(a)].

⁴² See Te Whenua Law "Memorandum of Counsel Filing Statement of Claim and Making Submissions on Priority Issues for Inquiry", dated 20 December 2024 at [46]-[50].

areas of focus as part of their application to the Charter School Authorisation Board, or in contract negotiation processes with the Charter School Agency.

33.2 Of the seven approved and contracted charter schools, two have a Māori focus:

33.2.1 **Tipene (St Stephen's)** is an active collaboration between the St Stephen's Old Boys Association and the St Stephens Queen Victoria's Trust. It is a full-time boarding school for Māori and Pacific boys in years 9-13 located in South Auckland. Tipene will use well-established cultural frames and pedagogies, which promote success, and are specifically designed to inspire Māori boys. One aspect of this will be the school's focus on creating a home away from home, a positive kaingarua, because students will board on the premises. The school intends to focus on high student engagement in education and vocational pathways by emphasising individual learning plans and a 'boy centric' approach. Learning programmes will be tailored for diverse learners and to recognise connections between tauira, kaiako and whānau.

33.2.2 **Te Rito, Te Kura Taiao** will provide Kaitaia families with an option for educational immersion in reo Māori for mokopuna at primary school level. Their innovation is their unique landscape and the intentional move to work together on the whenua. The 22-hectare Taumarumaru reserve neighbouring their school will serve as the school's science classroom for exploration, species identification, kaitiakitanga and research. The land also encompasses three historical pā, connecting mokopuna to the land and its legacy.

34. In terms of priority, counsel submits:

- 34.1 Charter schools under subpart 6A are clearly new.
- 34.2 Two of the seven approved charter schools have a particular Māori focus, despite the lack of specific provisions in subpart 6A that require that focus.
- 34.3 Claimants have not pointed to concerns with any of the particular charter schools to be established or any issues that would require an urgent or immediate State intervention following a Tribunal recommendation.
- 34.4 As with Māori boardings schools, it may be that claims relating to charter schools should be addressed after inquiry into the overall education system.

Recruitment of Kaiako Māori

35. The Kereopa whānau and members of Ihingārangi seek priority for issues relating to the recruitment of kaiako Māori.⁴³ The claimants say the Crown has failed to recruit, train and employ a sufficient number of suitably qualified kaiako Māori.⁴⁴
36. The Ministry of Education instructs us that:
- 36.1 The Ministry of Education has a range of initiatives in place to support the growth of kaiako in Kaupapa Māori and Māori Medium education settings, as well as te reo Maori subject kaiako in secondary schools. The initiatives contribute to all the Ka Hikitia – Ka Hāpaitia | The Māori Education Strategy outcome domains but are most closely aligned to Te Kanorautanga:⁴⁵

Māori are diverse and need to be understood in the context of their diverse aspirations and lived experiences.

Our education workforce will have the right skills and capacity to support all Māori learners ..., to achieve excellent outcomes.

⁴³ Tamaki Legal “Memorandum of Counsel to Prioritise a Kaiako Māori Recruitment Inquiry”, dated 20 December 2024 at [7].

⁴⁴ Tamaki Legal “Memorandum of Counsel to Prioritise a Kaiako Māori Recruitment Inquiry”, dated 20 December 2024 at [10].

⁴⁵ [Ka Hikitia – Ka Hāpaitia | The Māori Education Strategy](#)

36.2 Current initiatives available to support the growth and retention of kaiako with te reo Māori in the education workforce are:

36.2.1 **Teach NZ Scholarships** (Te Tipu Whakarito and Te Waka Whakarei career changer) encourage and support prospective kaiako into and/or through Kaupapa Māori and Māori Medium Initial Teacher Education training.

Scholarship Type	Awards Available	Awards Allocated 2023	Awards Allocated 2024
Te Waka Whakarei Career Changer	90	70	68
Te Tipu Whakarito	130	12	24

36.2.2 The **Iwi/Māori Workforce Supply Package** provides scholarships and financial support packages designed by ten iwi or Māori organisations to assist prospective kaiako into and/or through an Initial Teacher Education programme.

36.2.3 The amount of funding allocated to all scholarships, including: Te Tipu Whakarito, Te Waka Whakarei, and the Iwi Māori Support Package, is being considered as part of a wider piece of work on the role and scale of all scholarships which may include advice on reprioritisation.

36.2.4 Three **Kaupapa Māori and Māori Medium Employment Based Initial Teacher Education (EBITE)** Programmes aimed at addressing the undersupply and retention of kaiako in wharekura have been piloted. The pilots have concluded and have resulted in 31 graduates. From 2025, the Kaupapa Māori | Māori EBITE programme

funding award is expected to support up to 65 people every two years to participate in these programmes.

36.2.5 **The Ako Mātātupu Teach First NZ Programme** delivers ITE training in schools serving low-income communities. The programme is a pathway into teaching that allows trainees to teach under a Limited Authority to Teach while they complete their teacher education. Whilst participants complete an English medium Postgraduate Diploma in Secondary Teaching, Ako Mātātupu also accepts participants from Māori medium kura where candidates already have the necessary reo Māori language skills and where the kura is comfortable partnering with Ako Mātātupu. Te reo Māori kaiako are also one of the priority subject areas for eligibility for this programme.

36.2.6 The **School Onsite Training Programme** provides funding for places in school-based Initial Teacher Education (ITE) programmes where kaiako trainees are hosted in schools 3 to 4 days a week while studying remotely towards their teaching qualification. Places are available to students teaching in all schools and kura. Kaupapa Māori and Māori Medium settings are included.

36.3 Additionally, there are initiatives to retain and upskill te reo kaiako in Kaupapa Māori and Māori Medium education settings, as well as te reo Māori subject kaiako in secondary schools. These include:

36.3.1 The **Māori Medium Beginning Teacher Retention Programme** which provides tikanga-based mentoring and professional development to support new kaiako in Kaupapa Māori and Māori Medium schools to stay in the profession. The programme is delivered by two

providers: Kia Ata Mai Educational Trust and Te Rūnanga Nui o Ngā Kura Kaupapa Māori.

36.3.2 **Study Awards:** Kaupapa Māori and Māori Medium Education Study Awards and Teachers' Bilingual Study Awards provide an opportunity for kaiako and tumuaki to improve their capability in te reo Māori and develop their skills as a bilingual or immersion kaiako.

36.3.3 The **Māori Immersion Teaching Allowance (MITA)** is a salary allowance (equivalent to one salary unit per annum) for kaiako or tumuaki who use te reo Māori as the language of communication and instruction at immersion levels 1, 2 or 3. The allowance honours, recognises and affirms the expertise of registered kaiako in the teaching profession with pre-existing knowledge of te reo Māori.

36.4 The Ministry does not hold data on the number of te reo Māori kaiako over the past 10 years. Tracking the number of kaiako receiving MITA (level 1-3) provides an estimate of the numbers of kaiako⁴⁶ in Kaupapa Māori and Māori Medium settings. Below is the data from the past five years.

Year	2019	2020	2021	2022	2023
Number of kaiako receiving MITA (proxy measure for kaiako count)	2260	2416	2469	2650	2784

36.5 The Ministry of Education Teacher Demand and Supply Planning projection – December 2023 states that there are teacher supply

⁴⁶ This data may include Limited Authority to Teach staff and excludes teachers who did not claim MITA. This is proxy data in the absence of accurate Te Reo Māori teacher numbers.

challenges at all levels in Kaupapa Māori and Māori medium settings.

36.6 The disproportionate number of employed staff with a Limited Authority to Teach (LAT) is a key indicator that kaiako shortages have resulted in alternative solutions being utilised.⁴⁷ 24.7% of LATs are employed across Kaupapa Māori and Māori medium settings, including those in English medium schools, servicing 12.4% of the student population.⁴⁸ An LAT enables people without teaching qualifications to teach in positions where there is a need for specialist skills or skills in short supply.

36.7 Roll growth shows increasing enrolments in Kaupapa Māori and Māori medium immersion education. While there has been growth in the number of qualified kaiako, it is acknowledged this has been insufficient to meet the demand for kaiako with the required language skills that enable them to teach in these settings.

Increase in Kaupapa Māori and Māori Medium enrolments since 2014⁴⁹

Kaupapa Māori Māori Medium Type	Te Rūnanga Nui	Ngā Kura ā Iwi o Aotearoa	Kura Motuhake	Rumaki Reo Rua L1\L2	Rumaki Reo Rua L3
% change since 2014	45.7	103.9	4.9	54.5	60.9

37. In terms of urgency and/or priority, counsel note that:

37.1 He taonga te reo Māori mā ngā iwi me ngāi Māori,⁵⁰ he reo whai mana ā-ture hoki nō Niu Tirenī.⁵¹ He ū tā te Karauna kia mahi tahi me ngā iwi me ngāi Māori ki te āta whai tonu kia tiakina, kia tokona ake hoki tēnei taonga mō ngā whakatipuranga e haere ake

⁴⁷ July 2023 Payroll data – Retrieved by Te Pae Aronui Workforce and Strategic Analysis Team

⁴⁸ July 2023 Payroll data – Retrieved by Te Pae Aronui Workforce and Strategic Analysis Team – 75.3% of LATs are employed in English medium settings servicing 87.6% of the population.

⁴⁹ Māori Language in Schooling | Education Counts | July 2024.

⁵⁰ Te Ture mō te Reo Māori 2016, ww 3(2)(a)(ii) me 4(1).

⁵¹ Te Ture mō te Reo Māori 2016, ww 3(2)(a)(iv) me 5.

nei.⁵² Te reo Māori is a taonga of iwi and Māori⁵³ and an official language of New Zealand.⁵⁴ The Crown has a commitment to work in partnership with iwi and Māori to continue actively to protect and promote this taonga for future generations.⁵⁵

37.2 As above, the Ministry of Education has a range of initiatives in place to support the growth of kaiako in Kaupapa Māori, and Māori Medium education settings, as well as te reo Māori subject kaiako in secondary schools. These initiatives continue to be developed and updated over time in consultation with the sector and Kaupapa Māori peak bodies to better support uptake and completion of teacher training qualifications.

37.3 The available data does suggest a steady increase in the numbers of a kaiako in Kaupapa Māori and Māori Medium settings. It is, however, acknowledged that there are kaiako supply challenges at all levels in Kaupapa Māori and Māori Medium settings as well as across the education workforce more broadly.

37.4 The issue of kaiako recruitment might be best heard alongside other claims relating to te reo Māori in education.

Kaapoo Maaori issues (Maaori blind, vision impaired and deaf blind persons)

38. The Wai 2109 claimants (Kahurangi Fergusson-Tibble and Maaka Tauranga Tibble on behalf of themselves and all kaapoo Maaori and kaapoo Maaori Aotearoa) have requested priority for their claim.⁵⁶ The claimants says a core aspect of their claim is that kaapoo Maaori and their whaanau have been made invisible to the Crown.⁵⁷ The claimants have requested the commissioning of urgent and targeted research regarding access to

⁵² Te Ture mō te Reo Māori 2016, w 6(2).

⁵³ The Māori Language Act 2016, ss 3(2)(a)(ii) and 4(1).

⁵⁴ The Māori Language Act 2016, ss 3(2)(a)(iv) and 5.

⁵⁵ The Māori Language Act 2016, s 6(2).

⁵⁶ Wai 2109 “Memorandum of Counsel Filing Submissions Regarding Prioritisation”, dated 20 December 2024 at [1].

⁵⁷ Wai 2109 “Memorandum of Counsel Filing Submissions Regarding Prioritisation”, dated 20 December 2024 at [4].

education of tangata whaikaha Maaori (including kaapoo Maaori and their whaanau).⁵⁸

39. The Ministry of Education, in consultation with Whaikaha | the Ministry of Disabled People, instruct us that:

39.1 The Ministry of Education provides the following education supports for Kaapoo Maaori:

39.1.1 The Ministry funds the employment of specialist teachers (Resource Teachers: Vision) through the Blind and Low Vision Education Network NZ (BLENNZ).

39.1.2 Resource Teachers: Vision work with teachers, whānau, and families to set achievement goals and create learning plans for children and students who are blind or have low vision. They provide key services including:

- (a) functional vision assessments for students;
- (b) early involvement services, including centre-based programmes to help young children acquire essential skills in relation to their blindness or low vision, and to support families/whaanau;
- (c) specialist services, consistent with the MoE Specialist Services Standards such as early learning services, and Orientation and Mobility specialist services;
- (d) facilitation and consultation in schools;
- (e) professional development for teachers and support staff;
- (f) support for families/whaanau/caregivers;
- (g) the provision of assistive technology; and
- (h) production and provision of resources including accessible format materials for general teacher purposes.

⁵⁸ Wai 2109 “Memorandum of Counsel Filing Submissions Regarding Prioritisation”, dated 20 December 2024 at [9].

- 39.1.3 BLENNZ (a school made up of a national network of educational and residential services for students who are blind, deafblind, or have low vision) is resourced to provide support to students with vision needs, and their whānau.
 - 39.1.4 The Ministry funds specialist assistive technology tools to reduce barriers to student learning.
 - 39.1.5 Students may be eligible for Ongoing Resourcing Scheme (ORS) support.
 - 39.1.6 The Ministry funds the Youth Library Service located at Homai Campus in Manurewa.
 - 39.1.7 The Ministry Early Intervention Service provides support to blind or low vision students through Early Intervention Teachers, Psychologists and Speech Language Therapists.
- 39.2 The key strategy and planning documents underpinning the disability system are the New Zealand Disability Strategy 2016-2019 (NZDS), the New Zealand Disability Action Plan 2019-2023 (NZDAP) and Whaaia te Ao Maarama: The Maaori Disability Action Plan 2018-2022.
- 39.3 The NZDS is a cross-government strategy to guide how the Crown will take steps towards meeting New Zealand's commitment to the United Nations Convention on the Rights of People with Disabilities and addressing important disability issues. It was developed with the Disabled People's Coalition, including Kaapoo Maaori Aotearoa.
- 39.4 The NZDAP is the government's vehicle for implementing the NZDS.
- 39.5 Whaaia Te Ao Maarama: the Maaori Disability Action Plan is a culturally anchored approach to supporting taangata whaikaha Maaori and their whaanau through disability support services.

- 39.6 Whaikaha is currently refreshing the New Zealand Disability Strategy, which will focus on five key outcome areas: education, employment, health, housing and justice. Cross-cutting themes will include data, accessibility and equity.
- 39.7 In developing an engagement approach for the review of the NZDS, Whaikaha is also working with taangata whaikaha Maaori, Turi Maaori and their whaanau-led roopuu.
- 39.8 The strategy refresh will establish priority actions and set the context for the outcomes reporting framework. The refresh of both the NZDAP and Whaia Te Ao Maarama will need to be considered in the context of the refresh of the NZDS.
40. On urgency and/or priority, counsel submits:
- 40.1 The broad issue raised by the Wai 2109 claimants is clearly an important one.
- 40.2 Currently there are changes underway: Whaikaha are in the process of refreshing the New Zealand Disability Strategy during 2025. One of the focus areas of that strategy is education. Whaikaha say they are working with taangata whaikaha Maaori, Turi Maaori and their whaanau-led roopuu to develop the engagement approach for the NZDS review.
- 40.3 The claimants have asked that research be prepared. It is unclear when that research, if it is commissioned by the Tribunal, would be ready.
41. On a separate note, the Crown supports the development and use of accessibility protocols for this inquiry. Counsel for the Crown have been liaising with claimant counsel on this issue.

Proposed changes to s 127 of the Education and Training Act 2020

42. The New Zealand Educational Institute seeks priority for a claim regarding proposed amendments to s 127 of the Education and Training Act 2020.⁵⁹ The institute says the changes will “downgrade” the standing of Te Tiriti in the Act making educational achievement the sole primary objective for school boards.⁶⁰

43. Section 127 sets out the primary objectives for all boards in governing a school. There are currently four objectives, the fourth being that every board must ensure:

127 Objectives of boards in governing schools

(1) A board’s primary objectives in governing a school are to ensure that—

[...]

(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.

44. The Ministry of Education instructs us that:

44.1 Following public consultation in 2024, in December 2024 Cabinet decided to amend s 127. The two key changes are:

44.1.1 to amend s 127 to make educational achievement the primary objective for school boards, with the achievement of the other objectives necessary to meet the primary objective; and

44.1.2 to amend s 127(1)(d) by moving the requirement that schools achieve equitable outcomes for Māori students to the substantive part of the clause.

⁵⁹ Te Whenua Law “Memorandum of Counsel Filing Statement of Claim and Making Submissions on Priority Issues for Inquiry”, dated 20 December 2024 at [43].

⁶⁰ Te Whenua Law “Memorandum of Counsel Filing Statement of Claim and Making Submissions on Priority Issues for Inquiry”, dated 20 December 2024 at [43].

- 44.2 The first change is intended to give effect to the to the National Party and Act Party Coalition Agreement commitment to “enshrine educational attainment as the paramount objective for state schools”.
- 44.3 The second change is intended to increase the visibility of the existing requirement that schools achieve equitable outcomes for Māori students and to strengthen the focus of schools on Māori students’ achievement.
- 44.4 The Ministry has issued drafting instructions to Parliamentary Counsel. It is anticipated Cabinet will make final decisions at Cabinet Legislation Committee in March 2025 so that a Bill can be introduced in March or April in 2025.
45. On urgency and/or priority, counsel submits:
- 45.1 The proposal is not to remove a school board’s objective to give effect to Te Tiriti. That objective will remain.
- 45.2 The proposal is to keep the current objectives in s 127, but to express those objectives as necessary to meet the primary objective of educational achievement.
- 45.3 It is not accepted that this would amount to a “downgrade” of any of a school board’s objectives.
- 45.4 The Tribunal will lose jurisdiction to consider this claim and issue relating to s 127 once the Bill to effect the changes is introduced to Parliament in March or April 2025.
- 45.5 The Crown will update the Tribunal once any legislation is introduced to Parliament.

Changes to the Ka Ora, Ka Ako school lunch programme

46. The New Zealand Educational Institute seeks priority for changes to the Ka Ora, Ka Ako | Healthy School Lunches programme.⁶¹ The institute says

⁶¹ Te Whenua Law “Memorandum of Counsel Filing Statement of Claim and Making Submissions on Priority Issues for Inquiry”, dated 20 December 2024 at [51].

changes to the programme 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 the Ka Ora, Ka Ako | Healthy School Lunches programme. The institute relies on a government press release for that statement.⁶²

47. The Ministry of Education instruct us that:

47.1 In May 2024 the government announced that Ministry would redesign the Ka Ora, Ka Ako programme to improve cost effectiveness.

47.2 The details of the new programme were announced on 22 October 2024. The redesigned programme, would start from Term 1 2025 and continue to serve all participating schools and kura. In 2025, all schools except Contributing Primary Schools, Specialist Schools and Teen Parent Units, will receive lunches through one of three methods:

47.3 **Internal model:** Schools currently preparing their own lunches may continue to do so if they wish. Schools will be funded \$4 per lunch, per child. Schools can choose to access ingredients and supplies at wholesale rates through negotiated agreements with the preferred supplier (Gilmours) and have been provided with recipes that can be made at around \$2 per meal.

47.3.1 **Iwi and hapū partner model:** Schools currently receiving lunches from a hapū or iwi partner may continue to do so if the partner chooses to continue. Partners will be funded \$4 per lunch, per child. Partners can choose to access ingredients and supplies at wholesale rates through negotiated agreements with our preferred supplier (Gilmours) and have been provided with recipes that can be made at around \$2 per meal.

⁶² <https://www.beehive.govt.nz/release/smarter-healthy-school-lunches-programme-serves-130m-savings>

- 47.3.2 **School lunch collective:** Schools currently receiving lunches from an external supplier will receive lunches from the School Lunch Collective.
- 47.4 In 2025 there will be no changes to lunch provision for Contributing Primary Schools. They will move to the new model described above in 2026.
- 47.5 Specialist Schools and Teen Parent Units have specific health and dietary requirements. There are no changes to provision of lunches for these schools. This includes those schools/units that currently receive lunches from an iwi or hapū partner.
- 47.6 The institute’s statement that schools with Year 7+ learners are effectively prohibited from using the iwi and hapū social procurement and partnership model is incorrect. All schools currently using the iwi and hapū partnership model can continue to do so if the iwi or hapū partner chooses to continue participating in the programme. In addition, approximately 918 students from 11 schools on the East Coast Gisborne region will move to the iwi and hapū partner model in 2025.

Changes to Marsden Fund

48. The New Zealand Educational Institute seek priority for claims concerning the Marsden Fund.⁶³ The institute considers that changes to the fund requiring 50% of funding to go towards proposals with economic benefits and the disbanding of the humanities and social sciences panels will reverse progress made for Māori research.⁶⁴
49. The Ministry of Education, in consultation with the Ministry of Business, Innovation and Employment, instructs us that:

⁶³ Te Whenua Law “Memorandum of Counsel Filing Statement of Claim and Making Submissions on Priority Issues for Inquiry”, dated 20 December 2024 at [72].

⁶⁴ Te Whenua Law “Memorandum of Counsel Filing Statement of Claim and Making Submissions on Priority Issues for Inquiry”, dated 20 December 2024 at [69]-[70].

- 49.1 The Marsden Fund was established by the government in 1994 to fund excellent fundamental research. It is a contestable fund for research administered by the Royal Society of New Zealand on behalf of the Marsden Fund Council.
- 49.2 The Marsden Fund Council, appointed by the Minister of Research, Science and Innovation (the Minister), is responsible for recommending which proposals are to be funded. It operates under the Terms of Reference issued by the Minister.
- 49.3 In December 2024, the Minister announced the Government had updated the Fund to focus on core scientific research that helps lift our economic growth and contributes to science with a purpose. The new investment plan (developed by the Council and agreed by the Minister) focuses on supporting research that can be of economic, environmental or health benefit to New Zealand.
- 49.4 The new terms of reference outline that approximately 50 per cent of funds will go towards supporting proposals with economic benefits to New Zealand. The focus of the Fund will also shift to core sciences, with the humanities and social sciences panels disbanded and no longer supported by the Fund.
- 49.5 There is no reason in principle why proposals for research focusing on economic benefits to Māori will not be considered or granted.

3 Huitangaru 2025



A K Irwin / S K Barr / U D Herath
Counsel for the Crown

TO: The Registrar, Waitangi Tribunal
AND TO: Claimant Counsel