OFFICIAL

**Wai 49, #2.23**
**Wai 682, #2.99**
**Wai 1464, #3.1.28**
**Wai 1546, #3.1.27**
**Wai 3503, #3.1.7**

**I TE RŌPU WHAKAMANA**
**I TE TIRITI O WAITANGI**

**WAI 682**
**WAI 1464/1546**

**KEI RARO I TE MANA** o te ture o te Tiriti o Waitangi 1975

**I TE TAKE O** he kēreme nā Te Riwhi Whao Reti rātou ko Hau Hereora, ko Romana Tarau, ko Karen Herbert, ko Edward Cook, ko Pearl Reti hei mangai mō Te Kapotai (Wai 1464/1546)

**Ā**

**I TE TAKE O** he kēreme nā, Rewiti Paraone rātou ko Erima Henare, ko Pita Tipene ko Waihoroi Shortland mō Te Rūnanga o Ngāti Hine hei mangai mō ngā uri o Torongare me Hauhaua (Wai 682)

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**HE MANATU RŌIA**

**I tēnei rā, i te 17 o Hakihea 2025**

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RECEIVED
Waitangi Tribunal
***17 Dec 2025***
Ministry of Justice
WELLINGTON

**TĒNĀ, E TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI:**

## Introduction

1. This memorandum of counsel is filed on behalf of:

    a) Te Rūnanga o Ngāti Hine (Wai 682); and

    b) Te Kapotai (Wai 1464/1546) ("**the claimants**").

2. By way of Memorandum Directions dated 19th November, Her Honour Judge Reeves directed the applicant to respond to submissions of the Crown and interested parties by **17 December 2025**.[1]

3. Accordingly, this memorandum files the claimants' response to the Crown's submissions.

## Response to application for urgency and interested parties

4. Ngāti Hine and Te Kapotai have both filed applications seeking an urgent inquiry into the recent amendments to the Education and Training Act 2020 ("**the Act**") and the reset of the New Zealand Curriculum – Te Mātaiaho ("**NZC**").[2]

5. Counsel support the application filed by Wai 3503 – New Zealand Educational Institute (NZEI) Te Riu Roa,[3] provided that any participation granted does not disturb or delay the urgency timetable set by the Tribunal, should the application be granted. Counsel acknowledge the applicant will make a valuable contribution to an urgent inquiry.

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[1] Wai 49, #2.8, Wai 682, #2.84, Wai 1464, #2.5.1, Wai 1546, #2.5.1, *Memorandum-Directions of The Deputy Chairperson Regarding an Application for an Urgent Inquiry* [19 Noema 2025].
[2] Wai 1546, #3.1.16, *Application for an urgent inquiry regarding amendments to the Education and Training Act 2020* [19 November 2025]; Wai 682, #1.1(ak), *Amended statement of claim and application for urgency on behalf of Ngāti Hine* [19 November 2025].
[3] Wai 3503, #3.1.3, *Application for an Urgent Inquiry* [12 December 2025].

6. Counsel hold the same position for those who have sought and been granted interest party status by the Tribunal.[4]

7. Counsel will work collaboratively and coordinate matters with participating parties to ensure an efficient urgent inquiry.

**Crown's overall response**

8. The Crown provides no witnesses or evidential basis for their response to the claimants application for an urgent inquiry, despite the level of detail provided in its submissions and the substantial documentation attached in the footnotes. Much of what the Crown has provided is more appropriately dealt with once the applications are determined and the substantive inquiry proceeds, and where evidence can be properly tested.

9. In providing this response counsel have been careful not to respond to matters which counsel submit are more appropriately left for the substantive phase of the inquiry, including:

    a) The scope and placement of the Crown's obligations under Te Tiriti o Waitangi ("**te Tiriti**") within the education system (including the respective roles of Ministers, officials, and school boards);

    b) The advice provided to Ministers by officials and advisory groups;

    c) The nature, timing, and adequacy of engagement and consultation with the claimants in respect of both the legislative amendments and the NZC refresh;

[4] Wai 1464, #3.1.18, *Memorandum of counsel for Te Whakakitenga o Waikato Incorporated seeking leave to participate as an interested party*, [3 Decembeer 25]; Wai 1464, #3.1.21, *Memorandum of counsel for Te Aupouri seeking to participate as an interested party,* [3 December 25]; Wai 1464, #3.1.22, *Memorandum of counsel for New Zealand Māori Council supporting the application for urgent inquiry*, [4 December 2025]; Wai 1464, #3.1.23, *Memorandum of counsel for New Zealand Post Primary Teachers Association Te Wehengerua seeking to participate in the urgent inquiry*, [5 December 2025]; Wai 1464, #TBC, *Application In Support of an Urgent Inquiry and to Join as an Interested Party for Ngā Kura Ā Iwi* [4 Tīhema 2025].

d) The extent to which the NZC gives effect to te Tiriti;

e) The impacts of the amendments to the Act and the NZC refresh on Māori learners, whānau, kura, and school governance; and

f) Any future policy, monitoring, or remedial work the Crown proposes to undertake in response to those impacts.

10. At this point of the process the claimants are only required to demonstrate that they have met the grounds for urgency. As the Tribunal is aware, the grounds are:[5]

a) They are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions, omissions or policies;

b) That there is no alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise; and

c) That they are ready to proceed urgently to a hearing or (if appropriate) decision on the papers, without the need of further research/evidence to be filed.

11. The Crown has not substantively submitted on the urgency criteria in relation to (c).

12. In respect of an alternative remedy the Crown suggests that the Tribunal should wait for the Wai 3310 – Education Services and Outcomes Inquiry,[6] the outcome of a post-implementation review for s 127 reforms,[7] and a consultation period for the draft NZC.[8] Counsel submit that these processes do not constitute a reasonable or effective alternative remedy in the circumstances. The Crown's suggestions are protracted and not designed to produce timely findings or

[5] Waitangi Tribunal, *Practice Note: Te Tukanga Taihoro Urgency Inquiry Process* at 2.
[6] Wai 1464, #3.1.20, *Crown submissions in response to applications for urgency* [3 December 2025], at [3.3], [19].
[7] Wai 1464, #3.1.20, *Crown submissions in response to applications for urgency* [3 December 2025], at [16].
[8] Wai 1464, #3.1.20, *Crown submissions in response to applications for urgency* [3 December 2025], at [30], [39].

recommendations capable of addressing the existing and imminent prejudice arising from the Crown's actions challenged in these claims.

13. The Crown says that the claims raise two distinct aspects, regarding two related but separate Crown policies in the education system; the removal of te Tiriti from section 127 and the changes to the NZC.[9] The Crown submits that the Tribunal ought to consider separately whether its urgency criteria are satisfied for each of the two aspects of the claim.[10] The Crown opposes both, giving its own rationale as to why urgency should be declined.

14. The claimants reject the Crown's view that urgency must be assessed separately, and maintain that both the legislative amendments and NZC reset have been advanced by the Crown within the same timeframe and arise from the same underlying policy direction. Moreover, as explained by Mr Jepsen, section 127 and the NZC operate within an interdependent system of governance and implementation, such that, changes in one area influence and impact others.[11] Section 127 set out the governance obligations through which school boards were required to plan for, resource, and implement their curriculum responsibilities, including the NZC, in a manner that gave effect to te Tiriti.[12] The removal of that obligation alters the governance context in which the NZC operates.

15. Counsel submit the Crown's actions together impact the Māori and Crown treaty relationship in relation to one issue, education. The claim calls for treaty analysis and an assessment of the prejudice arising for Māori from Crown conduct. There is no logical rationale to separate the claim or assess the legislative and curriculum changes in isolation of each another.

[9] Wai 1464, #3.1.20, *Crown submissions in response to applications for urgency* [3 December 2025], at [3].
[10] Above.
[11] Wai 1546, #A5, *Affidavit of Bruce Jensen and Therese Ford* [19 November 2025] at [5].
[12] Section 127(d), Education and Training Act 2020.

**Prejudice**

16. On the matter of prejudice in relation to section 127 the Crown:

a) Acknowledges that the statutory obligation on school boards to give effect to te Tiriti was removed without consultation with Māori.[13] However, it submits that the amendment does not remove the Crown's Treaty obligations in the education sphere, on the basis that school boards are not part of the core Crown bodies who hold the treaty responsibility;[14]

b) Submits that the practical impacts of the amendment are uncertain at this stage and that any implications will be identified through a post-implementation review.[15] It submits that, without a fuller evidential picture, it would be difficult for the Tribunal at this stage to assess whether the amendment substantively prejudices the claimants;[16] and

c) The claimants reject the Crown's characterisation of prejudice as premature and uncertain. As already submitted, the removal of section 127 has immediate and practical consequences.[17] The Crown's assertion that prejudice is uncertain fails to engage with the fact that obligations previously mandatory at the governance level are no longer legally required. In that context, the issue for urgency is not the measurement of downstream outcomes, but the present loss of enforceability and accountability arising from the removal of a statutory Tiriti obligation.

[13] Wai 1464, #3.1.20, *Crown submissions in response to applications for urgency* [3 December 2025], at [11.5].
[14] Wai 1464, #3.1.20, *Crown submissions in response to applications for urgency* [3 December 2025], at [13].
[15] Wai 1464, #3.1.20, *Crown submissions in response to applications for urgency* [3 December 2025], at [16].
[16] Wai 1464, #3.1.20, *Crown submissions in response to applications for urgency* [3 December 2025], at [18].
[17] Wai 1546, #1.1.1(x), *Amended statement of claim of Te Kapotai* [19 November 2025], at [4.11].

17. Counsel submit that the Crown cannot unilaterally determine the nature, extent, or timing of its Tiriti obligations, nor defer scrutiny to a future review process when those obligations are removed. If that position were accepted without inquiry, Māori would be left with no effective mechanism to test Crown action at the point prejudice arises.

18. The Crown's reliance on the characterisation of school boards as non-core Crown bodies does not displace the Crown's responsibility for its chosen legislative framework to give effect to Tiriti obligations. Section 127 was the mechanism enacted by the Crown to translate those obligations into governance requirements within the schooling system. The removal of that mechanism represents a substantive alteration to the operation of the Tiriti relationship in education, and is not a matter the Crown can determine unilaterally without engagement with Māori. Its removal, without consultation with the claimants, is therefore properly assessed as Crown action giving rise to urgency.

19. The absence of any consultation with Māori prior to the removal of section 127 is itself a source of present prejudice. In this regard the Crown:

    a) Acknowledges that no engagement with Māori occurred;[18]

    b) Records that the decision to amend section 127 was aligned with political commitments arising from coalition agreements and Cabinet priorities,[19] rather than informed by any assessment of Tiriti principles or engagement with Māori as Treaty partners;

    c) Amended section 127 despite advice from Ministry of Education officials that changes to te Tiriti provisions in the Act should not

[18] Wai 1464, #3.1.20, *Crown submissions in response to applications for urgency* [3 December 2025], at [10], [12], [13].
[19] Wai 1464, #3.1.20, *Crown submissions in response to applications for urgency* [3 December 2025], at [11.1]-[11.2].

commence without further engagement and design with Māori;[20] and

d) Proceeded with amendments despite advice from the Māori Education Ministerial Advisory Group ("**Māori Education MAG**") that such provisions are direction-setting, require Tiriti-compliant policy development, and that the process followed to date was not Tiriti-compliant.[21]

20. In these circumstances, where the Crown has acknowledged an absence of engagement and acted contrary to advice, the removal of a Tiriti obligation through sole Crown decision making gives rise to present and ongoing prejudice and warrants urgent inquiry by the Tribunal.

21. On the matter of prejudice in relation to NZC the Crown:

a) Submits that the NZC framework and the majority of its content remain in draft and are subject to an ongoing consultation process;[22]

b) Relies on the inclusion of references to te Tiriti, te reo Māori, and mātauranga Māori within draft and final curriculum materials, as set out in Appendix D, to argue that Māori interests continue to be recognised;[23] and

c) Submits that it has engaged with Māori through the development and resourcing of a Māori Education Action Plan, supported by Budget funding and advised by a Māori Education

[20] Wai 1464, #3.1.20, *Crown submissions in response to applications for urgency* [3 December 2025], at [11.5]; Ministry of Education Report: *The Treaty References Review and relevant clauses in the Education and Training Act 2020*, (17 September 2025) at [10], [14] and [25].
[21] Ministry of Education Report: *The Treaty References Review and relevant clauses in the Education and Training Act 2020*, (17 September 2025) at [27].
[22] Wai 1464, #3.1.20, *Crown submissions in response to applications for urgency* [3 December 2025], at [3.4.1], [38.1]
[23] Wai 1464, #3.1.20, *Crown submissions in response to applications for urgency* [3 December 2025], at [38.2]; Wai 1464, #3.1.20(d), *Appendix D: Summary of curriculum content relevant to Te Tiriti o Waitangi, Te Reo Māori and Mātauranga Māori* [3 December 2025].

MAG.[24] It relies on the establishment and ongoing work of that group, along with planned and targeted engagement during the curriculum consultation period, as evidence that Māori interests are being considered in relation to curriculum and assessment reforms.[25]

22. The claimants do not accept that the matters above negate or defer the assessment of prejudice.

23. While the Crown emphasises that the NZC remains in draft and subject to consultation, Ms Forde notes that the content was widely circulated and had already begun to be implemented by some schools.[26] Accordingly, the reset and their practical effects are already being experienced, giving rise to present prejudice that cannot be addressed by deferring consideration to a later consultation or review process.

24. In response to the Crown's submission that Appendix D demonstrates continued recognition of Māori interests within the New Zealand Curriculum, counsel submit this document does not respond to the substance of the claimants' concern that the NZC proposals deprioritise te Tiriti, te reo Māori, and mātauranga Māori. It is a descriptive summary of selected curriculum content, not an explanation of how te Tiriti operates as a foundational or directive principle within the curriculum framework. As Ms Forde explained, Te Mātaiaho is "unrecognisable" and the changes made are "wholescale".[27]

25. Nor do the engagement processes relied on by the Crown, including the Māori Education MAG, amount to Tiriti-compliant engagement in respect of the decisions that are being challenged by the claimants. The matters identified by the Crown occurred within policy settings that

[24] Wai 1464, #3.1.20, *Crown submissions in response to applications for urgency* [3 December 2025], at [31]
[25] Wai 1464, #3.1.20, *Crown submissions in response to applications for urgency* [3 December 2025], at [32]-[36], [38.3]
[26] Wai 1546, #A5, *Affidavit of Bruce Jensen and Therese Ford* [19 November 2025] at [29].
[27] Wai 1546, #A5, *Affidavit of Bruce Jensen and Therese Ford* [19 November 2025] at [30]-[31].

had already been determined, and did not involve the claimants as Tiriti partners in the process for making decisions. The Crown's reliance on advisory mechanisms, like the MAG, do not address this deficiency, particularly when the same advisory group whose advice was available to the Crown was not reflected in the policy decisions made.[28]

**Counsel response to comity submission**

26. The Crown submits that principles of comity and Parliamentary privilege preclude scrutiny of the Parliamentary process, while accepting that Māori had no opportunity to engage with the Crown in the development of the policy underlying, or the drafting of, the amendment removing section 127.[29]

27. The claimants do not invite the Tribunal to scrutinise Parliamentary debate or procedure. Rather, the Tribunal is asked to inquire into Crown policy development and engagement for compliance with te Tiriti. The Crown's acceptance that Māori had no opportunity to engage in the development of the policy underlying, or the drafting of, the amendment removing section 127 is a matter properly within the Tribunal's jurisdiction and does not offend principles of comity.

28. As the Court of Appeal has confirmed, comity operates primarily to protect the constitutional relationship between courts and Parliament,[30] and does not constrain the Tribunal in carrying out its statutory function of inquiring into Crown policy and conduct for te Tiriti compliance, where such inquiry has no proximate effect on Parliamentary functions.[31]

[28] Ministry of Education Report: *The Treaty References Review and relevant clauses in the Education and Training Act 2020*, (17 September 2025) at [27].
[29] Wai 1464, #3.1.20, *Crown submissions in response to applications for urgency* [3 December 2025], at [12].
[30] *Skerritt-White v Minister for Children* [2024] NZCA [107]
[31] *Skerritt-White v Minister for Children* [2024] NZCA [110].

29. Inquiry into whether Tiriti-compliant engagement occurred prior to the formulation and introduction of the amendment is therefore a proper and necessary matter for the Tribunal's consideration.

**Concluding remarks**

30. Given the divergent positions between the claimants and Crown on all matters raised, and that these matters can only be clarified through an inquiry and consideration of evidence by the Tribunal, counsel submit that an urgent inquiry into the claims remains necessary.

31. The issues raised by the claimants are no broader than those considered in other urgent inquiries regarding coalition-driven legislative and policy reform.[32] Counsel maintain that the urgency criteria is met where, as here, legislative change has already occurred and implementation is underway, and delay would constrain the Tribunal's ability to assess Tiriti compliance where meaningful remedial options remain available.

32. Counsel respectfully request that the Tribunal grant the application and matters proceed to hearing.

**I TĒNEI RĀ**, i Kirikiriroa, te rā, 17 o Hakihea 2025

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Dr Season-Mary Downs/Chelsea Terei-Tipene/Jessica Hita
**Rōia mo ngā kaikerēme**

[32] Wai 2358 – Draft Geothermal Strategy Priority Inquiry; Wai 2575 – Te Aka Whai Ora (Maaori Health Authority) Priority Inquiry; Wai 3300 – Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown's Treaty Principles Bill and Treaty Clause Review Policies; Wai 3327 – Te Reo i te Kāwanatanga Ruku Tātari Ohotata - Te Reo in the Public Sector Urgent Inquiry; Wai 3350 – The Oranga Tamariki (Section 7AA) Urgent Inquiry; Wai 3365 – The Māori Wards and Constituencies Urgent Inquiry; Wai 3400 – The Takutai Moana Act 2011 Urgent Inquiry; Wai 3470 – The Regulatory Standards Bill Urgent Inquiry