OFFICIAL

Wai 1464, #1.1.1(z)
Wai 1546, #1.1.1(x)
Wai 3553, #1.1.1

I TE RŌPU WHAKAMANA
I TE TIRITI O WAITANGI

WAI 1464/1546

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

I TE TAKE O he kerēme 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)

TAUĀKĪ WHAKARAUPAPA NAWE
Statement of claim

I tēnei rā, i te 18 o Whiringa-ā-rangi 2025

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RECEIVED
Waitangi Tribunal
19 Nov 2025
Ministry of Justice
WELLINGTON

TĒNĀ E TE RŌPU WHAKAMANA O TE TIRITI O WAITANGI:

1.0 THE CLAIM

1.1 Te Kapotai ("the **claimants**") say the Crown has breached te Tiriti o Waitangi and its principles by:

(a) Removing the statutory requirement under section 127(1)(d) of the Education and Training Act 2020 ("**Education Training Act**") that required School Boards of Trustees to give effect to te Tiriti o Waitangi; and

(b) De-prioritisng te Tiriti o Waitangi, te reo Māori and mātauranga Māori, in the national curriculum through the refresh of the New Zealand Curriculum; Te Mataiaho ("**NZC**","**Te Mātaiaho**").

1.2 The claim centres on the failure of the Crown to recognise and give effect to te Tiriti o Waitangi and its principles in making the legislative and policy amendments at issue. The claimants say that the Crown has not upheld the Treaty partnership, failed to undertake meaningful consultation, and has not ensured that Māori perspectives, opposition, or rangatiratanga were appropriately incorporated into decision-making processes. As a result, the claimants say they have been excluded from influencing the changes, and that the resulting prejudice to them is immediate and ongoing.

2.0 TE KAPOTAI

2.1 Te Kapotai is hapū based in the Bay of Islands. Te Kapotai tūpuna are signatories to he Whakaputanga o Nu Tireni and te Tiriti o Waitangi. Te Kapotai therefore have a special relationship with te Tiriti, one that guarantees them the status and rights of a treaty partner.

2.2 Accordingly the claimants say the Crown owes treaty duties and obligations in relation to their hapū, including to:

(a) Recognise and provide for the exercise of their tino rangatiranga over their affairs and taonga;

(b) Act in partnership, including genuine, informed and meaningful engagement on law and policy changes that impact their people; and

(c) Ensure law and policy achieves equitable outcomes for the claimants.

2.3 Te Kapotai is a rural and geoghraphically remote community. Te Kura o Waikare, located in Te Kapotai takiwā, is a Kura-ā-Iwi with a role of around 87 tamariki.

2.4 Tamariki from Te Kapotai attend Te Kura o Waikare. Many whānau also travel to town, or live in town where their Tamariki attend both Kura Kaupapa Māori and Kura Auraki (mainstream schools). Most Te Kapotai taiohi attend Bay of Islands College for secondary education, which is a mainstream school.

2.5 The claimants have experienced long standing deeply rooted systemic prejudice, arising from the colonisation of their hapū, and the imposition of the early Native Schools and Western education system. The claimants say this historical context is relevant and should be taken into account when considering the inequity and prejudice arising from the current legislative and curriculum changes at issue in this claim.

3.0 TE TIRITI O WAITANGI

3.1 The starting point for Treaty interpretation is Article 2, which requires the Crown to recognise and respect Māori, their mana, tikanga, mātauranga, and tino rangatiratanga. The Tribunal has described the extent of the Crown's duty to recognise and respect Māori as follows:[1]

> In our view, it was the duty of the Crown at the outset to recognise and respect mana, tikanga, kawa, mātauranga, kaitiakitanga, and te reo Māori. At the heart of Māori values and the Māori way of life was and is

[1] Waitangi Tribunal *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry, Part I* (Wai 1040, 22 December 2022) at 78.

> tikanga. The Crown must recognise and respect tikanga Māori values and Māori systems of law.

3.2 The Tribunal has also made clear that the Crown has an active duty to ensure its laws and policies give effect to Treaty rights and guarantees:[2]

> The duty of the Crown was (and is) to foster tino rangatiratanga (Māori autonomy), not to undermine it, and to ensure its laws and policies were just, fair, and equitable, and would adequately give effect to treaty rights and guarantees, notably those affecting hapū autonomy and tikanga, and hapū retention and management of their lands and resources.

3.3 The Tribunal has repeatedly acknowledged systemic bias, unequal treatment, and entrenched structural disadvantage faced by Māori across State systems, including education. The *He Tangata, He Whenua* report,[3] confirms that the principle of equal treatment requires the Crown to act fairly and impartially toward all Māori, and to avoid creating or exacerbating divisions by advantaging some Māori groups over others where their circumstances, rights and interests are broadly the same.[4]

3.4 In this context, the removal of Tiriti-based obligations from the Education and Training Act creates a situation where tamariki Māori in Māori-medium schooling retain Tiriti-grounded protections, while the 97 percent of tamariki Māori in mainstream schooling do not, an outcome that risks entrenching inequity and is inconsistent with the Crown's duty of equal treatment.

3.5 The Tribunal has examined numerous Acts which include treaty provisions and have commented on their value for ensuring the implementation of the treaty at a practice level. For example, in the recent Oranga Tamariki (Section 7AA) Urgent Inquiry, the Tribunal said in relation to section 7AA, "Such a provision is, in our view, a

[2] Waitangi Tribunal Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry, Part I (Wai 1040, 22 December 2022) at 84.
[3] Waitangi Tribunal, *He Tangata, He Whenua: The Citizenship Report* (Wai 3513, October 2025).
[4] Above at 7.

necessary foundation to secure and promote Treaty consistent policy and practice":[5]

> With that in mind, we cannot overstate the importance of having in the Act a provision such as section 7AA(2)(b), which requires the Chief Executive to ensure that 'the policies, practices, and services of the department have regard to mana tamaiti (tamariki) and the whakapapa of Māori children and young persons and the whanaungatanga responsibilities of their whānau, hapū, and iwi'. Such a provision is, in our view, a necessary foundation to secure and promote Treaty consistent policy and practice. It is a necessary, but not a sufficient condition.

3.6 In several Tribunal reports, recommendations have been made towards the strengthening of treaty provisions. For example, in the Hauora report where the Tribunal recommended "that the Crown ensure that the legislative and policy framework...recognise and provide for the Treaty of Waitangi and its principles."[6]

3.7 The claimants say the legislative and curriculum changes breach these obligations by removing treaty protections and by failing to uphold Māori autonomy, tikanga and mātauranga within the education system.

4.0 PARTICULARS

4.1 As per section 118 of the Education and Training Act, school boards are locally elected boards that govern state and state integrated schools.[7] A school board is a Crown entity. Every State school is governed by its board.

4.2 School boards are Crown entities under section 7(1)(d) of the Crown Entities Act 2004[8] and are therefore Crown entities required to give effect to government policy.[9]

4.3 Māori learners represent a large and steadily growing proportion of all learners across the education system. As at 1 July 2025, the Ministry

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[5] Waitangi Tribunal, *The Oranga Tamariki (Section 7AA) Urgent Inquiry* (Wai 3309, 10 May 2024), at 35.
[6] Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Wai 2575, March 2023) at 162.
[7] Section 118 of the Education and Training Act 2020.
[8] Section 7(1)(d) of the Crown Entities Act 2004.
[9] Section 103 of the Crown Entities Act 2004.

of Education reported that 65.6% of all school students (561,831 learners) were not enrolled in Māori Language in Education at any level, meaning the majority of Māori learners depend on mainstream schooling environments where te Tiriti protections and kaupapa Māori approaches are already limited.[10]

4.4 Only 3.3% of all students (28,382 learners) are enrolled in Māori medium education (immersion Levels 1–2), of whom 95.7% are Māori. A further 31.1% (266,199 learners) receive Māori language in English medium (Levels 3–5). This means just over one-third (34.4%) of the school population receive Māori language education.[11]

4.5 These figures demonstrate that the vast majority of Māori ākonga rely on mainstream schools**,** not Māori-medium pathways, and therefore depend on statutory Tiriti protections (previously contained in section 127(1)(d)), as well as on curriculum settings that uphold te reo Māori, tikanga and mātauranga Māori.

4.6 The legislative and curriculum changes directly impact where Māori children are actually located in the system.

Legislative change

4.7 On Tuesday 11 November 2025, passed its thirsd reading and section 127(1)(d) was removed from the Education and Training Act. Section 127(1)(d) previously required every school board in governing a state school:

> (d) 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.

[10] Education Counts, ***Statistics*** (October 2025).
[11] Above.

4.8 This statutory obligation has now been repealed in its entirety. Subsequent amendments were made to the Education (School Planning and Reporting) Regulations 2023, which set out the mandatory content that must be included in schools strategic plans, annual implementation plans and annual reports. These regulations have now been amended to remove the requirement of school boards to give effect to te Tiriti, to identify how te Tiriti would feauture in their annual implementation plans and report annually on their progress in giving effect to te Tiriti. These Tiriti-based planning and reporting requirements have now been entirely removed.

4.9 Regulation 7(1)(f) previously read:

> (d) the board's strategies for giving effect to Te Tiriti o Waitangi, including strategies for–
>
> (i) achieving equitable outcomes for Māori students;
>
> (ii) working to ensure that its plans, policies, and teaching and learning programmes reflect local tikanga Māori, mātauranga Māori, and te ao Māori; and
>
> (iii) taking all reasonable steps to make instruction available in tikanga Māori and te reo Māori.

4.10 This has now been repealed with:

> Regulation 7(1)(f) the board's strategies for—
>
> (i) seeking to achieve equitable outcomes for Māori students; and
>
> (ii) taking all reasonable steps to provide for students to be taught, and to learn, in te reo Māori on request of their parents or immediate caregivers; and
>
> (iii) taking reasonable steps to ensure that the policies and practices for the school reflect New Zealand's cultural diversity.

4.11 The claimants say, the removal of these Tiriti-based obligations have a substantive and practical effect. What is not required by law becomes optional and in the absence of any legal requirement to plan for, implement, or report on Tiriti commitments, there is no mechanism through which the Crown or the sector can measure whether schools are giving effect to te Tiriti.

4.12 Additionally, the legislative amendments extend the timeframe for school boards to update their strategic plans.[12] The Education and Training Amendment Act (No 2) 2025 amended Regulation 5 of the Education (School Planning and Reporting) Regulations 2023 by replacing the date "1 January 2026" with "1 January 2027" for the preparation of updated strategic plans.[13]

4.13 This amendment has the practical effect of school boards remaining governed by their existing strategic plans throughout 2026. Those existing plans were developed under section 127(1)(d) of the Education and Training Act, and therefore include requirements to plan for and give effect to te Tiriti o Waitangi. The first year in which school boards may lawfully operate without Tiriti-based planning and reporting obligations is 2027, heightening the urgency and significance of the Crown's removal of these statutory protections.

4.14 The claimants say that updating strategic plans by 1 January 2027 will constitute a significant piece of work for schools, including substantial time, resource and sector capability, particularly given the removal of clear statutory guidance relating to te Tiriti.

4.15 The claimants further note, a number of schools have publically rejected the Crown's decision, expressing concerns that the process was flawed, and the substantive changes are prejudicial to tamariki Māori, whānau, kaiako and kura.

Process issues

4.16 The claimants say that the political context in which the legislative changes were made are important. Under the National and Act Parties' Coalition Agreement, the Act Party committed to refocusing school boards so that "educational achievement" would become the primary objective of school boards.[14]

[12] Education and Training Amendment Bill (No 2) at 2.
[13] Above.
[14] *National–ACT Coalition Agreement, 24 November 2023, at 6.*

4.17 Consistent with that commitment, on 7 April 2025 the Government introduced the Education and Training Amendment Bill (No 2) to the House.[15] The claimants say this reframing is a substantive de-prioritisation of te Tiriti as it positions Tiriti-based duties as optional, secondary, and contingent, rather than foundational to educational outcomes.

4.18 During the Select Committee process, Hobson's Pledge publicly advocated for the removal of all Tiriti references from the education system, stating that the Bill did not go far enough while such references remained.[16]

4.19 The Prime Minister and Minister of Education also stated publicly that the Government was undertaking a broader review of all Treaty references across the statute book, as required under the National-New Zealand First Coalition Agreement. As part of that review, they indicated that further amendments to the Education and Training Act were being considered, including the removal of remaining Tiriti-based obligations on school boards.[17]

4.20 On 11 September 2025, the Education and Workforce Select Committee released its report on the Education and Training Amendment Bill (No 2).[18]

4.21 On 4 November 2025, the Bill entered the Committee of the Whole House stage.[19]

[15] New Zealand Parliament, *Education and Training Amendment Bill (No 2),* (November 2025).
[16] Hobon's Pedge, School is for lessons - not indoctrination.
[17] RNZ, *ACT Party tried to get Treaty of Waitangi clause removed from education legislation* (1 July 2025).
[18] New Zealand Parliament, *Education and Training Amendment Bill (No 2) Government Bill: As reported from the Education and Workforce Committee* (September 2025).
[19] New Zealand Parliament, *Education and Training Amendment Bill (No 2),* (November 2025).

4.22 One day prior, the Minister announced publicly that she intended to remove all remaining treaty obligations on school boards in their entirety.[20]

4.23 As a result, the change was introduced not through Select Committee scrutiny but directly at the Committee of the Whole House stage. This meant that a legislative shift of significant constitutional and practical consequence proceeded with only a few hours of debate, alongside other major amendments including changes to the Teaching Council.[21]

4.24 On 11 November 2025, the amendment passed its third reading.

4.25 The claimants say the process for legislative change was inconsistent with te Tiriti where the amendment was rushed through the House at the last minute, there was no public consultation, there was no select committee on the proposed change, and it is unclear whether there was a Regulatory Impact Statement.

Impacts

4.26 The claimants say they are directly impacted by the Crown's failure to uphold the Tiriti partnership in making these significant legislative changes. By removing Tiriti obligations without genuine engagement, consultation, or shared decision-making, the Crown has denied the claimants the ability to exercise tino rangatiratanga over matters that materially affect their tamariki, whānau and hapū.

4.27 The claimants further say that the widespread opposition to the amendments, from Māori, schools, kura, boards, sector leaders and education professionals demonstrates the extent of the Crown's failure to actively protect Māori interests or uphold the Tiriti partnership.

[20] Hansard, *Education and Training Amendment Bill (No 2) — In Committee—Part 1* (4 November 2025).
[21] Above.

4.28 The claimants have emphasised that when identity, belonging, and cultural safety are recognised and supported, tamariki experience stronger educational outcomes and improved wellbeing.[22]

4.29 The President of the New Zealand School Boards Association has stated publicly that there is "no harm in having the provision, but there is harm in not having it,"[23] underscoring the protective function that Tiriti provisions serve for Māori students and the wider school community.

4.30 Although Kura Kaupapa Māori and Kura-ā-Iwi are exempt from the legislative change,[24] its effects are nevertheless felt across all Māori, as the amendments:

(a) Undermine the tino rangatiratanga and partnership rights of Māori who participate in mainstream schooling thereby treating Māori differently;

(b) Produce unequal treatment of Māori tamariki in terms of te Tiriti o Waitangi in schools where some Māori tamariki have access to te Tiriti inclusion and other do not;

(c) Fail to normalise of te Tiriti o Waitangi across the education sector as a whole; and

(d) Fail to ensure continuity of transitioning students between schools and the nature of the environment and values set provided to children more generally.

Curriculum change

4.31 The Minister is currently consulting on a refreshed New Zealand Curriculum for years 0 – 10. The Ministry has indicated that a draft

[22] Wai 1456, Wai 1564, Wai 682, #TBC, *Kōrero Taurangi o Arona Tipene* (18 Whiringa-ā-rangi 2025) at [8].
[23] The Guardian, *Backlash after New Zealand government scraps rules on incorporating Māori culture in classrooms* (4 November 2025).
[24] Clause 7(2), of the Education (School Planning and Reporting) Regulations 2023

curriculum for Years 11–13 will be released for consultation in Term 1 of 2027.[25]

4.32 The claimants say this consultation occurs against the backdrop of a nearly completed curriculum refresh undertaken prior to the formation of the coalition government. Under the previous Government, the Ministry worked collaboratively with Māori and the wider education sector to redesign the national curriculum. This process resulted in a new curriculum framework, Te Mātaiaho, gifted by Dr Wayne Ngata, that weaved in te Tiriti o Waitangi, biculturalism, and mātauranga Māori.[26]

4.33 The claimants say changes to the NZC are particularly significant because 97 percent of Māori learners attend English-medium schooling, meaning revisions to the NZC will directly shape the educational experience of almost all Māori tamariki.[27]

4.34 Since the change of government, the Minister has announced a shift toward a "knowledge-rich", "explicit, year-on-year teaching sequence", and a curriculum "grounded in the science of learning."[28] The claimants say these revisions amount to a substantive rewrite rather than a refinement of Te Mātaiaho.

4.35 There is growing concern across the sector that mātauranga Māori, te reo Māori, local histories, and wider Aotearoa histories have been minimised or removed.[29] Sector experts describe a noticeable withdrawal of kaupapa Māori content and a return to Eurocentric framing.

4.36 The curriculum that is currently being consulted on is described by many as a "recolonised curriculum"; "white washed curriculum"

[25] Ministry of Education, *Changes to the curriculum and why they matter for your child* (24 October 2025).
[26] Tarai Kura, *Te Mātaiaho – how the whakapapa puts ākonga at the centre* (30 June 2023).
[27] Education Counts, *Statistics* (October 2025).
[28] Ministry of Education, Changes to the curriculum and why they matter for your child.
[29] Te Ao Māori News, *Teachers worried 'restoring balance' to history curriculum may send Aotearoa backwards* (October 2024).

"recolonising curriculum".[30] These critiques are detailed in expert analysis, including the paper by Bruce Jepsen and Terese Forbes, which outlines the dilution of mātauranga Māori, te reo Māori, and Aotearoa/New Zealand histories and the broader re-colonising effects of the reset.

4.37 Although the Minister and Ministry have stated that there has been no instruction to minimise te reo Māori or mātauranga Māori, the claimants say this is inconsistent with the observable changes, sector evidence, and cumulative effect of the revisions.

4.38 The Minister is consulting, the curriculum will then be gazetted and from 2027 this will be the new curriculum required to be taught in schools.

5.0 PREJUDICE

5.1 The claimants say that the de-prioritisation of te Tiriti o Waitangi in the law, policy and curriculum for education causes the following prejudice:

(a) The failure of Crown to act consistently with te Tiriti, where Crown entities are no longer considered to be bound by te Tiriti o Waitangi and are therefore not required to give effect to te Tiriti;

(b) The inability of the claimants and Māori to exercise tino rangatiratanga in respect of legislative and curriculum changes, leaving Māori disempowered and rendering the treaty partnership meaningless;

(c) Te Tiriti o Waitangi will not be implemented by some school boards resulting in unequal treatment of tamariki Māori both within English-medium schooling (where some school boards may give effect to te Tiriti, and others may not) and between English-medium and Māori-medium schooling, where Māori-

[30] Dr Therese Ford and Bruce Jepsen: Te Akatea Incorporated, *The Recolonisation of the Aotearoa New Zealand Curriculum in 2025* (August 2025).

medium schools remain legislatively empowered to give effect to te Tiriti.

(d) The removal of statutory planning and reporting pathways eliminates any accountability mechanism for assessing the Crown's performance in meeting its Tiriti obligations in education;

(e) Significant harm to the Tiriti relationship caused by the regressive nature of the legislative and policy changes; and

(f) The failure to provide mechanisms to achieve equitable outcomes for Māori, who continue to experience systemic bias and entrenched inequity within the education system.

5.2 The claimants further note that these changes have prompted widespread sector opposition, including from principals, teachers, academics, professional associations, and peak bodies across the motu. The breadth and depth of this backlash highlights the scale of concern about both the process and substance of the Minister's curriculum and legislative reforms. The collective response reinforces that the removal of Tiriti obligations is understood as harmful, unjustified, and inconsistent with the Crown's duties.

6.0 RELIEF

6.1 The claimants seek:

(a) A finding that their claim is well founded;

(b) An apology to the claimants and Māori for the prejudicial impacts identified in this claim;

(c) A finding that the Crown has breached te Tiriti o Waitangi by removing s127(1)(d) and additional amendments to the regulations of the Act;

(d) A finding that changes to the current curriculum where te Tiriti o Waitangi, te reo and mātauranga Māori is deprioritised is in breach of te Tiriti o Waitangi;

(e) A recommendation that the Crown restore s 127(1)(d) in full , reinstating the legal requirement that school boards give effect to te Tiriti o Waitangi;

(f) A recommendation that the Crown not proceed with or Gazette the redesigned New Zealand curriculum;

(g) That the Crown pause and work in partnership with Māori to ensure that the New Zealand Curriculum gives effect to te Tiriti o Waitangi; and

(h) A broader recommendation that the Crown work with Māori to restore the Crown Māori relationship in terms of education and ensure that any future law and policy change is done in accordance with the principles of te Tiriti.

I TĒNEI RĀ, i Kirikiriroa, te rā 18 o Whiringa-ā-rangi 2025

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Dr Season-Mary Downs/Chelsea Terei-Tipene/Jessica Hita
Ngā rōia mo Te Kapotai

This **STATEMENT OF CLAIM** is filed by Dr Season-Mary Downs. Chelsea Terei-Tipene, and Jessica Hita of Tukau Law, counsel for the claimants.

Accordingly, the address for service for all documents for this claim is:

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