OFFICIAL

Wai 49, #2.25
Wai 682, #2.101
Wai 1464, #3.1.30
Wai 1546, #3.1.29
Wai 3503, #3.1.9

**BEFORE THE WAITANGI TRIBUNAL** **WAI 3502**

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|---|---|
| **IN THE MATTER OF** | the Treaty of Waitangi Act 1975 |
| **AND** | |
| **IN THE MATTER OF** | a claim by **Te Riwhi Whao Reti, Hau Hereora, Romana Tarau, Karen Herbert, Edward Cook, Pearl Reti** for and on behalf of **Te Kapotai (Wai 1464/1546)** in relation to the amendments to the Education and Training Act 2020 and the proposed Curriculum reset |
| **AND** | |
| **IN THE MATTER OF** | he kerēme **nā Watson Ohia, Heywood Kuka** me **Sophie Tukukino** mā/mō **Ngā Kura ā Iwi o Aotearoa (WAI 3502)** |

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**SUBMISSIONS IN REPLY TO CROWN RESPONSE DATED 3RD DECEMBER 2025**

I tēnei rā, te 17 o Tīhema 2025

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Waitangi Tribunal
*18 Dec 2025*
Ministry of Justice
WELLINGTON

**TĒNĀ E TE TARAIPIUNARA:**

## *Introduction*

1. This reply submission is filed for and on behalf of

   **1.1** **Wai 3502** – he kerēme nā Watson Ohia, Heywood Kuka me Sophie Tukukino mā/mō Ngā Kura ā Iwi o Aotearoa (WAI 3502) **("the Interested Parties")**

2. This reply submission is filed to support the applications made by Ngāti Hine (Wai 682) and Te Kapotai (Wai 1464/1546) and New Zealand Education Institute (NZEI) and NZEI Te Riu Roa (Wai 3503) in relation to the recent amendments to the Education and Training Act 2020 and the New Zealand Curriculum – Te Mātaiaho, which remove, weaken and deprioritise Te Tiriti o Waitangi ("Te Tiriti").[1]

3. This submission replies to the Crown's submissions dated 3 December 2025 in response to an application for an urgent inquiry into amendments to the Education and Training Act 2020, and the reset of the New Zealand Curriculum - Te Mātaiaho.

4. The Interested Parties submit that urgency is required because the amendments engage matters of constitutional significance. They diminish the practical and legal effect of Te Tiriti within the education system. They cause immediate and compounding prejudice to Ngā Kura ā Iwi o Aotearoa (NKAI) and the Māori-designated character schools it houses. The contextual circumstances that justified urgency in the Ngā Matāpono Inquiry are materially analogous to those present in this case, notwithstanding the different subject matter, and are better dealt with in an urgency inquiry than the substantial inquiry as the Crown submits at para [3.3] of their reply submission dated 3 December 2025.[2]

## Unusual Features of the Crown's Response

5. At para [3.3] of the Crown's response, the Crown submits that: [3]

   > "the Tribunal ought not direct an urgent hearing but may wish to wait and deal with this issue in the context of the Education Services and Outcomes Inquiry, Wai 3310."

6. The most appropriate substantial inquiry is the Wai 3310 Education Services and

[1] Application for urgency, 18 November 2025 (Wai 1464/1546, #3.1.16).
[2] Crown submissions in response to applications for urgency, 3 December 2025 (Wai 1464, #3.1.20), at 3.3.
[3] At 3.3.

Outcomes Kaupapa Inquiry. The Tribunal has outlined in its Strategic Direction for 2025-2035 that this inquiry is in its planning stage and is expected to be completed by 2035.[4] This means that if the issues are left to be dealt with in that substantive inquiry, the earliest opportunity for the Crown to take on the Tribunal's findings and recommendations is around 9 years away.

7. At paras [7]-[12] of the Crown's submissions, it canvasses the policy and legislative context leading to the amendment of s 127. The Crown outlines the Government's broader education reform agenda, the passage of the 2025 Amendment Act, the removal of the requirement that school boards "give effect to Te Tiriti o Waitangi," and the sequence of internal policy processes, including the Treaty References Review and subsequent Cabinet decisions that culminated in this change.

8. While the Crown describes this procedural pathway, it does not meaningfully engage with the substance of the Interested Parties concerns. The Interested Parties' application raises issues of constitutional significance, including the withdrawal of Treaty protections, the erosion of Māori educational rights, and the immediate and ongoing prejudice suffered by NKAI and Māori learners nationwide.

9. At para [9], the Crown suggests that the main focus of the urgency inquiry is to do with the removal of the requirement that boards "give effect to Te Tiriti o Waitangi." This framing mischaracterises the claim and is an impermissible attempt to narrow the scope of the allegations of Te Tiriti breach.

**Ngā Mātāpono – The Principles: The Interim Report ("Ngā Mātāpono")**

10. The Tribunal's assessment should be informed by the principles articulated in Ngā Mātāpono – The Principles: The Interim Report ("Ngā Mātāpono").[5] Unilateral Crown action that weakens Treaty protections raises acute constitutional concern, where it proceeds without Māori consent and causes foreseeable prejudice. In particular, the amendments:

    10.1 reflect a settled Crown policy advanced unilaterally and in opposition to Māori;

    10.2 are unfair, discriminatory, and inconsistent with Te Tiriti and its

[4] See 'Current Status and Completion Targets Strategic Direction at p 22. https://waitangitribunal.govt.nz/assets/Strategic-Direction/Waitangi-Tribunal-Strategic-Direction-2025-2035.pdf

[5] Waitangi Tribunal, Ngā Mātāpono - The Principles: The Interim Report of the Tomokia Ngā Tatau o Matangireia – The Constitutional Kaupapa Inquiry Panel on the Crown's Treaty Principles Bill and Treaty Clause Review Policies (Wai 3300, August 2024) at 134-139.

principles;

10.3 constitute, at their core, an unbridled exercise of kāwanatanga power;

10.4 were developed without consultation with Māori or the obtaining of free, prior, and informed consent, despite their constitutional significance;

10.5 are not supported by any demonstrated policy problem or evidential foundation;

10.6 reduce the constitutional status of Te Tiriti, weaken its recognised legal effect, limit Māori rights and corresponding Crown obligations,

10.7 will cause significant and compounding prejudice to Māori, including the erosion of trust in the Crown, diminished partnership, and the undermining of Māori educational pathways.

## Impact on Kura-ā-Iwi and Designated Character Protections

11. The Interested Parties remind the Tribunal that the consequences of the removal of Treaty obligation and responsibility of the Boards of Trustees (BOT's) will have impacts well beyond what the Crown suggests.

12. The issue is not merely the fact of the removal of a clause. In doing so, the Crown's actions have profound impacts with respect to the broader obligations to actively protect the Māori right to exercise tino rangatiratanga through the embedding of mātauranga Māori and tikanga in teaching praxis of Kura-ā-Iwi character designated schools.

13. The relevant statutory provisions are as follows, s 204 of the Education and Training Act 2020 (the Act);[6]

13.1 At s 204(3)(a) of the Act the school is to have a character that is in some specific way or ways different from the character of ordinary State schools (its "different character" ):[7]

13.2 At s 204(4) of the Act, the board of a designated character school must ensure that the aims, purposes, and objectives of the school's different character are set out in the school's strategic plan; and the school operates consistently with its different character.[8]

[6] Education and Training Act 2020, at S204
[7] At S204 ss [3][a].
[8] At S204 ss [4][a-b].

14. These provisions make clear that the statutory recognition of a school's "different character" is not symbolic but binding. For Kura-ā-Iwi, that character is defined by tino rangatiratanga, tikanga, and mātauranga Māori that is recognised as a taonga to be protected per Article 2 of Te Tiriti. The requirement that boards must both articulate this kaupapa in their strategic plans and operate consistently with it ensures that tino rangatiratanga and the protection of taonga Māori is embedded in the daily functioning of the school.

15. The removal of Treaty obligations therefore strikes at the heart of these protections. Without the Treaty clause, the Crown treats the statutory "different character" as a matter of administrative discretion rather than a constitutional guarantee. These risks undermine iwi tino rangatiratanga in education and expose Kura-ā-Iwi to assimilation pressures within mainstream curriculum reform.

16. The removal of Treaty obligations also shapes Māori attitudes toward education and influences how Māori perceive the education system.[9] Historically, even minor legislative changes have had significant impacts on Māori perceptions of their place within education. These shifts often reinforced feelings of marginalisation and mistrust, given the long history of policies that undermined Māori language, culture, and authority in schooling.

**Crown's Concession**

17. At para [10] of the Crown's response, the Crown concedes that at no stage were Māori provided with an opportunity to engage on the policy rationale for, or the drafting of, the Amendment Paper that removed this Tiriti obligation.[10] This concession reflects a position that the Crown considers it acceptable to depart from Te Tiriti o Waitangi without meaningful engagement or consequence. Such a stance is fundamentally inconsistent with the constitutional status of Te Tiriti and its guarantees of partnership, protection, and participation. That position cannot be sustained.

18. Concerningly, the concession is based on an expectation that because the Crown accepts the breach, no further accountability or remedial action is required. The conduct is unilateral and in breach of the 2019 Cabinet Office Circular, which expressly requires agencies to engage with Māori on proposals that affect Treaty obligations.[11] By failing to comply with these standards, the Crown undermines

[9] Interested party request, filed by Annette Sykes & Co., on behalf of Ngā Kura ā Iwi o Aotearoa (Wai 3502), at 11.15.
[10] Crown submissions in response to applications for urgency, 3 December 2025 (Wai 1464, #3.1.20), at 10.
[11] CO (19) 5: Te Tiriti o Waitangi / Treaty of Waitangi Guidance (Cabinet Office circular, 22 October 2019), at 47-54, found here: https://www.dpmc.govt.nz/sites/default/files/2019-

its own policy framework and erodes trust in the Tiriti partnership.

**Crown in Breach of its own regulatory standards**

19. The Cabinet Manual imposes a mandatory obligation on Ministers to identify and address, at the earliest stages of legislative development, any implications a bill has for the principles of Te Tiriti o Waitangi, and to expressly confirm compliance when seeking approval for introduction or otherwise to identify and justify any inconsistency. The Crown's acceptance that the amendments engage Te Tiriti interests therefore indicates a failure to properly identify, disclose, or justify those implications at the Cabinet stage, contrary to the Cabinet Manual and minimum standards of good government. Proceeding in the absence of meaningful engagement with NKAI undermines the constitutional safeguards intended to ensure Treaty issues are addressed transparently and accountably, rather than retrospectively.[12]

## Regulatory Impact Statement (RIS)

20. Contrary to our earlier understanding, a Regulatory Impact Statement (RIS) was prepared in relation to the Education and Training Amendment Bill (No 2). The RIS is dated 25 November 2024 and was publicly released in April 2025 alongside the introduction of the Bill. Parallel to this, a cabinet paper which has been proactively released made comments at page 2 para [5] and page 11 para [1] of that the Minister was conscious of the need to give effect to Te Tiriti o Waitangi in the way these proposals would be embedded in legislation.[13]

21. The RIS prepared in 2024 makes no reference to the subsequent removal of the requirement for school boards to "give effect to Te Tiriti o Waitangi," which was introduced by the Amendment Paper on 3 November 2025.

22. One of the key issues of concern is that the proposal to remove te Tiriti reference from s 127 of the Education and Training Act crystallised on the 3rd of November 2025, when the Hon Minister made updates to the Act to make several changes was not the subject of analysis. One of the key changes was the removal of an explicit obligation on school boards to give effect to Te Tiriti o Waitangi.

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10/CO%2019%20%285%29%20Treaty%20of%20Waitangi%20Guidance%20for%20Agencies.pdf

[12] Cabinet Manual 2023, at 7.68-7.70. found here: https://www.dpmc.govt.nz/sites/default/files/2023-06/cabinet-manual-2023-v2.pdf

[13] Cabinet Paper, *Approval to Introduce the Education and Training Amendment Bill (No 2)*, Hon Erica Stanford (Minister of Education), considered 7 April 2025, proactively released 3 July 2025, found here: Cabinet Pper, approval to Introduce the Education and Training Amendment Bill (No2)

23. In the intervening period between April 2025 and the filing of the application for urgency by Ngāti Hine and Te Kapotai, to the best of our knowledge and belief, there was no updating of the RIS with respect to these new additions.

24. The Crown proceeded with the proposed amendments to the Bill during November, and the Bill passed into Law at that time. The Interested Parties maintain this significant change occurred without having undertaken meaningful consultation or analysis of impacts on Māori educational pathways and curriculum reform for Kura ā Iwi at the time key decisions were made.

**Breach of Good Government and Tiriti Principles**

25. This is not just a failure to consult; it is a breach of good government. Principles of good governance require transparency, accountability, and adherence to constitutional norms. When the Crown acts unilaterally and assumes that acknowledging a breach absolves responsibility, it undermines these principles and the integrity of public administration.

    25.1 In Stage 2 of the Te Paparahi o Te Raki Inquiry, The Tribunal affirmed that the Crown's duty is to foster tino rangatiratanga, not undermine it, and to ensure its laws and policies are just, fair, and equitable.[14]

26. Such unilateralism reflects an expectation that concessions carry no consequence. This breaches partnership and reciprocity, reducing Te Tiriti obligations to a discretionary courtesy rather than a binding constitutional commitment. Left unchecked, this approach risks normalising breaches and eroding the Tiriti relationship.

    26.1 In Stage 2 of the Te Paparahi o Te Raki Inquiry, The Tribunal stated that partnership requires cooperation, good faith, and equal authority, whereby Crown cannot unilaterally define Māori interests or the scope of tino rangatiratanga.[15]

27. The Crown's concession misapplies civil government. Instead of maintaining the balance between kāwanatanga and tino rangatiratanga envisaged by Te Tiriti, it reinforces a hierarchy that subordinates Māori rights. This is inconsistent with Te Tiriti, which requires partnership and co-decision-making, not unilateral action.

    27.1 In Stage 2 of the Te Paparahi o Te Raki Inquiry, The Tribunal

[14] Waitangi Tribunal, Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry, Part I (Wai 1040, 2022) at 69 (Paparahi Stage 2 Report), Documents CJ2, CJ2(a) and CJ(b).
[15] At 61.

emphasised that kāwanatanga does not permit abrogation of Treaty duties and that mutual recognition and respect for mana, tikanga, and Māori systems of law are vital.[16]

**Reverting to previous legislative history**

28. At para [11.2], the Crown treats Te Tiriti obligations as an instrument to help achieve the objective of "ensuring that every student at the school is able to attain their highest possible standard in educational achievement."[17] This recasting treats Te Tiriti as a subsidiary policy mechanism rather than an independent constitutional obligation.

29. The Crown's position disregards Aotearoa's well-documented educational history, in which the suppression of te reo Māori, tikanga, and mātauranga Māori was a deliberate feature of state schooling. It was precisely because of this history of state-sanctioned assimilation, and its intergenerational impacts, that Parliament embedded explicit Te Tiriti obligations into the Education and Training Act 2020.[18] Removing those statutory protections while simultaneously advancing significant curricular reform risks re-imposing the same harms previously experienced by whānau, hapū, iwi, and kura, by reinstating an education framework that renders Māori language and knowledge contingent or expendable.

30. The Crown's submissions fail to engage with foundational evidence such as the Hunn Report (1961), which identified the system as structurally assimilationist and confirmed that state policy actively suppressed Māori language and culture, producing severe social and educational disparities that persist today.[19] For more than a century after the signing of Te Tiriti, there were no statutory mechanisms to uphold Tiriti guarantees in education, and the absence of legal protections directly enabled the decline of Māori language, cultural transmission, and achievement. The Crown's attempt to frame the removal of statutory Treaty references as benign or administrative is inconsistent with this historical record.

31. Parliament's decision in 2020 to embed Te Tiriti obligations, support Māori-medium pathways, and centre mātauranga Māori within the national curriculum was a direct response to this history and a safeguard against its

[16] At 60-64.
[17] At 11.2.
[18] Crown submissions in response to applications for urgency, 3 December 2025 (Wai 1464, #3.1.20), at 11.2.
[19] Hunn, J. K. (1961). Report on Department of Maori Affairs: with statistical supplement, 24 August 1960. Government Print.

repetition.[20] By dismantling those protections before curriculum reform has concluded, the Crown invites a return to the assimilationist conditions identified in the Hunn Report and elsewhere. The Interested Parties submit that the amendments in both law and curriculum dismantle the structural safeguards specifically designed to ensure that such breaches do not recur.

**Current context of legislative trend**

32. The Interested Parties also say that the urgency arises within a broader legislative and policy trend that threatens Te Tiriti o Waitangi. This trend is exemplified by the Coalition Agreement between the National and New Zealand First parties, which commits to reviewing all legislation containing references to "the principles of the Treaty of Waitangi" with the stated intention either to "either replace the reference with specific wording that explains the relevance and application of the Treaty principles or to remove them" altogether.[21]

**Grounds for Urgency**

33. In summary, the urgency is required because the amendments raise issues of acute constitutional significance, reflect unilateral Crown action that diminishes the legal and practical effect of Te Tiriti within the education system, and cause immediate, compounding, and irreversible prejudice to Ngā Kura ā Iwi o Aotearoa and Māori-designated character schools.

34. The Crown's approach is characterised by the absence of consultation, the acknowledged breach of Treaty obligations, the lack of any regulatory impact assessment, and the framing of Te Tiriti as a discretionary policy tool rather than a binding constitutional guarantee mirrors the circumstances in which urgency was granted in the Ngā Matāpono Inquiry.

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[20] In 2020, the Education and Training Act was enacted. According to Hipkins (2019), this Act signalled a shift in direction, aiming to address gaps in previous legislation and better reflect the Crown's education-related obligations under Te Tiriti. The Act introduced a shift in board governance responsibilities: boards are required to give effect to Te Tiriti by integrating Māori language, culture, knowledge, and customs into their plans, policies, and curriculum, with an emphasis on achieving equitable outcomes for Māori students (Education and Training Act 2020 s 9; s 127 (1) (d) (i–(iii)) as seen in Michelle Marston, *Te Tiriti o Waitangi, School Boards, and Equitable Outcomes: A Bacchian Analysis of Recent Education Policy* (2025) 60 *New Zealand Journal of Educational Studies* 285–301, DOI: 10.1007/s40841-025-00406-1, at p 7.

[21] Ministry of Justice, *Review of legislation including reference to the principles of the Treaty of Waitangi* (Key initiatives, Ministry of Justice, 16 July 2025) <www.justice.govt.nz>.

35. Deferring these matters to a substantive inquiry that may not be heard for many years would deny effective relief, entrench prejudice, and permit the normalisation of Treaty breaches within a broader legislative trend aimed at weakening Treaty protections. In these circumstances, the Interested Parties submit that an urgent hearing must be upheld and not deferred.

**DATED** at Rotorua this 17th day of December 2025

| Annette Sykes | Kalei Delamere-Ririnui | Maia Te Hira | Jack Potaka | Rangipurei Manley |
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**Counsel for the Interested Parties**