WAI 3553 – THE EDUCATION AND TRAINING AMENDMENT ACT AND TE MĀTAIAHO URGENT INQUIRY

HELD AT JAMES COOK HOTEL, WELLINGTON

WEDNESDAY 15 APRIL 2026 - FRIDAY 17 APRIL 2026

Tribunal:	Judge Rachel Mullins Kevin Prime Derek Fox Gerrard Albert Dr Paul Hamer
Crown Counsel:	James Watson Tanuvi Garimella Lachlan Ewing
Claimant Counsel:	Jessica Hita Dr Season-Mary Downs Chelsea Terei-Tipene Annette Sykes Jack Potaka Rangipurei Manley Jamie Ferguson Wiliame Gucake Angel Stewart Harry Clatworthy Grace Taylor Toni Talamaivao Darshini Dorn Dr Liz Gordon Hakaraia Richards-Coxhead
Interpreter:	Paiheke McGarvey
Witnesses:	**Day 1 - [Wednesday 15 April 2026]** Bruce Jepsen Therese Ford Meredith Kennett Ripeka Lessels Bevan Holloway Associate Professor Richard Manning Jessie Moss Heidi Hayward Stephanie Mills Dr Raewyn Mahara Alicia Poroa

Day 2 - [Thursday 16 April 2026]
Watson Ohia
Heywood Kuka
Jane Jarman
Ellen MacGregor-Reid
Pauline Cleaver
Andy Jackson

Day 3 - [Friday 17 April 2026]
Andrew Kibblewhite
Caroline Greaney

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PLEASE NOTE: In recognising that the spelling of names, dialect, and kupu differ across hapū and iwi, we acknowledge that each kupu has a whakapapa that is valid. With respect of these differences, the following transcripts have been specified for continuity in our mahi. The dialectal variations have been transcribed verbatim.

HEARING COMMENCES ON WEDNESDAY 15 APRIL 2026 AT 8.29 AM

KARAKIA TĪMATANGA (KEVIN PRIME)

(08:31) KEVIN PRIME: (MIHI)

Nā reira, e ngā reo, e ngā mana, e ngā waka, ki ngā huihuinga tāngata, nau mai haere mai, whakauru mai, whakauru mai ki roto i tēnei a tātou ki te – kia aroha mai, kau kē e mōhio he aha tēnei tangi i waenga i taku pēke, kia aroha mai. **So to the voices, to the authorities, to the waka, to this gathering of people, welcome, come forth to this sitting of our – apologies my phone is ringing.**

Nā reira ki a koutou, haere mai, haere mai, haere mai. Haere mai rā me ngā taumaha i runga i a koutou e hinga atu nei, hinga atu nā roto ō tātou tini marae o te motu e tīraha mai nā i kō, i kō, i kō. Tawhiti nei hoki rātou kua whetūrangitia, kua tae ki te okiokinga, engari kotahi tonu te kōrero mō rātou, haere e ngā mate, haere, haere, haere. Hei meinga nei anō ngā mate i hinga atu i waenganui i a koutou nā koutou i tangi, nā tātou. Tēnā anō hoki ngā mate i hinga atu i waenganui i a mātou nā mātou i tangi, nā tātou katoa. Nā reira, kau kē e kūmea ake wēnei mihi kia roa, hoinō e tū ana, whakatau mai nei i a koutou rā runga me ngā āhuatanga o tātou te iwi Māori. Nā reira, huri noa roto i tō tātou noho i te rā nei, tēnā koutou, tēnā koutou, kia ora tātou. **And so to you all, welcome, welcome, welcome. Welcome, bring forth all of the burdens that are upon you and all of our dead that are lying on our marae throughout the country, and to the many who have joined the stars and final resting place, but there is only one thing to say about them, farewell to our dead, farewell, farewell, farewell. And all of the deceased that have fallen, passed away amongst you, you mourn them and we did as well. All of those dead amongst us, we mourned, we all mourned their deaths. And so, I will not prolong these acknowledgements, I just want to formally greet you in terms of the aspects of the Māori people, and so to everyone in our sitting today thank you, thank you, greetings all.**

(08:32) JUDGE RACHEL MULLINS: (MIHI)

Tēnā koutou, otirā tēnā tātou. Kei te kaiwhakarite e taki nei i ngā ōhā, e paihere nei i ngā mana o te ao wairua ki ngā mana o te ao tāngata, tēnei e whakamānawa atu nei e pā. Kia whakamānawatia i konei te pou mataaho o te Kīngitanga, te Kuini Māori e tū nei, kia tau ngā manaakitanga ki runga i a ia otirā ki tōna whare tapu, pai mārire. **Greetings all. To the person who joined together the spiritual realm to the world of the living, and I want to honour you elder. And I want honour the Kīngitanga and the Māori Queen and may she be blessed and also her holy house, pai mārire.**

E rere atu nei ngā whakamiha ki ngā maunga, ki ngā awa, ki ngā roherohenga o tēnei whaitua mātuatua o te motu, kei ōku rangatira tēnei koutou. Kei ngā mata areare o roto i ngā iwi kua whakatōpū mai nei ki tā tātou kaupapa whakahirahira, haere mai rā, whakatata mai rā. Ko te ahunga whakamua o te tangata i roto i ngā tini kaupapa o te wā te tohu o te māia o te ngākau. Haere mai rā kia māia ake ai tātou i roto i ngā tītakataka o te wā. Nō reira, kei aku rangatira kua whakarauika mai i tēnei ata, tēnā koutou, tēnā koutou, tēnā tātou katoa. **I also want to acknowledge the mountains, the rivers and the areas of this major centre of the country, so to the assembled leaders, greetings. To those people from the iwi who have come together for this most important matter, welcome, welcome. This is the advancement of the people in terms of the many issues which demonstrates the strength and courage of people and may we be courageous with the circumstances of current times. And so, to the leaders that have assembled this morning, greetings, greetings, greetings all.**

Ko wai mātou i mua i a koutou? Ko tērā pito nō ngā tai o Tokerau, nō Ngāti Hine, nō Ngāti Whātua, Matua Kevin Prime tērā. Ō mātou kaipāmu nō Mōtatau. Mai i ngā tai o Tokerau ki ngā tai o te Rāwhiti, ko Pāpā Derek Fox tērā nō Ngāti Kahungunu me Ngāti Porou. Mai i ngā tai o te rāwhiti ki te tai Hauāuru, kua tae mai nei te reo o Te Awa Tupua, kua tae mai nei te reo o Whanganui, ko Gerrard Albert tērā. Mai i te tai Hauāuru ki konei ki Te Upoko o te Ika, ko Dr Paul Hamer tērā, tā mātou tumu kōrero. Ko wai tēnei e noho whakaiti nei i waenganui i ēnei rangatira nei? He mokopuna tēnei o

Ngāti Kahungunu me Ngāi Tahu. He Kaiwhakawā ahau o te Kōti Whenua Māori kei roto i te rohe o Waikato-Maniapoto. Nō reira, e rere ana ngā mihi. **Who are we sitting before you? On the end is from the North, Ngāti Hine, Ngāti Whātua elder Kevin Prime and our farmer from Mōtatau. From the tides of the North to the tides of the East is elder Derek Fox from Ngāti Kahungunu and Ngāti Porou. From the East to the West the voice of Te Awa Tupua have come, the voice of Whanganui, this is Gerrard Albert. And from the West to here, Wellington, is Dr Paul Hamer, our historian. And who is this sitting humbly amongst these leaders? I am a grandchild of Ngāti Kahungunu and Ngāi Tahu. I am a Judge of the Māori Land Court covering Waikato-Maniapoto region, and so greetings.**

Ko te hunga i muri rā ko ngā kaimahi o te Rōpū Whakamana. Ko rātou ngā kaiurungi o tēnei waka, nē. Me mihi ka tika ki a rātou o tā rātou tautoko mai, o tā rātou tautoko atu ki a koutou. Kei te pouaka rā a Tūhoe moumou kai, moumou taonga, moumou tangata ki te pō, ko Paiheke McGarvey tēnā, te kaiwhakapākehā, te kaiwhakamārama pea, o te wiki nei. Nō reira, mēnā e hiahia koutou ki te kōrero Māori, tukuna tō reo kia rere. Mēnā e ako tonu ētahi o koutou i tā tātou reo rangatira, kia mau tēnei mea taputapu taringa, mā Paiheke e whakapākehā, nē. **Those behind me are the Waitangi Tribunal staff. The are the navigators of this waka. And so, I must acknowledge them for their support and their provide support for you. In the box is Tūhoe lavished with food and sending people to the world of death, that's Paiheke McGarvey the interpreter for this hearing week. And so, if you want to speak Māori, you are allowed to do so. And if some of you are still learning our noble language, there's this hearing piece and Paiheke will interpret to English for you.**

Ko Alan Doyle tērā, ko ia te pūkenga oro pea. Nō reira, mēnā he pātai tā koutou o ngā mea hangarau, pātai atu ki a Alan. **That is Alan Doyle who is the AVL specialist. So if you have any questions about this technology then ask Alan.**

Nō reira, āe, nei rā te mihi nui ki a koutou katoa. I te tuatahi, ko wai ki mua i a mātou? Mā wai e tīmata? Hoki atu ki ngā tai o Tokerau. Kei a koe, Ms Downs. **And so, yes, greetings to you all. Firstly, who is appearing? Appearances. So, turning to the North, over to you, Ms Downs.**

(08:36) MS JESSICA HITA: (MIHI, APPEARANCE)

Mauri ora ki te whare, otirā tēnā koe e te Kaiwhakawā. Mātua rā e tika ana ka tukuna ngā mihi ki tō tātou kaihakarite i tēnei ata nei. E te koroua e Matua Kevin, tēnei taku mihi aroha ki a koe i ō kupu kia hakapuare i tā tātou nei kaupapa i tēnei ata, nā reira tēnei taku mihi uruhau ki a koe, tēnā koe. **Behold the breath of life to the house, and so greetings to the Judge. First and foremost I must acknowledge our elder who recited our prayer. To the elder Kevin, I want to extend my love towards and my thanks for the words that you shared to open our occasion this morning, and so I thank you.**

Te Āti Awa, Ngāti Toa Rangatira, tēnei a Ngāti Ueoneone, a Ngāti Tara e mihi atu nei. Ka mutu, e mihi ana ki ngā kaikōrero o tēnei wiki nei. Kia tae ki te wā tika kia hakatō i tō koutou wheako, i ō koutou kōrero i mua i te Rōpū ‘hakamana i te Tiriti o Waitangi, nā reira tēnā koutou. Tēnā koutou i tō koutou manawanui mai mō tēnei kaupapa tino hakahirahira. **Te Āti Awa, Ngāti Toa Rangatira, Ngāti Ueoneone, Ngāti Tara, acknowledging you. Furthermore, I want to acknowledge this week’s witnesses until we reach the right time to share your experiences, your kōrero before the Waitangi Tribunal, and so greetings. I thank you for your resilience in terms of this most important matter.**

Ko wai ahau? Ko Ms Hita tōku ingoa. He rōia ahau nā te tari o Tūkau Law. Kei taku taha ko Dr Downs me Mrs Terei-Tipene. Hei māngai mātou mō ngā kerēme Wai 1464, 1546, ko Te Kapotai tērā, me Ngāti Hine Wai 682. **Who am I? My name is Ms Hita. I am a lawyer for Tūkau Law. Beside me is Dr Downs and on my other side Mrs Terei-Tipene. We are counsel for the claims Wai 1464, 1546, that is Te Kapotai’s claim and Ngāti Hine Wai 682.**

I mua i te hakamōhio mai ko wai kei te rūma, ka tū ngā kaikōrero ki te tuku i ā rātou kōrero, nā reira tēnā koutou, tēnā koe e te Kaiwhakawā. **Before informing as to who is in the room, the witnesses will stand to provide their evidence, and so thank you all, thank you Judge.**

JUDGE MULLINS:

Kia ora, tēnā koe, tēnā koutou. Ngāti Pikiao, mōrena. **Thank. Ngāti Pikiao, good morning.**

(08:38) MS ANNETTE SYKES: (MIHI)

Kei te tuku i te rākau ki a Mōkai Pātea, māna hei whakarite tā tātou nei kaupapa i te rā nei. Ko te tuatahi, e te tohunga i whakatuwhera tō tātou nei hui, tēnā koe. **I am passing it over to Mōkai Pātea who will arrange our kaupapa, and so to the tohunga who opened our gathering thank you.**

(08:38) MR JACK POTAKA: (MIHI, APPEARANCE)

Tēnā tātou e te Taraipiunara, otirā tātou katoa kua karapinepine mai nei i tēnei ata, tēnei te toai ngā mihi ki a koe e te uri o Hineāmaru mōu i taki i ngā kupu karakia i te ata nei e tau iho ai ngā manaakitanga o te wāhi ngaro ki runga ki tēnā, ki tēnā o tātou. I runga hoki i ērā whakaaro ki te wāhi ngaro, tēnei te ngākau e tangi atu nei ki ngā mate tāruru nui o te wā, ngā mate kei roto i a koe o Ngāti Whātua, ki te māreikura a Sharon Hawk kātahi anō ka riro i te wiki kua taha ake nei, otirā ki a koutou i roto i te Tai Rāwhiti, ki te whānau Ngata me ngā mate kei runga i a koutou, otirā tēnei te kawe mai nei i ngā mate kei runga i a au, ki tētahi o aku mātua kēkē i noho hei reo pāorooro roto i te reo irirangi o Te Upoko o te Ika, ko Thomas Curtis tērā kātahi anō ka hinga i ngā rangi tata nei. Koutou katoa i te wāhi ngaro, tau mai ki a mātou e whai māramatanga ai tātou i roto i ngā mahi kei mua i te aroaro i tēnei wiki o tātou. **Greetings to the Tribunal and to everyone who has gathered this morning. I want to echo the acknowledgements to the descendants of Hineāmaru who recited the karakia addressing the hidden realm. And so, with those sentiments of mine, to the hidden realm, we mourn those many deaths currently, those dead of yours Ngāti Whātua, Sharon Hawk who just passed last week and to those of you on the East Coast, to the Ngata whānau and all of the dead**

that you are carrying, and so I want to bring forth my dead also, my uncle who was a radio broadcaster in Wellington, Thomas Curtis also just passed away recently. And so, to those who have passed on to the hidden realm, come forth amongst us so that we can be enlightened as we appear before the Tribunal this week.

Heoi anō, tēnei ka huri ngā mihi ki tēnā, ki tēnā o tātou katoa. Koia tēnei he uri hoki nō Ngāti Tama ki Te Upoko o te Ika. Ko Ngāti Wai tēnei e mihi atu ana ki ōku toronga ki a Ngāti Toa Rangatira, Te Āti Awa, Taranaki whānui, koutou e pupuri tonu nei i te mana o ēnei whenua taurikura ōku, ngā wai Kaukau o Te Whanganui a Tara, nei rā ka mihi. **And so, I want to turn my attention to acknowledge each and every one of us. I am a descendent of Ngāti Tama in Wellington. Ngāti Wai acknowledging my whakapapa links to Ngāti Toa Rangatira, Te Āti Awa, Taranaki whānui who are upholding the mana of these precious lands and the waters of Wellington.**

Otirā, ki a tātou katoa ngā mana, ngā tapu, ngā ihi kua hui tahi mai nei ki te whakapuakina ngā take o te wā, koia tēnei ko te tari o Annette Sykes & Co. Ko Mr Potaka tōku ingoa. Ki taku nei taha ko Ms Manley, otirā ko Ms Sykes, kua tae mai i te rangi nei hei māngai mō ngā kerēme e rua. Ko te kerēme tuatahi ko 3502, he kerēme tēnā nā NZEI, Te Riu Roa. Ka rua, ko te kerēme a Wai 3503, he kerēme nā Ngā Kura ā Iwi o Aotearoa. Tēnei tātou e tae mai i tēnei rā ki te kawe mai nei i ngā take kei te ngutu o tēnā manu e kai ana i te mātauranga i roto i te wao tapu nui a Tāne. **To the mana, tapu, ihi, essential and powerful forces who have come forth to express their views on current issues, and so on behalf of Annette Sykes and Co, my name is Mr Potaka, beside me is Ms Manley and Ms Sykes appearing as counsel for two claims. First claim is 3502, a claim made by NZEI Te Riu Roa. Secondly is a claim by Wai 3503, a claim by Ngā Kura ā Iwi o Aotearoa. And so to everyone, that's why we are present here to convey the issues from the lips from the birds that are consuming knowledge, education.**

Kāti ake, i mua i tā tātou kuhu ki ngā mahi o te rā **nonetheless, before we…**, your Honour, Ms Sykes has something urgent she would like to share with you

before we commence today's proceedings. I'm not sure whether you'd like to speak with her now or after we take further appearances from other counsel present today.

JUDGE MULLINS:

I will take appearances first, Mr Potaka. Tēnā koutou, tēnā koe. **Thank you.** Mōrena, Mr Ferguson. **Good morning, Mr Ferguson.**

(08:41) MR JAMIE FERGUSON: (MIHI, APPEARANCE)

E te Kaiwhakawā me ngā mema o te Rōpū Whakamana i te Tiriti o Waitangi, tēnā koutou. Ko Ferguson taku ingoa. Ko māua ko Mr Gucake, ko Ms Stewart ngā māngai ture mō Te Whakakitenga o Waikato Incorporated. **Your Honour and the members of the Waitangi Tribunal, greetings. My name is Ferguson, appearing alongside Mr Gucake and Ms Stewart, counsel for Te Whakakitenga o Waikato Incorporated.**

Ferguson, Gucake, and Stewart, Ma'am, for Te Whakakitenga o Waikato, an interested party in this inquiry.

JUDGE MULLINS:

Tēnā koe, tēnā koutou. Kia ora. **Thank you, thank you all.**

(08:42) MR HARRY CLATWORTHY: (MIHI, APPEARANCE)

Kia ora. Tēnā koe e te Kaiwhakawā, otirā tēnā koutou te Rōpū Whakamana i te Tiriti o Waitangi. E te kaikarakia, tēnā koe i ō whakatuwhera tō tātou hui i tō tātou hui i te ata nei. Ko Mr Clatworthy tōku ingoa nō te tari o Te Mata Law. Ko ahau anake i tēnei wiki. He uri tēnei ahau nō Tauranga Moana. Kei konei ahau mō te kerēme 3504, he kerēme nā Gazala Maihi mō te PPTA, The Post-Primary Teacher's Association of New Zealand. Kei te whakapiri mātou ki tēnei kaupapa hei te interested party. Tēnā koe. **Greetings. Greetings your Honour and greetings to the Waitangi Tribunal. To the person who recited our karakia, opened our hui this morning, thank you. My name is Mr Clatworthy from Te Mata Law. I am appearing alone. I am a descendant of Tauranga Moana. I am appearing for claim 3504, a claim**

by Gazala Maihi for the PPTA, Post Primary Teacher's Association of New Zealand. We are here as an interested party. Thank you.

JUDGE MULLINS:
Kia ora, tēnā koe.

(08:42) MS GRACE TAYLOR: (MIHI, APPEARANCE)
Tēnā koe e te Kaiwhakawā, koutou hoki te Rōpū Whakamana i te Tiriti, tēnā koutou. Ko Ms Taylor ahau. Kei konei ahau, māua ko Ms Talamaivao, mō te kerēme Wai 2959, the Māori Women's Welfare League. Tēnā koe. **May it please your Honour and the Waitangi Tribunal, greetings. I am Ms Taylor, appearing alongside Ms Talamaivao for the claim Wai 2959. Thank you.**

JUDGE MULLINS:
Kia ora, tēnā kōrua. **Thank you both.**

(08:43) MS DARSHINI DORN: (MIHI, APPEARANCE)
Tēnā koe e te Kaiwhakawā me te Rōpū Whakamana i te Tiriti o Waitangi, tēnā koutou. Ko Ms Dorn ahau. **May it please your Honour and the Waitangi Tribunal, greetings. I am Ms Dorn.** I represent Dr Kenneth Kennedy and Mr Toro Bidois on behalf of themselves and the New Zealand Māori Council for Wai 3428. Tēnā koe. **Thank you.**

JUDGE MULLINS:
Tēnā koe. **Thank you.**

(08:43) DR LIZ GORDON: (MIHI, APPEARANCE)
Tēnā koutou katoa. **Greetings all.** Ms Gordon from Loader Legal. I represent a number of interested parties of whom are Ms Beckmannflay from Northland and her daughter are here today and we're going to listen to the proceedings with great interest. Thank you.

JUDGE MULLINS:

Tēnā koe, tēnā kōrua. Mr Watson, mōrena. **Thank you both. Mr Watson, good morning.**

(08:44) MR JAMES WATSON: (MIHI, APPEARANCE)

Tēnā koe e te Kaiwhakawā. E te Taraipiunara, tēnā koutou. Ko Watson ahau. Kei konei mātou ko Garimella, ko Ewing mō te Karauna. **May it please your Honour and the Tribunal, greetings. I am Watson appearing alongside Garimella and Ewing for the Crown.**

Also in attendance for the Panel's knowledge there's seated in the backrow here is Ellen MacGregor-Reid, the Secretary of Education, Pauline Cleaver the Acting Deputy Secretary Curriculum Centre, Mere-Hēni Simcock Deputy Secretary Māori Education, Andy Jackson Deputy Secretary Policy, Rich Hollis Pou Ārahi, and other officials, so I just wanted to bring that to your Honour's and the panel's attention as well. Thank you.

JUDGE MULLINS:

Tēnā koe, tēnā koutou. **Thank you, thank you.** Did you bring a pou ārahi with you? I'm just saying, if you wanted to, feel free to have your Pou Ārahi sitting with your counsel table, but kei a koutou te tikanga **that's up to you**. It's up to you. Ka pai. **Okay.**

So there are a few things that I just wanted to touch on before we get into proceedings today. The first one – aroha mai **sorry**, there's people online. Sorry. Mr Hakaraia Richards Coxhead, tēnā koe.

(08:45) MR HAKARAIA RICHARDS-COXHEAD: (MIHI, APPEARANCE)

Kia ora. Kia ora tātou. E tautoko ana au i ngā mihi kua mihia i ngā tini āhuatanga o te wā, mihi ana tēnei uri nō Ngāti Pikiao, Ngāti Mākino, Te Whānau a Apanui, Waikato-Tainui hoki. E te Kaiwhakawā, e te Rōpū Whakamana i te Tiriti o Waitangi, tēnā koutou. Ko Mr Richards-Coxhead ahau. Kei konei ahau hei māngai mō ngā kaikerēme o ngā kerēme 1456 me te kerēme 2332, ā, e whakapiri ana ki tēnei kaupapa hei interested party. Nō

reira tēnā tātou. **Greetings. Greetings all. I endorse the acknowledgements that have been made in terms of the many circumstances currently. I am descendant of Ngāti Pikiao, Ngāti Mākino, Te Whānau a Apanui, Waikato-Tainui. Your Honour, the Waitangi Tribunal, greetings. I am Mr Richards-Coxhead appearing as counsel for the claimants, claims 1456, claim 2332, and we are here as an interested party, and so thank you all.**

JUDGE MULLINS:

Tēnā koe. Aroha mai, Mr Richards-Coxhead. Ko wai atu? Kāo. **Thank you. Apologies, Mr Richards-Coxhead. Anyone else? No.** Okay.

HOUSEKEEPING – HEALTH AND SAFETY, MEDIA MEMORANDUM (08:46:42)

JUDGE MULLINS:

Before I get to you, Ms Sykes, which I suspect has something to do with the memo, I just wanted to touch briefly, and perhaps for you, Mr Watson, on your whakaaro in terms of the scope of the inquiry. Some of the evidence has touched on things that are not technically in scope. If I use some examples, issues around Te Ahu o te Reo funding, the issues around appointment to the Teaching Council, and I suspect that is evidence of context from within which we sit. I mean, the Crown, you haven't raised that and I'm just wondering if there is any comments or any views you have on that at this point.

MR WATSON:

Thank you, your Honour. It's an important thing to talk about. If I were to make an observation, if we think about education or the issues that are clearly within the scope of the inquiry, they have a number of dimensions but there's a very important dimension which your Honour has touched on and that is time. So, I do – one of the Crown's observations about scope is that within this hearing there's limited time to engage with issues and the Tribunal has set the scope of the issues accordingly. The Crown's evidence has been directed to those issues as they've been set. And so, in a sense, I think those factors, those

more practical constraints might drive what the panel feels it can and cannot engage with, and that's my take on that, your Honour.

JUDGE MULLINS:

Okay. The other thing was, and well it is a question I think the Tribunal are going to put at least to the first witnesses and possibly other ones because there is different understandings amongst the panel as to what exactly Te Mātaiaho encompasses. Is it, and it is probably a question best put to the first witnesses, but just so that you can understand the differences of whakaaro that the Tribunal have, Te Mātaiaho, is it the framework from within which the New Zealand Curriculum and Te Marautanga o Aotearoa sit? Or is it the New Zealand Curriculum on its own and Te Marautanga o Aotearoa is something quite different? There are different understandings on the panel as to exactly what that is. And the reason that I raise it, Mr Watson, is because if Te Mātaiaho is simply the New Zealand Curriculum then we have got a bit of evidence in and around Te Marautanga o Aotearoa and so therefore, it could potentially be a scope issue. Just sort of laying that out now so that some of the fleshing out that we're wanting to with some of those witnesses, including the Crown witnesses, on that topic. Now, Ms Sykes.

(08:52) MS SYKES: (PROCEDURAL MATTERS)

May it please the Tribunal. Ka huri au ki tērā o ngā reo nā te mea nā te ture he whakararuraru te whakahaere o tēnei kaupapa, i ōku nei whakaaro. **I will turn to the other language because the law has undermined the organisation of this matter in my opinion.**

I came late to Wellington yesterday afternoon. I left Rotorua at 6.00 pm and I got here at 8.00 pm. There was a significant document filed before this Tribunal at 5.47 pm. I wish to address that matter because I am not satisfied with your Honour's direction that we differ this to a judicial conference because I believe without undertakings from the Crown there may be a process in play that we are unaware of that may render this hearing nugatory.

I wish to also provide to the Tribunal information that was provided in another commission of inquiry, Waitangi Tribunal hearing in the urgency Climate Change hearing which was filed by three Crown counsel led by Mr Nixon Fong. It shows in that document which I have available for distribution which I think the Tribunal must be seized of that there was a Cabinet minute made much earlier than the 30th of March that sets out quite significantly the kind of approaches that Cabinet had approved in terms of both the Treaty principles deletion and the ongoing review of the Treaty Principles Review process which indirectly, I believe, is impacting on Issue 1.

My biggest concern isn't so much the way it's impacted, I believe the Crown today and last night has shirked in their duty of candour to this Tribunal. I want to actually put this on the record. The duty of candour in the context of Waitangi Tribunal refers to the expectation akin to that in judicial review proceedings that the Crown as a respondent will proactively disclose all relevant facts and evidence rather than fighting the claim like traditional adversarial litigation. This principle requires the Crown, in my view, to lay all the cards faced upwards on the table. Key aspects of this duty regarding the Tribunal include frank disclosure.

After the memorandum and the amendment to the annexture which was redacted and now unredacted, I believe that the Crown has not made frank disclosure in a timely manner to this Tribunal. The Crown is expected to voluntarily disclose relevant information and give a frank account of its actions, rather than presenting a selective version of facts.

The goal is to allow the Tribunal to properly examine the Acts and policies of the Crown to determine compliance with te Tiriti o Waitangi principles.

While the Tribunal can instruct parties to produce evidence which you did in this inquiry, it generally operates on the basis that the Crown observes this duty making, for example, the summoning of a minister for cross-examination extraordinary or highly unusual.

The duty does not require violating fundamental constitutional principles such as Cabinet confidentiality or collective responsibility. Yet, I have a Cabinet minute produced in another Waitangi Tribunal inquiry dated February, which has not been produced to this inquiry – I have copies of it – which was provided by other Crown counsel because they thought in the Climate Change that we should be aware of what was happening in the greater context of Treaty principles' removal, adaptation or manipulation.

I say that the failure to comply with the duty of candour can lead to adverse findings in this Tribunal and I will be seeking them, unless we have two undertakings from the Crown in light of the information that they brought yesterday. I think notwithstanding those undertakings the drawing of negative inferences and reputational damage is something that we should also be cognisant of.

The duty of candour is critical because the Tribunal often relies on the Crown to provide crucial documentation about why certain policies were made, are being made, are being adapted, particularly when those policies allege to breach Treaty principles.

I believe the conduct of the Crown in failing to give the same Cabinet minute, which is Cabinet Minute 26, to this Tribunal, that another Tribunal is seized of in Urgency Climate Change. That was filed with them. It's a document, a Cabinet document dated 23 February falls into that category.

What is more alarming is that that document is fundamentally referred to in the 16-page document that we got served last night, again, late, which sets out the Ministry of Education response to these broader issues that I'm raising.

I am seeking from the Crown today in light of their information shared to us that a bill is expected, that they will give an undertaking by lunch time today from the Minister who obviously asked them to file papers last night to keep this Tribunal seized of certain matters, that they will not introduce a bill until this Tribunal has reported.

This is not an unusual course of action. It was done in the Fisheries case when we were looking at the introduction of the quota management system. It's done in significant cases where the totality of the New Zealand population will be impacted by Crown action, policy and omission.

This is one of the most significant decisions before our country and it is one of the most significant decisions for mokopuna tamariki Māori that we face given the significant transformation that has occurred with the advent of the Māori Language struggle, the introduction of Kōhanga Reo, Kura Kaupapa, Wharekura, and now efforts by this government to take away a fundamental underlying plank of those matters.

I don't believe that you can proceed unless we have some ideas about this because it is not satisfactory to commence a hearing in the absence of knowing whether in fact your report will be rendered nugatory by virtue of the fact that this Crown may introduce legislation which makes our exercise here today a waste of time. Those are my submissions.

(08:59) JUDGE MULLINS TO MS SYKES:

Q. Ka pai. Just to summarise, Ms Sykes, you are asking for two undertakings from the Crown?

A. Yes.

Q. So, just to summarise those again?

A. The first undertaking is that all information will be disclosed to us that is relevant and pertinent, and I have Cabinet Minute 26 here which refers to other information that is not before this Tribunal. I wish to actually put that on the Tribunal. Maybe not in a public way. There are several ways that we could've fashioned disclosure of Cabinet information, and it has been done previously. There would've been a version given only to the Tribunal that could be viewed by counsel or not, or viewed by someone appointed on counsel's behalf to give us the veracity of the documents. So, all information, a full, free and frank disclosure as soon as practicable.

In its memorandum my friend suggested that we should be given the opportunity to reply to that new information by the 28th of April. My biggest concern is there is also in the material a suggestion that the Treaty review process may be reported on and we don't know whether in fact there will be a bill that will follow that that would render today's actions nugatory. That's why I'm asking for that full disclosure.

The second thing is that they will give an undertaking. That they will not introduce a bill that will impact on this nature and scope of this hearing until this Tribunal has reported. And I say that in light of – I didn't like your comment, I have to be quite frank, Ma'am, to suggest kei te pai we will carry on and we will do everything. Well, we have significant numbers of school teachers here of the kura here who don't want to be a kei te pai. We want to actually know what is the adversary that we are facing. What is the change that we are confronting. Not something that might be utilised as really a sop for what the Crown is doing.

And this is how much interest is here – we have 30 people that have travelled here from the NZEI. They have done this during their school holidays, their down time, to meet the urgency of this, and we are not being respected. Mutual respect is one of the underpinning principles of te Tiriti, and what we are seeing from the Crown is candid disrespect both to your panel and to us that are here today. That should not be countenanced.

Q. Kia ora. Tēnā koe, Ms Sykes.

(09:01) DR SEASON-MARY DOWNS: (PROCEDURAL MATTERS)

Tēnā koe, Ma'am. Can I just make one point? Ms Hita did, upon the grant of the application, reach out to the Crown in relation to discoverable documents and asked for any to be produced that were relevant, so that request had been before the Crown for a significant period of time.

In addition to that just to support Ms Sykes' submission and to note in other inquiries the Crown has provided regular updates in relation to timing of Cabinet decisions.

JUDGE MULLINS:

Tēnā koe. Mr Watson.

(09:02) MR WATSON: (PROCEDURAL MATTERS)

Thank you, your Honour, and thank you to my friends for raising this point, it's an important thing to discuss obviously. I just want to make a couple of observations about some of the process issues that my friends have referred to. Officials and Crown counsel worked very hard to take the steps necessary to put this information that's contained in the memorandum before the Tribunal before the hearing started. I can honestly say it's been a source of almost sleepless nights for us because we were very conscious of the duty of candour that my learned friend Ms Sykes mentioned and did not want this Tribunal to proceed without knowing what the information that is contained in the memorandum.

That required engagement at senior levels among Justice officials, officials from the Ministry of Justice and their Minister to get the approval to put this memorandum before the Tribunal. That did take time but I do regret that it took as much time as it did and that it came in at the moment in time that it did. So I want to acknowledge the points made by Ms Sykes and I do want to say no disrespect was intended and that from our side we worked very hard to provide the information we had.

The other point I want to make is that after receiving the Tribunal's, your Honour's response by way of email through the registry we immediately took steps to urgently start the process of getting the approvals needed to file any relevant Cabinet material. That process is in train and obviously not with us but other Crown counsel, other officials are taking carriage of that. So, that's what I can say and I will actively be seeking updates on that and will update the Tribunal accordingly. So in terms of the process that's all I can really say.

The suggestion of undertakings, obviously I have no instructions on that and I can't take that any further at this moment in time but certainly I will reflect on those points and uptake the Tribunal I think as soon as I can.

(09:05) JUDGE MULLINS TO MR WATSON:

Q. Ms Sykes has raised earlier Cabinet papers that have been filed in other Tribunals –

MS SYKES:

I have them here if your Honour wants them. I have copies of the memorandum and that Cabinet paper here.

JUDGE MULLINS TO MR WATSON: (CONTINUES)

Q. Ka pai. That would have been of assistance to the Tribunal.

A. I understand the point. I think even within those my understanding and I am speaking off the top of my head here so I want to caveat with that is because it's an important issue I want to be accurate, but my understanding is that counsel involved in those inquiries were engaging with different agencies and had to go through an equivalent process that I had understood only culminated very recently, but I would differ to my friend on that because I don't have all the information in terms of providing material to the Tribunal. So I think other, which is my way of saying other counsel or other officials have also had to engage in really consistent effort which involved engagement with ministers as well to try to put the information before the Tribunal, and I think that's all I can say on that, your Honour.

Q. And so, in terms of the timing of any introduction of the bill to the house?

A. I think my only information on that is what I've recorded at six of the memorandum we filed I think it was yesterday morning in fact, and that says that counsel are instructed that on current timelines it is intended that a bill implementing the amendments summarised above will be introduced as Parliamentary term, however those timelines are subject to change, and I have nothing further to add to that.

Q. Okay because the Tribunal have been here before. I am thinking of Te Aka Whai Ora **Māori Health Authority** when that introduction came in.

A. I understand.

Q. And so, you can understand why claimants are feeling the way they are feeling.

A. Absolutely. I don't want to diminish or invalidate those feelings in any way with my comments but I feel I have to provide something by way of explanation te explain how we are where we are in terms of the timing.

Q. And so, being able to take instructions on being able to provide all the relevant information.

A. Yes, we're treating that as a matter of urgency.

Q. So when will you be able to have an update to the Tribunal on that?

A. I can't honestly at this moment in time say, but what I can say is that we have got your Honour's email last night. Immediately took steps last night to urgently put ourselves in a position where we can provide that documentation. As of this morning, as of right now I don't have a substantive update but as I said earlier I will be actively seeking updates and actively providing them to your Honour accordingly.

Q. Okay, and just what Dr Downs said that they had requested disclosure I think from the end of last year.

A. Yes your Honour I didn't have carriage of this file at that moment in time so again I'm reluctant to speak off the top of my head. From when I've had carriage of the file one characteristic of this urgency is it's been very urgent and that –

Q. For obvious reason.

A. For obvious reasons and that's – yes, for obvious reasons your Honour in a sense that that makes it hard, that does make it hard in terms of ensuring that everything is before the Tribunal. We've done our very best but that might be a reflection of the urgent dimension to this inquiry. I want to emphasise one thing in case I have not made it clear that the Treaty Clause Review is under the rubric of the Ministry of Justice and the Minister of Justice, not the Ministry of Education, and I just think that's a really important distinction from the Crown's perspective, from the Ministry's perspective and a number of them are here, that it's not a policy process that they have control of and I just wanted to make that clear for the Tribunal's benefit and because I know it's important to the Ministry.

Q. And I'm sure that claimants and counsel understand that but as it impacts on the Education Act it is very relevant.

A. Completely understood, your Honour.

Q. So, I'm going to push you a bit further on that, Mr Watson. So when you're taking instructions under urgency and giving substantive updates when you can, so if I ask you after lunch you will have an update?

A. I will have an update. The nature and substance of that update I can't say at this point but I will have an update, your Honour.

Q. Okay. Thank you.

(09:10) MS SYKES:

(mic off 09:10:13)… to my friend on one matter. The distinction between the Ministry of Education and the Ministry of Justice is nugatory. It was a Cabinet decision. It's irrelevant. The Cabinet made some clear directions about matters which would impact both the Justice department, the Education department, all departments that were involved. So I don't think the distinction that he makes is relevant.

(09:10) JUDGE MULLINS:

Kia ora. Thank you, Ms Sykes. I just want to respond in a way to Ms Sykes' comments. I wasn't being flippant or not taking into account the mamae or the taumahatanga **hurt or burden** that many of you are feeling as a result of the memo that was filed by the Crown yesterday, my point was that we only just received it too and as a Tribunal we need to be able to reflect on that as well. We have come here to hear evidence and submissions on the issues before the Tribunal and at this juncture we're going to continue to do that while at the same time we are going to, as a panel, to continue to think on how we can respond and progress from here at the same time while the Crown takes instructions on what they are going to provide to the Tribunal moving forward. I runga i tēnā, **with that**, I will pass it over to Tūkau Law to open and call your first witness.

(09:12) MS CHELSEA TEREI-TIPENE: (#3.3.006)

Tēnā koe e te Kaiwhakawā, otirā tēnā koutou ki ngā mema o te Rōpū Whakamana i te Tiriti. **Thank you your Honour and greetings to the members of the Waitangi Tribunal.**

Our opening submissions filed on behalf of Te Kapotai and Ngāti Hine can be found at appellation #3.3.6. I am going to assume that you have read them and I can take the approach of speaking to them rather than reading them out. My intention is to highlight the key points in that submission as well as some additional comments throughout as we've prepared for the hearing today.

Before I make a start in the written submission itself I wanted to make two preliminary points. The first is to take the opportunity to acknowledge the many claimant and interested party witnesses who gave time amongst what I'm sure is very busy, professional and personal lives to give evidence on the issues before this Tribunal. Whether they are presenting today or not, because we are short on time we don't get to hear from all of them, it doesn't detract away from their contribution to the inquiry and in our view it's demonstrable of the depth of their concerns and the commitment that they have to the Education sector that works as much for Māori as it does for everyone else.

The second is noting the importance of the wider contextual landscape that this inquiry sits in relation to the Education sector, and it's already been mentioned this morning. And although this inquiry is looking specifically at the removal of section 127(1)(d) from the Education and Training Act and the changes to the New Zealand Curriculum, these matters have come after a plethora of changes in the Education sector, after the removal of te Reo from early readers, it's after funding cuts to Te Ahu o te Reo, after cutting funding for Māori teacher professional development programmes and after the disestablishment of resourcing teachers in Māori roles.

So, suffice to say the claimants, the witnesses and Māori are concerned about what is happening in the Education space and why this inquiry provides a unique opportunity for the Tribunal to hear their voices and make findings and recommendations that could contribute to system reform.

REFERS TO OPENING SUBMISSIONS, #3.3.006

Picking up at my page 1, paragraph 1.1, the reason that Te Kapotai and Ngāti Hine have come to the Tribunal is because they are concerned by the Crown's

unilateral decision making to deprioritise and remove te Tiriti from legislation, and te reo Māori, tikanga, mātauranga and Aotearoa histories from the curriculum.

From their perspective, an education system can be both culturally safe and focus on educational outcomes. It does not have to be one or the other. And as far as they are concerned, te Tiriti can provide the foundations for that system.

The Crown's view on the other hand appears to be the opposite where educational achievement is the paramount objective and presumably te Tiriti is seen to be in conflict or a distraction from that objective. In such circumstances the claimants say the Crown is dismissive of Māori and te Tiriti and its value.

Over the page from my paragraph 2 onwards, we provide an overview of the issues and facts as they relate to the Crown's removal of section 127(1)(d) and the proposed changes to the curriculum.

The key things to highlight in this section are the impacts of the decision making that has taken place. In respect of the removal of section 127(1)(d) at my paragraph 2.5, there is now no explicit statutory direction to give effect to te Tiriti, meaning Māori perspectives in the governance and curriculum of schools becomes optional and invisibilised.

In respect of the curriculum at my paragraph 2.13, the impact is that the curriculum has been designed without Māori which gives rise to a culturally unsafe learning environment for Māori learners, their teachers and leaders.

Coming into my paragraph 3 onwards, we provide an initial Treaty framework for the Tribunal's consideration. We ask that you focus on the standards and duties required of the Crown to give effect to the rights of Māori in the Education sector.

Our overarching submission in this respect is that where an applicable Treaty principle and standard is identified the Crown falls well short of that standard.

Per my paragraph 3.3, we say that the appropriate starting point is Article II, and the Crown's duties to foster tino rangatiratanga and ensure its laws and policies are just, fair and equitable, and give effect to treaty rights and guarantees.

We submit that the Crown's decision making including but not limited to, especially in light of the memo that was filed yesterday, the removal of section 127(1)(d) and the curriculum changes currently on foot are very much out of step with its obligations under Article II where there has been no provision for meaningful Māori engagement, input or influence.

Partnership is the next key principle that we identify at paragraph 3.6, of which the Tribunal has said:

> …in the spirit of partnership, the Crown has a duty to engage with Māori (rather than merely consult) on how it should recognise rangatiratanga and … the Crown is obliged to include Māori in decision making around the operation of law in Māori communities, or in cases where Māori are impacted.

If the threshold is to engage, not merely consult, and participation and decision making, then again the Crown has fallen short. It has fallen short where legislative changes were made in the 11th hour that impact Māori learners and leaders in the education, and their experiences in the education space and the New Zealand Curriculum where it was rewritten prior to seeking their input.

From a different perspective, if we were to apply the Crown witnesses' articulation of partnership in Ms MacGregor-Reid's evidence where the Crown and Māori are to act in good faith reasonably and honourable with mutual respect and a shared commitment to addressing Māori education interest and outcomes, I mean, I might be getting a little bit long in the tooth here but it's

difficult to see how that standard has been met. To act in good faith, honourably, with respect, when the evidence of both the claimants and the Crown itself shows the opposite. For example, no consultation as acknowledged by the Crown. It serves to show however you look at it, the Crown has failed to meet its Treaty obligations.

I think the point has been made, but the same applies to the other key principles in the Treat section of our submissions, namely the Article III guarantees of equity and equal treatment discussed at my paragraph 3.7. Here, the Tribunal have said in its provision for equity, the Crown is to ensure that measures are developed and implemented in partnership with Māori and are both culturally and legally appropriate.

In this context, the principles of equity is particularly relevant where the claimant witnesses have identified and speak to institutional racism, inconsistency across the system, alienation of Māori learners, and limitations to achieving equitable outcomes for Māori learners.

We ask that the Tribunal consider this initial framework when thinking about the issues and the evidence that's going to come across the next couple of days, and we will provide a fuller Treaty framework for your consideration as we come into closings once we've heard all of the witnesses.

At my paragraph 4, we arrive at the evidence. As outlined at 4.1, our approach to the evidence supporting these claims was to try and get a cross-section of experts, including pou tikanga, sector leadership and peak bodies, specific expertise in subject areas and grassroots on the ground educators who speak to what's happening in the education sector and the issues affecting Māori.

I make particular note of the tribal leadership evidence provided by Waihoroi Shortland, Whaea Moe Milne who is here this morning, and Kara George. Although they are not being heard in person, their evidence is the foundation of these claims and the starting point for understanding the relevance of te Tiriti to the education space and the issues before this Tribunal.

So what is important at this part of the process? Where should we be focussing? It is our submission that particular attention should be paid to the difference in perspectives between the claimants and the Crown as to the manner and reasons, the how and why for the changes that are happening in the education space.

A read of the Record of Inquiry document shows what we would characterise as inconsistencies in the Crown's case. For example, where the Crown says active protection requires the Crown to take positive steps to protect Māori rights and interests in education, including taonga such as te reo Māori, mātauranga Māori **Māori knowledge**, and equitable access to educational opportunity and success, the claimants' evidence shows te reo Māori and mātauranga Māori being reduced or removed, tokenistic, marginalised in draft curriculum documents.

Another example is where Crown witnesses speak of collaborative work for the sector and wanting to build on and evolve from prior work rather than starting again on a blank page. Whereas the claimant evidence says the curriculum was a complete rewrite and nothing like the original curriculum.

There is also the Crown's opening submissions at paragraph 10 where it says that the two policies before the Tribunal today must be seen in its proper context, including broader legislative context provided by the Education and Training Act as a whole. And in respect of section 127, at paragraph 21, that the Crown's evidence will be that they did not aim to dilute the Crown's Treaty obligations in this area in any way.

This appears to be inconsistent with the memorandum filed yesterday along with the now unredacted annexture to Mr Jackson's evidence where it is clear that discussions had been ongoing to reduce or remove te Tiriti standards from the Education and Training Act. There's differences and inconsistencies between what the claimants and the Crown say and what the Crown itself is

saying in its submissions and evidence, and it's here that we suggest the Tribunal focus.

Finally, when determining the claims and considering recommendations, we respectfully submit that the way forward needs to include engagement with Māori and sector leaders to restore te Tiriti in legislation, te Tiriti in the curriculum and the relationship with the Crown. Nā reira, tēnei te mihi ki a koutou. **And so, thank you all.**

JUDGE MULLINS:

Kia ora. Tēnā koe, Mrs Tipene. Now is probably a good time to take our wā whakatā **short break**, but i mua i tērā kātahi anō au ka kite i a koe e Moe, nō reira e te māreikura tēnei au ka mihi **before that, I have just seen you Moe, so to the accomplished woman, thank you, greetings**.

HEARING ADJOURNS: 9.25 AM

HEARING RESUMES: 9.30 AM

JUDGE MULLINS:

Ka tīmata anō tātou. Kia ora, Mrs Tipene. **We will recommence. Thank you, Mrs Tipene.**

(09:31) MRS TEREI-TIPENE: (CALLS)

Very much married, Ma'am. Kia ora anō. **Greetings again.** It is a privilege to be seated beside and be leading out our next witnesses. Such is the nature of the work that we do that we sometimes meet our witnesses on the morning of a hearing which is today, but nonetheless have had numerous Zoom calls at all times of the day to get to where we are today, and I think that that demonstrates the commitment that our witnesses have to this kaupapa and my honour to be leading these witnesses this morning.

Mr Jepson and Dr Ford's evidence can be found at appellation #A4 which was their first evidence that was filed, and #A4(a). I don't intend to lead them, they

are going to lead themselves, and I will hand over the mic to them. Kia ora, Ma'am. **Thank you, Ma'am.**

JUDGE MULLINS:

Kia ora. Tēnā kōrua. **Thank you. Greetings to you both.**

(09:31) BRUCE JEPSEN: (MIHI)

Mauri ora e te whare. Ko Bruce Jepsen tōku ingoa. He uri ahau nō Ngāti Tūwharetoa rāua Ngāti Raukawa. **Greetings to the house. My name is Bruce Jepsen. I am from Ngāti Tūwharetoa and Ngāti Raukawa.** I am Tūwharetoa, I'm Ngāti Raukawa. I am the CEO of Te Akatea with over 20 years educational leadership experience as a tumuaki **principal**. I've worked primary, secondary school settings, including rural and urban.

(09:32) THERESE FORD: (MIHI)

Kia ora koutou katoa. He uri ahau nō Muriwhenua, Ngāi Takoto, Ngāti Kahu, Ngāpuhi ōku iwi. Ko Waimanoni tōku marae. Ko Therese Ford ahau. **Greetings everyone. I am a descendant of Muriwhenua, Ngāi Takoto, Ngāti Kahu, Ngāpuhi are my iwi. Waimanoni is my marae. My name is Therese Ford.**

My name is Therese and I am the national director of Te Akatea, Huia Kaimanawa. I have over 30 years of education experience across primary schools, secondary schools and tertiary settings. Kia ora koutou. **Thank you.**

(09:32) BRUCE JEPSEN: (#A004, #A004(a))

Te Akatea was established over 30 years ago and is a collective of Māori educators comprising iwi leaders, tumuaki, principals, deputy principals, associate principals, senior teachers, heads of department, deans, education researchers and teachers in early childhood, primary, secondary, tertiary settings.

This is a group of hundreds of Māori educators from across Aotearoa who are committed to te Tiriti o Waitangi and advancing Māori educational success.

Between all of us we hold centuries of combined experience leading in Kura Kaupapa Māori, Māori Medium, and English Medium schools. Most of our members work in English Medium schools, where 97% of Māori learners are educated.

(09:33) THERESE FORD: (#A004, #A004(a))

Our network of tāngata Tiriti, non-Māori allies, who seek to protect and advance te Tiriti o Waitangi in education is extensive. We support and draw support from the primary, secondary and tertiary unions, secondary school subject associations, early childhood organisations and primary and secondary school principal collectives.

We interface with Māori and non-Māori organisations that represents thousands across all levels of education. These mutually re-enforcing relationships provide us with a unique and comprehensive macro and micro view of the curriculum and the education system as a whole.

BRUCE JEPSEN: (CONTINUES)

We're going to outline our position. We acknowledge that this inquiry is concerned with issues associated with the Education and Training Amendment Act, specifically removal from section 127(1)(d) and the proposed New Zealand Curriculum 2025.

From the outset, we want to clarify our position regarding the second kaupapa of this hearing which a proposed New Zealand Curriculum 2025. We will not refer to it as Te Mātaiaho.

THERESE FORD: (CONTINUES)

We were both part of the Ministry of Education's core working group responsible for ensuring that there was coherence in the way the bicultural and inclusive framework was developed and interpreted. So we intimately know the whakapapa that underpinned the original 2023 Te Mātaiaho document.

We recognise the significant opportunity we had to be part of curriculum redevelopment from inception because this was high stakes for our tamariki Māori and for other groups of minority students.

Evidence across decades showed that the New Zealand Curriculum had been far from bicultural and inclusive. It had in fact consolidated colonisation, embedded and enabled racism, and perpetuated inequity. We wanted to contribute to the co-construction of a refreshed curriculum that was the antithesis of what had been. We wanted a curriculum that was decolonising in nature, intentionally anti-racist, and genuinely equity focussed. We still want a curriculum and an education system that reflects these principles.

BRUCE JEPSEN: (CONTINUES)

We were both in the whare when these ideas for a decolonising anti-racist and equity focussed curriculum were being tasted and tested. We know what was said and we know who said what. The whakapapa was collaboratively co-constructed by several esteemed Māori leaders including Dr Wayne Ngata. Dr Wayne Ngata drew from that collaborative theorising and gifted the name Te Mātaiaho to the curriculum refresh document that we were part of developing.

He did not gift the name Te Mātaiaho to the proposed New Zealand Curriculum 2025 document. That document does not accurately reflect the whakapapa of the original Te Mātaiaho. For this reason, we and the members of the core working group that we were part of do not call the proposed New Zealand Curriculum 2025 Te Mātaiaho.

THERESE FORD: (CONTINUES)

We see the removal of section 127(1)(d), the requirement for boards to give effect to te Tiriti o Waitangi, and the changes that have characterised the shifts between Te Mātaiaho 2023 and the recently released Draft New Zealand Curriculum 2025 as being closely interrelated. These were determined actions to deprioritise the status of te Tiriti o Waitangi in education and effectively recolonise the entire system.

These two actions have played out within a wider pattern of similar actions that seek to erase te reo, tikanga, mātauranga Māori **Māori knowledge**, and marginalise Māori histories and contemporary Māori experiences.

As also mentioned in our second affidavit, the recolonisation of the New Zealand Curriculum is part of realising a primary goal of Elizabeth Rata who was a Ministry advisor and lead writer on the current curriculum draft.

BRUCE JEPSEN: (CONTINUES)

Elizabeth Rata specifically articulated to the Minister of Education her aspiration to end decolonisation success. Why an education advisor would want to end the success of a process that is focussed on achieving social justice, recognises indigenous human rights and ultimately seeks to heal intergenerational trauma confuses us. What is of most concern however is that the advice that has been taken on board and enacted through multiple removals that we have observed over the past three years.

THERESE FORD: (CONTINUES)

In 2024, cultural capabilities, local curriculum design, mātauranga Māori and te reo Māori were removed from the Ministry funded professional learning development priorities. This meant that support for teachers to respond to cultural diversity and teaching ways that were inclusive and that uphold te Tiriti was deprioritised. $30 million worth of funding to learn te reo Māori was removed when Te Ahu o te Reo Māori was discontinued, despite the positive results that it was showing for te reo revitalisation and the naturalisation of reo in schools.

The Minister of Education also initiated a rewrite of Aotearoa New Zealand Histories curriculum in 2024, which resulted in a significant reduction in the focus on power and colonisation, which effectively sanitised Māori histories. Each of these changes were detrimental individually, but for them to happen within the space of a year was astounding for Māori and non-Māori who are committed to te Tiriti. It was difficult to comprehend that more would be removed and that things would get worse, but in 2025 they did.

BRUCE JEPSEN: (CONTINUES)

I call 2025 the big year of erosion. Resource teachers of Māori who support Māori language acquisition were removed. The National Education Learning Priorities or NELPs which required educators to ensure that schools and classrooms are places of learning that are safe, that are inclusive, that are free from racism, discrimination and bullying were removed. The removal the National Education Learning Priorities also removed the requirement that educators reduced barriers for all, including for Māori, for Pasifika learners, for disabled learners and those with learning support needs.

The Teaching Council is a statutory body for the teaching profession in New Zealand, Aotearoa. From 2022 to 2025 its governing council reflected a genuine te Tiriti partnership with ministerial appointments split equally between three Māori and three non-Māori members. However, for the 2025-2027 term, the three Māori representatives were dismissed and we are unclear about whether or not any of the six ministerial appointees are Māori at all.

The Ministry of Education made headlines in August by withdrawing the junior reader at the marae because the Minister deemed its six Māori words confusing. The book was a vital tool for 97% of Māori students in English Medium schools. Regularly taking Māori language and identity into their homes of peers, parents and grandparents by reducing it to a big book for classroom use only. The Ministry has effectively eroded a key resource for re-enforcing Māori culture and language in daily life.

In November, the Ministry of Education announced the removal of section 127(1)(d) which is the requirement of boards to give effect to te Tiriti o Waitangi. The devastating impact of this decision will be discussed in the impact section of our presentation.

THERESE FORD: (CONTINUES)

So far, in 2026, the Ministry of Education has discontinued the Māori Education Collaborative, more commonly known as the MEC. For 13 years, this initiative has provided professional development to over 448 participating schools. This

important work supported Māori and non-Māori principal leaders to better understand and give effect to te Tiriti.

Earlier this month, after four years of success, the Māori First Time Principals Programme and Māori Emerging Leaders Programme also known as Huia Kaimanawa were discontinued. These programmes were equity initiatives that provided over 200 Māori leaders with tailored support to lead as Māori from the foundation of te Tiriti o Waitangi and in relationship with hapū and iwi.

BRUCE JEPSEN: (CONTINUES)

Speaking with the Tribunal today provides us with an opportunity to share the impacts of that removal of section 127(1)(d) without consultation with Māori and the recolonisation of the New Zealand Curriculum and the impacts it's had on our people that we represent today.

We have sought feedback from our members and from our allies. The most prominent and concerning impact shared by leaders has been the escalation of racism and the immediate shift in the social and professional climate of our schools. Leaders explicitly state that racism is increasing. The removal of te Tiriti protections is viewed as providing an opportunity to say things out loud that challenge and diminish Māori presence and authority.

A highly effective principal I know was recently referred to as an 'f'ing N word' by a parent in a board meeting. The presiding member dismissed this as going hand in hand with the role. I don't know of any Pākehā ever being called the N word.

THERESE FORD: (CONTINUES)

A related impact has been the hostile environment that has been created for Māori under constant pressure to reassert themselves against a system that no longer sees the need to recognise Māori language, culture or identity. Consequently, Māori teachers and whānau report feeling heightened feelings of being unsupported and unsafe when advocating for kaupapa Māori approaches.

BRUCE JEPSEN: (CONTINUES)

The sidelining of Mātauranga Māori within both English and Māori Medium learning spaces has been another serious impact. For example, we see Western theories taking precedence over mātauranga Māori in our indigenous curriculum using te reo Māori translations to disguise it.

THERESE FORD: (CONTINUES)

The recolonisation of the national curriculum is another impact that our leaders have noticed. They identify the changes in the proposed curriculum as a deliberate move to marginalise Māori intelligence and history. Leaders question the political imposition of a knowledge rich or science of learning model, asking whose knowledge is being pushed on us. Our people view the knowledge rich rhetoric as a tool to displace mātauranga Māori knowledge systems.

BRUCE JEPSEN: (CONTINUES)

Our leaders are devastated by the erosion of identity mandate and accountability. The removal of the legislative requirement to give effect to te Tiriti has stripped schools of their formal protection to the point that te Tiriti is optional.

THERESE FORD: (CONTINUES)

Lastly, the cumulative weight of these changes is causing a crisis of faith amongst Māori educators. There is an increasing tension for teachers to choose between government requirements and what they know works for the tamariki right in front of them.

Highly skilled and dedicated leaders are now questioning their place in this system, expressing deep concern that they can no longer work safely or effectively within a system moving in this direction.

BRUCE JEPSEN: (CONTINUES)

Our recommendations for the Tribunal. Speaking with the Tribunal today also provides us with an opportunity to hear the recommendations of our members and allies that we'd like you to consider.

We recommend the immediate re-instatement of section 127 so that boards are again required to give effect to te Tiriti o Waitangi. The grey area must be removed because it should never be a case of you can give effect if you want to.

THERESE FORD: (CONTINUES)

We recommend that a process be established that goes beyond consultation and requires the Crown to engage with Māori leadership collectives, including iwi, before they change any Acts or curriculum.

BRUCE JEPSEN: (CONTINUES)

We recommend that a process be established to protect the curriculum from recolonisation. Te Tiriti must be a foundational and directive principle of any national curriculum. It must be protected as the core heart of learning to prevent it from being reduced to a tokenistic superficial surface tick box exercise.

THERESE FORD: (CONTINUES)

In closing, these recommendations speak to the importance of returning to education reforms that enable rather than end decolonisation success so that our system is intentionally anti-racist and genuinely equity focussed.

BRUCE JEPSEN: (CONTINUES)

As outlined in the opening statements of Te Mātaiaho 2023, te Tiriti sets our mutual obligations for the Crown and Māori that guide how tangata tiriti and tangata whenua can live together with mutual respect. It speaks to our unique identity as a South Pacific nation and ultimately a covenant of care and hope that should never be feared or removed in any system in Aotearoa.

We owe it to all of our tamariki and mokopuna **children and grandchildren** to ensure that our founding document is a central pillar of education and a lived reality so that they are safe in their identity and they are all enabled to thrive as te Tiriti intended.

JUDGE MULLINS:

Tēnā kōrua. **Thank you both.** Possibly, before you Mr Watson, we're just going to clarify with the witnesses that Mātaiaho, New Zealand Curriculum, Te Marautanga o Aotearoa **New Zealand Curriculum**.

(09:49) JUDGE MULLINS TO BRUCE JEPSEN, THERESE FORD:

Q. Tēnā kōrua. **Thank you both.** Now, I understand your position in that you're not going to refer to the New Zealand Curriculum as Te Mātaiaho and I understand the reasons for that. I'm just wanting to understand, so, Te Mātaiaho, is that the New Zealand Curriculum only it doesn't also include Te Marautanga o Aotearoa?

A. [Therese Ford] It does not.

Q. Doesn't. So, what is the relationship between Te Mātaiaho and Te Marautanga o Aotearoa? I mean, I will ask Mr Ohia those questions as well, but can you explain your understanding of the relationship between Te Mātaiaho and Te Marautanga o Aotearoa **New Zealand Curriculum** is?

A. I think we would speak to the relationship between the original Te Mātaiaho 2023 –

Q. Yes, ka pai, yes.

A. – as opposed to the current document.

Q. Yes, ka pai **all right.**

A. So certainly in the talking and the learning that we did during the time that we were part of the redevelopment we had our own team working on the New Zealand Curriculum and there was another team working on the marau **curriculum**.

Q. Yes.

A. And so, there were conversations that were happening as those curriculums were being refreshed in tandem. And what we were really

cognisant of understanding is that our marau is our indigenous curriculum, and Te Mātaiaho was a curriculum that was to be implemented in English Medium but with a bicultural and inclusive frame.

Q. Ka pai. So, Te Mātaiaho was not the overarching framework for both, it was the New Zealand Curriculum, albeit in a bicultural way, it wasn't Te Mātaiaho the framework under which both the New Zealand Curriculum and Te Marautanga o Aotearoa sat. Rerekē tērā, that's different?

A. It wasn't how we understood it at the time that we were part of the working group. Unfortunately we didn't get the opportunity to work with the other team which I think would have helped us better understand the synergies or whether or not they sat underneath the one kaupapa. We were reliant on the Ministry teams that were working between both that would share with us what had happened in one space and we took their word for it I guess because we didn't have the opportunity to work together.

Q. Okay.

A. I don't know if you want to add anything?

[Bruce Jepsen] Te Marautanga is the curriculum that has been taught in Māori Medium settings, Kura ā Iwi, Kura Kaupapa, and also within English Medium settings that have dual or provide dual medium whereby they have units of kaupapa Māori that are taught within English Medium schools. So there are schools that have dual curricular, and that's where it can be confusing, especially when people are referencing Te Mātaiaho and Te Marautanga o Aotearoa, but they are two curricular.

Q. Two, yes, that's I think where the confusion lies, and then of course added to that we also have Te Marautanga o Te Aho Matua which is something completely different in and of itself.

A. [Therese Ford] Āe.

Q. Ka pai. Kia ora, tēnā kōrua **thank you both**.

(09:53) MR WATSON TO BRUCE JEPSEN, THERESE FORD:

Q. Tēnā kōrua. Thank you very much for your evidence. Obviously it's a huge amount of effort to prepare it and come here and deliver it. You could hear the emotion and the feeling and I tried to listen very carefully

to your opening statement and you covered a very wide variety of matters. I don't have the time and can't talk to you about all of them. I actually only had a couple of quite small points that I wanted to raise before handing over to the panel because I know they'll be full of questions. My questions are mainly really trying to understand your perspective more. I think that's one of the very important benefits of the Tribunal process is that we get to hear from you and understand your perspective, so that's where I'm coming from.

A. [Therese Ford] Okay.

Q. Mr Jepsen, you mentioned the range of I think hundreds of Māori educators fall under the banner of Te Akatea, is that correct or could you speak to that, who comprises the membership of your organisation?

A. [Bruce Jepsen] So, within our constitution Te Akatea allows members that are Māori leaders, the majority of whom are tumuaki Māori **principals**. Tumuaki Māori work in a range contexts, those contexts include Kura Auraki which is English Medium. Some of our members also work in Māori Medium. Those Māori Medium settings can be Kura ā Iwi based or Kura Kaupapa Māori based. It also has breadth and depth in that you could work in ECE, you could work in Primary, you could work in Secondary School education or be Tertiary, so it's very broad in our membership. So, the hundreds of Māori leaders are a composition of all of those various contexts, but we all whakapapa Māori **have Māori lineage**.

Q. That was going to be my next question. I think you put the figure – your membership is in the hundreds within the context that you've just described?

A. Yes.

Q. In terms of all of those members, they'll be themselves involved in a range of other organisations within the education space or they might be, is that fair?

A. Yes, that could be.

Q. And those organisations might have their own – those organisations that your members might be part of or the members themselves might have

their own particular perspectives on issues as well in the education space, that would be fair?

A. I can't speak on behalf of other perspectives of other people but I could talk about what members tell us and when we consult, I could express their views. Outside of the membership I don't know what their views may be.

Q. And given the many members that you have, they themselves would have had opportunities to participate in consultation et cetera associated with the curriculum in their individual capacity or in the other capacities that they might be part of other groups, that's fair, isn't it?

A. Well we're hearing no, it's not fair. What we're hearing is they don't, that Māori haven't been given an opportunity to consult in that. Even in the broader sense with our membership, those in all those contexts, the survey, the materials that we're getting back has been that they haven't had the opportunity or consulted with.

Q. Were you aware or are you aware that the curriculum document as they are in draft do go out for public consultation, is that consistent with your, or with either of you, I will put it to you Ms Ford, is that consistent with your understanding?

A. [Therese Ford] Yes, absolutely. They are out at the moment for consultation, and what we find is that our members tend to really appreciate and seek guidance from us around how they might contribute to those consultation processes and we've been really busy over the last couple of weeks encouraging our people to consult because, and if I again go back to our 2023 experience of being involved in the curriculum refresh we ensured that we did have as much representation from Te Akatea across the different levels of groups that made up the ecosystem that was refreshing the curriculum. I just want to make another point around numbers in membership and it's about how I guess we as an organisation are perceived in the system. We talk about membership in Te Akatea and Huia Kaimanawa is about whakapapa Māori **Māori lineage**. We also mentioned the Māori Achievement Collaborative that was part of Te Akatea. So, within that 448 schools, not all of the leaders that participated in that mahi were Māori, but because they participated in an initiative that

was part of Te Akatea some of them see themselves as being part of Te Akatea because of that relationship. We also have other relationships across that broader group of non-Māori organisations that I was talking about who we work with really closely and provide support to, and so some of them call themselves like a Te Akatea or Huia Kaimanawa member because they see themselves as being that because of the support and close relationship, and that's I guess how we get those numbers getting bigger and bigger, and that's about the relationship back to the Treaty because they understand what we represent and they want to be part of that and contribute to protecting and advancing it.

Q. Thank you. There was one comment in there I just want to make sure I've got it correct. You said that your organisation, Ms Ford, will or has been in the recent times has been taking steps to assist its members respond to the consultation that the Ministry is running?

A. Yes.

Q. Okay, thank you very much. But it's fair to say that I think – so, if I'm understanding that, you're acknowledging that there has been consultation opportunities available to your members, correct?

A. [Bruce Jepsen] Yes, but –

Q. Sorry, I'll come back to you, Mr Jepsen, sorry.

A. [Therese Ford] Okay. So, the opportunities are available through responding online into the Ministry site around the survey and where you can upload written submissions, so that opportunity for consultation is available, like it's available to all people not just Māori.

Q. So I just want to make sure I'm hearing your underlying concern and getting it right from our perspective, it's that it's not a complete absence of an opportunity for your members to comment on the curriculum. As I'm hearing, your concern is more about the nature or the quality of the opportunities that have been made available?

A. Yes.

Q. Is that a fair comment?

A. Yes.

Q. Thank you. Mr Jepsen, I cut you off, I felt bad about it.

A. [Bruce Jepsen] No, I was wondering if you wanted to come back. The lived experience is very different over the three years, so I guess the tone or the nature that you're speaking of, we could be a general public member rather than an expert educator or a teacher that's been asked for an in-depth perspective when you are the teacher or you are the educator and you are the expert in a field. Three years ago we would be consulted and actively involved in a reciprocal process with the Crown in co-constructing, shaping in education, whereas the lived experience over the last three years for our members has been find something online and invisible, very much invisible, so we've had to go and seek it ourselves and find the thread. It hasn't been via invitation or seeking Māori expertise about co-constructing education, hasn't been our experience.

Q. That's been helpful for me at least to understand I think that concern around the consultation and the engagements, I thank you for those comments. I only really had, and I'm conscious of the time I'm taking, I only really had one more question. I don't think anything turns on it necessarily but at 28 of your brief and I this is I think (inaudible 10:02:52) to you Ms Ford, you talk about funding for Te Akatea –

A. [Mrs Terei-Tipene] Sorry, can you just give us which brief?

Q. Pardon me. I'm speaking to the 24 March document.

A. And sorry, the paragraph?

Q. Sorry, as I say I don't think anything turns on it necessarily. Paragraph 28.

WITNESS REFERRED TO #A004(A), PARA 28

Q. I'll just give you a chance to look at it, just in particular the first sentence. What I just wanted to understand was my understanding is that Te Akatea has existing contracts with the Ministry, is that correct?

A. [Therese Ford] What this was referring to was the MAC (Māori Achievement Collaborative Funding) and the funding for Māori First Time Principals and Māori Emerging Leaders.

Q. Right, So you weren't speaking more broadly about any other contracts that Te Akatea might have with the Ministry, that the comment was directed to that narrow issue?

A. To those three contracts, yes.

Q. And just so we're on the same page and so you can correct me, my understanding is that Te Akatea is currently engaged by the Ministry to provide professional learning and development services, so they just have rūmaki and bilingual units, is that correct?

A. Yes, yes.

Q. Could you speak to what that looks like?

A. So that is a contract that has just recently started. And do you want to speak more detailed around the contract and the team that are leading that work?

[Bruce Jepsen] Yes, I've mentioned earlier about dual medium environments. It's a pilot and it finishes in June and it's gaining insights into the curriculum dual medium environments, and our understanding is that – the feedback we're getting from our members is that they haven't received any support or a lot of support in that area. And as I said, it's a pilot, so we're working through that, gaining insights to feedback to the Ministry of Education on that PLD, that professional learning and development.

Q. Thank you. I think I can hand over to the panel, your Honour.

(10:05) GERRARD ALBERT TO BRUCE JEPSEN, THERESE FORD:

Q. Tēnā kōrua, te ora nei te kupu whakamārama mō Te Kapotai rāua ko Ngāti Hine, ana ka mihi. **Greetings to you both, explaining for Te Kapotai and Ngāti Hine, and so acknowledgements.** Thank you for clarifying your evidence. I just have a couple of quick questions which might just require yes or no answers but you be the judge of whether you need to expand or not. The majority of our Māori children are in Mainstream education?

A. [Therese Ford] Yes,

Q. Yes, okay. Is implementation of te Tiriti in education, is it a journey or a destination? It's not a yes or no answer, I know, but…

A. I'd say both, both.

Q. Yes,

A. A journey and a destination.

Q. At this stage of Government's implementation since the 1989 Education Act, are we still on the journey or how far are we towards the destination? Are we only at the start of the journey or are we nearing mid-course or the end?

A. I would say that we have made an incredible amount of progress since the establishment of the Waitangi Tribunal and the introduction of the Treaty of Waitangi Act in 1975, so we've had half a century of trying to understand in education what does the Treaty mean, how do we give effect to it and what does it look like every day playing out in the lives of our tamariki mokopuna in every school in Aotearoa, and incrementally as our knowledge has increased, teachers, leaders, our practices in the way that we give life to that have improved. I think particularly if I speak to Te Mātaiaho, what was really exciting about what was happening in Aotearoa New Zealand at that time in education was that leaders and teachers had worked in determined ways to foster relationships with hapū and iwi so that curriculum better reflected the narratives and the histories of the local mana whenua and they were integrated into learning programmes in ways that were authentic and meaningful to the point that hapū and iwi leaders were in schools and part of helping our tamariki mokopuna, all tamariki mokopuna, our Pākehā and our Māori understand the stories, understand the experiences, the ones that we're proud of and the ones that challenge us and make us feel uncomfortable, but collectively as adults and as children we were getting our heads around our history, we were starting to understand the potential of the bicultural relationship and we were heading towards it in a really determined way. That would be my reflection. There's lots of progress that's been made and we're really worried about these changes because they're challenging that progress, if not actually taking us backwards, and it's confusing. It's confusing and frustrating. So, I think we've been on a really strong journey. I think there's still some way to travel. It'd be great if we can get back on that trajectory quickly.

[Bruce Jepsen] My yes or no addition to that would be that when the Crown instructed that you no longer have to give effect, boards no longer have to give effect, 75% of boards of trustees in Aotearoa said we are

despite that instructions which indicates that we already were, and my colleagues in this room we will continue to do so. That's huge progress as a nation, as bicultural Aotearoa.

Q. Thank you, that's very helpful. My last question, I will skip through, it's related to that and I wanted to be inferred by the Crown or anyone else that I'm claiming this is the case, but with the Government's focus, stated focus on core competencies for reading, writing, numeracy and what have you, are you aware of any evidence that those core competencies are hampered by focusing on implementing te Tiriti, is there any evidence of that that's been brought to your membership or leadership?

A. They're enhanced by it, they're enhanced. Where identity, culture and language, I talked about the NELPs earlier, it was embedded through te Tiriti o Waitangi in that section, and our tamariki Māori could see themselves in the curriculum, they could read about their contexts. We could do that in partnership with hapū and iwi and whānau, and those things are very positive, and Therese will add to that.

[Therese Ford] So, we want to clarify from the outset that we don't challenge the emphasis on structured approaches to numeracy and literacy as such because the research shows really clearly that it is important that teachers understand the strategies that will engage learners and help them with literacy and numeracy learning as an example, but if you, again the research shows that if you try and implement those strategies, literacy and numeracy strategies, into learning environments that don't recognise the cultural location of the learner, their identity, their language, if there isn't cultural continuity between the learner and their whānau and the community, you won't get the same accelerated impact as you would if you just had one. So, you want both, you want the cultural context to be rich and safe and you want those determined structured strategies around literacy and numeracy. Our children need both and they accelerate in their learning when they have both.

Q. Tēnā koe, tēnā kōrua. **Thank you both.**

(10:12) DEREK FOX TO BRUCE JEPSEN, THERESE FORD:

Q. Kia ora kōrua. Kia ora tātou, tātou katoa. **Greetings to you both. Greetings everyone.** Now, I've spent quite a lot of time out of the country over the last 15 years, but when coming back in I've noticed and I wonder what effect you think this might be having on you as educators and our children in school and so on, I've noticed that in the media improved use of Māori language and Māori names and Māori place names and even phrases and what not. What sort of effect do you think that's having and what impact, given that there seems to be from the Ministry of Education's point of view that there's actually a watering down of things Māori, how do you see those two things mixing in our society?

A. [Therese Ford] Our observations would be consistent with yours and it speaks to the comment I made earlier about a naturalisation of te reo and kapa haka and our children being on a school day regular visitors at the local marae or on the maunga with a kaumātua giving them the kōrero about the maunga **mountain**. I felt or certainly we saw from the evidence that those sorts of the – tikanga and te reo were becoming more embedded and it was very normal to see bicultural signage and to see cultural iconography, waharoa **gateway** in the front of the school, that school start each term with pōwhiri, that was normal to welcome new students and their whānau. What we're seeing now and what we've been seeing over the past couple of years are real questions that are sitting in the education system about the legitimacy of continuing those practices. One example, a really clear example and it came in 2024, it was a direct email to me from one of our principals, I won't name the city, but she was so mortified because she went to her Principal Association meeting in the city that she was in and they were sitting around and someone said who is going to start our hui with a karakia and the response was we don't need to do that now. That's just one example I could give you. Many more, but I think that's a powerful, powerfully exemplifies what we have lost and what we might continue to lose if we don't rectify this current situation.

[Bruce Jepsen] In my closing statement I talked about mutual respect, tangata tiriti and tangata whenua **non-Māori and indigenous** and what

we've observed, if we went back three years ago I was a school principal in a large urban 750 students. It was normal to kōrero Māori **speak Māori** for all students. It was normal to hear instruction and kupu Māori **Māori words** in every lesson. It was contexualised, it was normal for all students to visit a marae as outlined in the book at the marae it's a part of being a New Zealand citizen, it's a part of a mutual respect of tangata tiriti and tangata whenua **non-Māori and indigenous people** and the majority of schools were well down the track in embedding the original Te Mātaiaho. It stopped abruptly and the changes have just happened at a fast tracked rate one after another without consultation. So you were right. What you observed about the progress we were making as bicultural Aotearoa we were on the right track.

Q. One of the comments you made earlier and I'd like you to reinforce it if you can where you said that when the people were told they no longer have to do that, 75% of your school all said well actually we are going to do it, and is that correct, that 75%, is that holding or is that eroding under the changes that are being mooted?

A. There was some work that Tania Waikato did, but school leaders actively engaged. I think it's at risk of changing because of the mere fact that it's been proposed that you don't need to, that there must be some other mechanism now that takes care of te Tiriti. Well, there isn't. So, the obligation sits for te Tiriti to be within schools. It has to be part of the governance structure of the schools, and that's normal. It's been normal ever since. In the 20 years I've been a principal it's been the norm, and it was fit for purpose. And as I talk to the progress, the progress we were making is the evidence.

[Therese Ford] The other thing that I'd say about that I guess from, and we're in a privileged position because we get a micro macro view of the system through our engagement with our members, and so while it was really disturbing and heartbreaking to hear that tumuaki email us and say I went to a Principals' Association meeting, we're going to start with karakia and someone said we don't need to do that, no one challenged that, that was really hard to hear, and we've had other examples. But last year, following that announcement, when we saw the 75% of boards of

trustees across Aotearoa come out and say we are going to continue to give effect to te Tiriti, that was really heartening, that was really, really heartening.

Q. Another thing I've noticed just in the last few months was that, and I didn't even know this competition existed but there's apparently a school choir competition that is held around the country and there were 400 schools participated. The winning school was a Pākehā school on the North Shore that sang a Māori hymn. Does that indicate that maybe these proposed changes are on the wrong side of history or might they have the effect of eroding all of that?

A. Well, we would say the changes are in the wrong side of history because as wonderful as that story is it's not that uncommon too. We're frequently hearing about these really beautiful stories of, in particular, our tangata tiriti **non-Māori** telling us we're holding on and we're going to continue to, and we're having this done and we're having that done and we're continuing to work with our kaumātua and our kuia **elders** and this is going to carry on despite the changes, and there are a lot of stories like that that are really encouraging.

[Bruce Jepsen] Through my experience what I've noticed is the demographic plays – is irrelevant, and as to the make up you could have a full Pākehā school with pōhiri, pōwhiri going on, full acknowledgment, te Tiriti alive and well. Those examples of waiata come to be a norm and expected and we celebrate them, we celebrate them all, all those examples whereby we are honouring te Tiriti. I think everyone that's in this room, I know most of these people over here and over here because they believe in that also.

Q. Thank you very much.

(10:21) DR PAUL HAMER TO BRUCE JEPSEN, THERESE FORD:

Q. Tēnā kōrua. **Greetings.** Thank you very much for your evidence and the attachments as well which I read which I found very interesting. I really only had one question. I had a few others, they've kind of been asked or perhaps superseded by recent events, but I just wanted to ask you, Bruce, about what do you say – I think it's in your latest brief, the March one,

#A4(a) I think paragraphs maybe about 11 or 12 and you said that you've been referring to Ministry's communication that reporting on progress towards giving effect to the Treaty was no longer needed and you described that as racist and you said in those paragraphs that you'd been told off by the Ministry, but you're full time as the Kaiwhakahaere Matua **CEO** of Te Akatea, aren't you, so I'm just wondering what's the context for the Ministry telling you off? Aren't you independent of the Ministry? And I understand there's some streams of funding but why and who is telling you off about that?

A. [Bruce Jepsen] So, what I'm referring there, yes, I do call the R word racism, and so when we experience that process or that action it's not an individual, we call it out for what it is, and when I am in Ministry buildings or any building, but yes, so we've called that out, and it's not received with thanks, it's not received with thanks. So, when I use the expression 'told off', it's expressed that it's not received with thanks and until the person on the other side of the conversation has the same understanding of what racism is well then we're just going to tit for tat. Is that answering what you want to know?

Q. Yes, I mean, I just wondered you're not going to get told off for your evidence today for example.

A. I appreciate that. Yes, I think it's about understanding what racism is, and for me it's a lived experience and for our leaders it is too, and being Māori at the moment in the education system is a challenge. It's hard enough with the multitude of changes that we're talking of, but then when you're also Māori you have a responsibility for all those people that we've talked to about their experiences that mean that we, one, have to do these things that make us a good leader, but then we also have to be honourable to our whakapapa, to our tūpuna **lineage and ancestors** and to our tamariki and their future.

Q. Kia ora kōrua. **Thank you both.**

(10:24) JUDGE MULLINS TO BRUCE JEPSEN, THERESE FORD:

Q. Tēnā anō kōrua. **Thank you once again.** I just have a few questions as well because like Dr Hamer some of them have already been answered.

Just going to #A4(a) of your brief of evidence, at paragraph 10 you talk about – so I appreciate this brief is a month or so old now. Paragraph 10, "Māori groups and organisations within the sector are looking to us to lead a response for the lack of consultation from the Minister about Te Marautanga o Aotearoa. We are doing that in partnership with NZEI and Te Riu Roa this coming week."

A. [Therese Ford] Yes.

Q. What was that joint response and is there anything that's come out of that?

A. [Bruce Jepsen] So, it was a collective of peak bodies, it was led by Te Riu Roa, NZEI and also NZPF, included subject area leads across the country and other peak bodies. The outcomes of that in relationship to this hearing would be that te Tiriti is an absolute priority within education, and that was agreed on by all – it was the highest priority.

[Therese Ford] So a joint statement emerged from that collaborative group as well and that was put out in the sector and there was a sharing of some evidence around some analysis that some of our rangatira in Māori Medium have undertaken around the changes. So, an analysis, and shared out to members so that people can use evidence to make informed submissions on the consultation that's currently out at the moment. And we can provide the statement and the analysis if that's useful.

Q. Ka pai. That would be helpful, thank you/

A. Ka pai.

Q. And appendix (a), and I think you Mr Jepsen talked about this, the pānui that was put out that you no longer need to report against what giving effect to te Tiriti looks like. Are boards still required to report on Māori achievement as a specific reporting requirement to the Ministry in terms of Māori achievement, achievement of their Māori students as a specific reporting requirement? I appreciate if you've been out of the game a wee while now, Mr Jepsen.

A. [Bruce Jepsen] Yes, you do have to report on all achievement of all students. I guess the point is that what the NELPs did specifically, at the moment Māori students may be invisible within the data because they

may not be identified. Children with needs might be invisible also because when we're talking about equitable outcomes for all, we're not talking about Māori within that title, we're calling it equitable outcomes for all. Māori become invisible, and when they become invisible we often get marginalised further and forgotten about, and similarly for those children that are disadvantaged with disability and Pasifika students, we have to name them, and that was the point around the NELPs. So we're being very clear about what the achievement is, and as Dr Ford outlined we know that our students achieve to their highest levels in literacy and numeracy when their culture and their identity and their whakapapa is enhanced, so the culture of the child can't enter the classroom until it's a part of the fabric of the school and its governance and the laws that we have to report under. So, the current requirement of boards and that omission has a significant effect, negative impact on Māori and our leaders and our whānau and our hapū and everyone that's Māori within the education system. That's what we're experiencing.

Q. So the removal of those NELPs – there's lots of acronyms in education, there was NAGs and all those – so, they have made it difficult to really target Māori achievement in terms of reporting?

A. Yes, the NELP was very specific about the requirement of reporting against Māori, whereas now it's not the same, it's been removed, and in relationship to te Tiriti that's where that was embedded, our rights as Māori to achieve and have access to a world class Māori education within school sits within te Tiriti.

[Therese Ford] I think the power of the NELPs, and I'm now speaking about this from the perspective of being on boards of trustees for the past 16 years, was that –

Q. Ka aroha. **I feel sorry for you.**

A. – was that they were a framework or a document that could sit at the senior leadership table or on the board table and we could have some conversations about words that often there's a lot of fragility around like racism, like discrimination, like bullying. So, to have an artefact or to have a document that sits within the expectations that we're required to understand and make sure that we do everything within our powers to

ensure that these learning contexts are barrier free and that bullying isn't happening at any level and that learners and teachers and staff aren't subjected to racism. So they were really powerful and it was so disappointing to see them removed because it was like another safety mechanism taken away and it just makes it harder to define the problem and address it.

Q. Ka pai, tēnā koe. Tēnā kōrua kei aku pūkenga o te mātauranga, e mihi ana ki a kōrua. **Thank you, thank you both. To the educational experts, I want to thank you.**

JUDGE MULLINS:

We have already gone well past our motto of e ū ki te hōtaka **commit to the timetable**. It is 10.30 now which is time for the morning adjournment which I think we will take because it is probably about time for our next paku wā whakatā **brief break** anyway but I will leave it with counsel to have a chat about how we resume following.

MRS TEREI-TIPENE ADDRESSES JUDGE MULLINS – TIMETABLE (10:31:05)

HEARING ADJOURNS: 10.31 AM

HEARING RESUMES: 10.52 AM

HOUSEKEEPING – TIMETABLING; EVIDENCE IS TO BE TAKEN AS READ (10:52:49)

(10:52) MS HITA: (CALLS)

Tēnā koe, e te Kaiwhakawā, otirā tēnā tātou. **Thank you, your Honour, and greetings, everyone.** It is my absolute privilege and honour to introduce our next witness, Meredith Kennett, and she will be providing a very succinct summary of her evidence and will allow time for questions from the Crown and the Tribunal. Āe, i runga i tērā, tēnei taku aumihi ki a koe, Meredith. **So, with that in mind, I want to acknowledge you, greet you, Meredith.**

(10:52) MEREDITH KENNETT: (#A036)

Right. Tēnā koutou katoa. He hōnore nui ki ahau te kōrero i tēnei rā i mua i a koutou. He kaupapa tino hira ki tōku ngākau. **Greetings, everyone. It is a great honour for me to speak today before you. This is a most important matter for my heart.**

Ko wai au? Ko Adirondack te maunga, ko (inaudible 10:53:51) te awa. He uri ahau nō te iwi o Iroquois. He Mohawk ahau, arā, i tōku ake reo, he Kanien'kehá꞉ka ahau. I tipu ake au ki Te Whanganui-a-Tara. Kei Tāmaki-makarau e noho ana ināianei. He manukura o Te Whakarōputanga Kaitiaki Kura o Aotearoa. Ko Meredith Kennett tōku ingoa. **… is the river. I am a descendant of the Iroquois people. I am a Mohawk, and… I am Kanien'kehá꞉ka. I grew up in Wellington, and I currently reside in Auckland. I am a manukura of… Kaitiaki Kura… My name is Meredith Kennett.**

Huri noa, tēnā koutou katoa. **And so, to everyone, greetings.**

Yes, hi. I'm Meredith, and I have been the president of the New Zealand School Boards Association, or Te Whakarōputanga Kaitiaki Kura o Aotearoa, for just coming up a year, and it's been a really interesting year. I've got to say it's been a really full-on year.

My focus today, I'm going to cover three points that I want to share with you today, yes, and see how we go. So, one of those is going to be about the positive impacts of having a requirement to give effect to te Tiriti for school boards, the impact of its removal, and then just some comments about concerns on language that is now being used, which seems to be more evident even now.

Cool, so I'm going to start with the positive impacts. When the Education and Training Act first came about in July 2020, there were a lot of conversations around board tables about "What does it even mean to give effect to Te Tiriti o Waitangi?", and for – you know, there were definitely some boards

out there, school boards who were already on the journey, who had done some learning, used things like the Hautū tool, but for many, it was not a conversation that they'd had, but now, suddenly, boards were invited to, and in fact required to understand what that meant in order to do their jobs effectively. So for many, it was the beginning of a journey, much to your comment earlier.

In November 2020, our organisation piloted a series of workshops on how to give effect to Te Tiriti o Waitangi for principals and board members. That pilot was done in Napier, central Hawke's Bay, Waipukurau, Wairoa and Gisborne, and the sessions were jointly delivered with the Ministry of Education, facilitated by our advisors, and these sessions ran over three days and were immediately attended by 98 principals and board members.

From there, obviously, there was COVID and lots of stuff around that, but in term 3 of 2021, we delivered, or our organisation delivered, 27 workshops on giving effect to Te Tiriti o Waitangi, and we received 500 registrations for those workshops and even had to signal to the Ministry that the opportunity for further resource development was there. Term 4, 391 registrations for those workshops. So keeping up with demand was a great problem to have and a cool challenge.

Boards – school boards quickly understood that greater understanding of cultural identity and partnership leads to more meaningful and equitable learning. That comment was echoed a number of times in the survey that I put out to our members, when we were – prior making – to making our submission on the changes suggested to, you know, the Education and Training Act, ETAB 2, and the question, interestingly now when I look back on it, the question that I asked, the words that I used, "The government (unclear 10:57:12) prioritising educational achievement as a paramount objective for school boards, with the other objectives set out in section 127 being retained to support the primary goal. School boards will still need to uphold te Tiriti along with other objectives specified in section 127." That's what I told my members in that – in that survey. So then I asked them, "Do you agree with student achievement becoming the paramount objective?", and 62 respondents of that survey

answered, “Yes”, they did support it, and I have to say that now I am unsure whether or not they would still – I would still get that high a percentage, because a number of the comments that were made were in relation to “Yes, but we are worried. We are worried about the – the need to give effect to te Tiriti being diminished. We are worried to it being pushed down the list of priorities.”

But anyhow, it was a chance, having it in the legislation was a chance for board members to understand te Tiriti and understand that versus the difference between te Tiriti and the Treaty, to learn some history, because quite frankly, most of us weren’t taught it at school, and then authentically consider what it might be like for rangatahi Māori to actually understand and be in a space where it was built for them, and I have to say that at the time, I was on a school board, yes, so when that came out and the sense of pride amongst boards of actually learning and understanding and being able to make safe – the space safer for rangatahi Māori **Māori youth** was an incredible feeling. It felt really like we were doing our job properly.

I want to share with you a couple of examples of correspondence from members that they sent to me when it was removed, but I think it’s a reflection of the good things that had come out of it already.

So, from a presiding member of a primary school, “We remain focused on our mission of encouraging collaborative, energised learners with a unique sense of self and belonging. We believe that an ongoing commitment to te Tiriti is essential to this mission and enriching the lives of – and achievements of all students. We are privileged to work with our Ngāti Tūwharetoa partners to continue our learning of – our journey of learning, implementing and improving the way that we honour te Tiriti.”

Another board, Tokoroa Intermediate, said to me that in practical terms, what it means to honour te Tiriti is that they get to strengthen cultural capability across their staff and their school community; they get to maintain and deepen genuine partnership with mana whenua; embed te reo Māori me ōna tikanga into daily school life; ensure equitable opportunities for all learners; create an

environment where identity, language and culture are embraced and celebrated; support every ākonga to thrive as confident, connected, culturally grounded learners. "The board believes that honouring te Tiriti enriches the education of our students, strengthens our school culture, and reflects the diverse vibrant community of Tokoroa."

And – and one other that I wanted to share with you as well. Yes. "As Crown entities, we acknowledge that school boards hold both a legal and a moral duty to understand and give effect to Te Tiriti o Waitangi. Even with the recent legislative changes removing the explicit requirement to give effect to te Tiriti with the Education and Training Act, our board remains firm in recognising that schools play a critical role in upholding the intent of te Tiriti in everyday practice. Education is the space where every child in Aotearoa passes through; where identity, belonging and partnership are actively shaped."

And this was one of so many letters, as was referenced before, and Tania Waikato collected some of those letters. There was some suggestion that I had asked boards to write letters. I hadn't. I had shared with them what I had learned. I had shared with them a press statement from the Mātauranga Iwi Leaders Group of what they had put out when the changes were announced and said to them if they wanted to do anything, they'd be welcome to write, but there was no "You must write a letter", which certainly was a question that I was asked.

So it happened, and these positive things happened because boards were suddenly required to do something about it, and they were required to report on it, because it was legislated.

So then the impact of removal – some people may say that the overarching statement in section 4 remains of that, which is that the purpose of the Act is to establish and regulate an education system that, in section (d), "honours Te Tiriti… and supports Māori-Crown relationships". Hopefully that stays; who knows?

There was – there is another section in the Act under Te Tiriti o Waitangi in section 9 that said, in relation to the NALPs, the national education and learning priorities, that they "must be consistent with objectives for early childhood, primary, and secondary education and learning that include instilling in each child and young person an appreciation of the importance of Te Tiriti o Waitangi and te reo Māori", and you won't see that now, because it's been removed, because it was in relationship to the NALPs, but those words of instilling an appreciation of the importance of Te Tiriti o Waitangi, they now don't seem to be anywhere in the Act, and yes, I think that my concern, and I know the concern of many board members, is that with no requirement, that over time, it will slip down the list of things to do, because boards are busy. You've got lots to do, and without the accountability there, without even maybe ERO – I'm guessing they probably won't look at it as a – you know, whether or not you're achieving it. Like, it won't get done, because time is tight, and – and I love our school boards, and I think that, you know, the 75-odd percent of them who committed that they would continue, that's great, but the reality is is that they are a collective of people who come together to do a task, and if it's not on that list, it – it will get forgotten.

And then finally, the other thing that I wanted to just have a quick chat about is the concern of language. When it comes to Acts and laws, words are important, and the detail in those words are what gives it meaning, you know, and the – the wording of the Act originally stated that schools giving – like, that a school gives effect to Te Tiriti o Waitangi, and those words changed, and now it says that a "board's paramount objective in governing a school is to ensure that every student at the school is able to attain their highest possible standard in educational achievement", and then when you go down the list of supporting things, it says – it says that we must now seek to achieve equitable outcomes for Māori, as opposed to achieving equitable outcomes, and even just in the adding of that word, "seek to achieve", for me, it diminishes its (inaudible 11:04:37), yes, because now it separates Māori students as something that hopefully we'll get to them.

And you know, there's been comments, and actually, in – in the secretary's statement in paragraph 41, it talks about how the Minister had suggested that, you know, we're just parents and volunteers, and that it's not reasonable to hold and discharge the responsibility of being, you know, being a Crown entity, and – and giving that effect, how it shouldn't be our responsibility because yes, we're just volunteers. Other than the fact that that is really mana-diminishing and really hurts for board members to be called volunteers, because they are people who are elected to do their position, we're asked to give effect to a number of other things. We're asked to give effect to obligation for attendance and curriculum. We're asked to give effect to the Bill of Rights and the Human Rights Act, which are surely quite big things as well. I don't think it is at all unreasonable for us to learn about and give effect to te Tiriti, because a big part of our role as a school board is to ensure that a school is a physically and emotionally safe place for students and staff, and for me, that means that we must understand who is in our school. Yes.

And finally, a couple of comments that I wanted to make is that –

HOUSEKEEPING – TIMETABLING (11:05:56)

MEREDITH KENNETT: (CONTINUES)

So one thing that I really wish, if anything could be different, my biggest wish is that coming from a background in, like, HR and corporate – the corporate world, change management is a really big thing, and in effective change management, what happens is that people are brought along and they are – they understand what the real problem is that we're solving, and for me and for many boards, the challenge here is that we don't know why. Like, why was it removed? What was the purpose of removing it? There was no harm in having it there, but there is harm in having it removed. If there was a really genuine reason to remove it, then why not consult, and why not sell it, and why not bring us in the waka in order to have us understand? So yes, a good change management process would go a long way. Kia ora.

(11:07) MR WATSON TO MEREDITH KENNETT:

Q. Kia ora. Thank you very much for your kōrero, Ms Kennett. It's actually – well, for me, it answered a few of my questions, so I think I can be quite brief.

I just wanted to start with some basic questions about school boards and what they do. You don't go into that, maybe, perhaps because many people would carry that knowledge with them, but it might be helpful to chat about that a little bit.

A. Sure.

Q. My understanding is that school boards are responsible for – for governance as opposed to day-to-day management, is that a fair – a fair divide?

A. Yes.

Q. And so school boards' governance role, that includes setting the strategic direction and having regard to the overall performance of the school, is that – is that fair?

A. The strategic direction, yes.

Q. And employing staff, that's a – that's another function of school – school boards?

A. Yes. Each school board will do it differently. Some will have – will delegate that authority to their principal to employ the teachers, but we are the employer, yes.

Q. And school boards – in terms of that divide between governance and day-to-day management, school boards don't determine what goes on in the classroom, effectively, what's taught or how, that's the teachers and the principal. That's a fair comment?

A. Yes. Yes.

Q. So, just so I'm understanding, as I understand it, the – to the extent boards influence student outcomes, they do that through their – their governance role, the strategy setting, et cetera. That's – that – sorry, that's right? That –

A. Yes, that's right, yes.

Q. Even with – and that's an important role, do you accept that? And within that important role, within that role, you know, it's very important a school

board can't guarantee any particular outcomes for students, given – given that divide that we've discussed between the management and the strategic leadership. That's a – that's a fair comment, isn't it?

A. Kind of. I don't think anybody can guarantee –

Q. Agree. Agree. Thank you very much. And school boards operate in a wide variety of different communities, that's fair?

A. We operate in all communities.

Q. Yes, and must respond to the needs of those communities in the way they discharge their – their role.

A. Yes, and they must consult with their community in order to form that strategic plan so that it is about the community that they exist in, yes.

Q. And boards have a significant amount of discretion in the way they go about discharging the various – their various roles. That's fair? And as I understand it, that – that's – well, I'm interested in your comment on this, that's why section 127 is important, in a sense, is because it provides some of the principles or the direction for boards in how they will go about exercising their discretion in their many – in the many tasks that they have to perform, is that – is that your – does that match with your understanding?

A. Yes, and I mean, it used to be that the section that contained the NALPs in it would also give that direction, but without that there, then yes, section 127 does become more important.

Q. I did – I want to talk to you about that section. I was a bit – I was a bit reluctant, because I don't want to get into a lawyerly conversation, but then when I heard you, you had a good grasp of the section, that was very apparent. So are you – I might put a couple of questions to you about it, but if you think it's too much in the realm of the lawyers, then please do say.

A. Sure.

Q. Do you have that in front of you?

A. Not the whole thing.

Q. I think I do here.

MS SYKES:

Sorry, what are you referring to?

MEREDITH KENNETT:

Section 127.

MS SYKES:

Okay. The amended section, or –

MR WATSON:

As it is in force now. We have copies here, enough for the panel as well, but I don't know if that's necessary.

MS SYKES:

I'm unsure we are working on the same paper. Can we please have an electronic version circulated to us? Thank you.

MR WATSON:

Thank you.

MEREDITH KENNETT:

No, I don't have a copy. Could you please give us one?

MR WATSON:

Pardon me.

MEREDITH KENNETT:

That would be great.

(11:07) MR WATSON TO MEREDITH KENNETT: (CONTINUES)

Q. So you've discussed section 127(1) and the paramount objective being to ensure that students attain the highest possible standard in educational achievement, and then we've talked a bit about 127(2) and what that contains. Just looking at 127(2)(c), this required – it contains a number of requirements, and it requires boards to ensure that schools are

physically and emotionally safe and to eliminate discrimination. That's your understanding of the section – of the subsection?

A. Those are the words that it says, yes.

Q. And I think you said before that that requires boards to understand who – who actually comprise their school community. Is that – is that how you sort of operationalise that, or one step of that?

A. Yes, you could look at it that way, yes.

Q. And if we look at the next one down, again, I think it's getting at a similar theme, so this requires boards, in meeting that paramount objective, to ensure that the school is inclusive of and caters for students with – with differing needs. Is that – on your understanding, that's another core obligation of how boards are to operate?

A. Yes.

Q. And you did mention 127(2)(e), and this – this says that to meet the paramount objective, school boards must seek to ensure that – first, that they seek to – seek to achieve equitable outcomes for Māori students, and it's not a – an obligation to guarantee those outcomes, is it?

A. Well, compared to what it used to say, where it used to just basically say, "achieve equitable outcomes", now a board is only required to seek to achieve.

Q. And we discussed before, no one can guarantee outcomes, can they?

A. No.

Q. So in – in your understanding of the provision as it is now, it required – would you – is it fair to say that it requires boards to take active steps and reasonable steps towards achieving the equitable outcomes mentioned there?

A. Can you repeat the beginning of that?

Q. Sorry, that – I'll try to put the question again. We just established that no one can guarantee outcomes, and so I'm trying to get at what do you, with your experience, actually see this as requiring, and I'm interested in that, and what I put to you was that it requires active steps towards achieving these equitable outcomes. Is – is that a fair comment?

MS SYKES:

Kia ora, Ma'am. I think we are starting to slip a little bit into statutory interpretation here, and that's starting to go towards legal submissions, which we will address when we get to closings.

JUDGE MULLINS:

I did wonder, though – Mr Watson did preface his comments by "Let me know if you think I'm drifting", and he based his questions on some of the earlier comments from the witness, but yes, we are in a fine line now, but I guess my comment to you, Ms Kennett, is if you are not answering the question, then kei te pai, and Mr Watson did preface his comments with that.

(11:07) MR WATSON TO MEREDITH KENNETT: (CONTINUES)

A. Yes, I think I can see where you're heading, and I get that. I can see that you're saying that basically, it's all still there, and for me, the biggest difference in how a board who are not legal people are interpreting these things is when they are clearly laid out that says that you must give effect to te Tiriti, then it is – then that is what you do as a school board, and when it is not as clearly obvious, then it just – it doesn't – it isn't as obvious then. Yes.

Q. No, I understand. No, I'm not trying to – not trying to trick you. I – I'm just genuinely interested in, from your perspective as an expert in boards and the way they operate, what – in a practical sense, what you would see (e)(i) as meaning. I'm interested in that. But if you don't feel that you want to speak to that, that's completely fine.

A. No, I think I will leave that to the legal people.

Q. Thank you. Those are all my questions.

(11:16) KEVIN PRIME TO MEREDITH KENNETT:

Q. Kia ora. Tēnā koe. As a parent from a remote community that really struggle to get nominees for the board and you never have elections, I was sort of taken aback by the comment that that was a government entity, the Crown entity, the boards of trustees, and you'd have struggled to have convinced many of our – sorry, you'd have struggled to convince

many of our boards in those days that we were government entities or Crown entities. Is your main backing for that assertion that they're established by Crown legislation? Is that the main reason?

A. Yes. It's in the legislation.

Q. In – in – yes, and I find that quite surprising that you claim that's the biggest organisation, I suppose, of – of government entities, which is – I find quite surprising, so I'm still thinking it through, and – but I – I've started to accept it after reading your papers over and over again. I think maybe, yes, we were Crown entities and didn't realise it at the time. Thank you for your evidence. I appreciate it.

A. Tēnā koe.

(11:18) GERRARD ALBERT TO MEREDITH KENNETT:

Q. Tēnā koe. **Thank you.** Thank you for your evidence. So, the board – and you have experienced within boards generally – have a range of statutory obligations, obviously. I just wanted to ask, is there any board that you're aware of that's actually raised the fact that implementing te Tiriti itself was any more onerous than any other responsibility or obligation statutorily to the Education and Training Act?

A. No, quite the opposite. More that many a board enjoyed it.

Q. And – no, I'll leave it there. Thank you.

(11:19) DR PAUL HAMER TO MEREDITH KENNETT:

Q. Tēnā koe. **Greetings.**

A. Tēnā koe. **Thank you.**

Q. I'm just aware that when the government in 2024 put forward its proposal to make educational achievement the paramount outcome – sorry, objective – of boards, there was consultation, a lot of engagement on that, including the School Boards Association – is it Association? – surveying its members and getting something like 511 responses. Have – has there been a similar exercise for the school boards around the country on any of the subsequent changes that have taken place, to your knowledge? I – I know that 2024 engagement was probably before your time, if you've

been in the role for a year, but are – are you aware of anything since then?

A. We have surveyed our members on the proposed changes for the systems reform.

Q. Right.

A. Yes. And then after that survey, that was in October 2024, before my time –

Q. Yes.

A. – yes – I resurveyed the members based on what was in the Amendment Bill.

Q. Right. Okay. Because – because that survey, of course, was within an entirely different context to the one we face at the moment, isn't it, so if we looked at the results from that survey, we'd have to bear that different context in mind, I imagine, wouldn't we?

A. Yes, because as I mentioned, the question that I asked the members was: are they happy with it being the paramount objective, assuming that te Tiriti still remains within there.

Q. Right. Yes. Okay. That – that's all I wanted to ask. Thank you for your evidence.

(11:21) JUDGE MULLINS TO MEREDITH KENNETT:

Q. Tēnā koe, Ms Kennett. **Greetings, Ms Kennett.** In a former life, I did education law, and in the roll-out of the 2020 Act, I did a lot of work with NZSTA, as it then was, and in fact did some of the training on what giving effect to Te Tiriti o Waitangi looked like, and certainly, the various kāhui ako in different places that I went to, there was a real appetite from board members to learn and to understand what that could look like in their communities, and what was really clear was how every community is different, and how one school may give effect to te Tiriti could be very different to how another school gave effect. But certainly, my experience was that there was a real appetite from boards to understand and to see what that might look like, and so it's been a few years now since I did that, and so although I am a mother of three still school-aged children, so I do see that in everyday practice, what that can look like, but since then, can

you share with us, in your experience, or give some examples of what you have seen in schools of what giving effect to te Tiriti looked like and felt like?

A. Yes, I can speak to the experience of one, having been a board member in a couple of schools, and – and also what some of the members have said.

So, examples – to go with my own school, because that's the easiest one that I think of, was the – the moment of being able to really come together with our iwi and form that relationship, and from there, that – that iwi developing things to bring to our children in our schools and our staff. I watched our – our iwi come and give talks on understanding the whenua and how things got their names, how their whakapapa came about and how their ancestors came, and – and shared the stories of how things came to be in our particular area.

And from my area, I think that was really interesting, because in the area of Auckland that this particular school is in, it's a predominantly – probably a 30, 35% Asian population, and so – and actually, probably only 2 or 3% Māori, similar Pasifika, but actually watching young people, tāngata Tiriti, find their place was the feeling that was really consistent. So, watching young people being able to walk down the street, point out a – a street name and go, "That's – that's the rangatira that – that the iwi were talking about", and – and being able to understand how they could settle in that place, which resulted in watching young people feel like they belong, and when young people feel like they belong, the – the learning comes easier, because they are – they know they're in the right place, and that – that sense of security and safety, you – you can see it in young people.

You can also see it in the community and in the adults around them – begin to have different conversations about why something is named something or why it's not okay to be racist about something, and those conversations come to the forefront and then they go into homes, and you can watch it spread. It's – it's quite remarkable watching that.

And also, then, just from a board level, being in a board meeting and making a decision on a policy and then, as a board, going, "Wait, are we really making sure that this policy actually fits our whole community? Are

we giving effect to te Tiriti, bringing our iwi in and asking them, 'Do we need to make any changes to this?', so, making sure that what we are doing is – is right for everybody?"

And that – to watch that happen and to be a part of that was a – was a really cool adjustment, and it – it started to feel like things were becoming more normalised. When Bruce talked about schools having pōwhiri and karakia, it became just what you do, yes, and it allowed that sense of having people feel settled and more comfortable in their space, and yes – and less people having to leave their culture at the door, and just bring it in. So that – that sense of settledness, you could feel that in schools.

Q. All right. Thank you. At paragraph 12 of your brief of evidence, you talk about the change and the lack of engagement, and "this is not this was not consistent with how we have typically been engaged on changes of this scale. In previous processes, I have been involved in, proposed amendments, particularly of this nature..."

Like, was – gosh, I only know them as NZSTA, but the New Zealand board –

A. (inaudible 11:27:03)

Q. – association, so, were you a key stakeholder in previous processes, or can you tell me a little bit about what the difference between how you've said here you were actively involved in other previous amendments and this time around it was a quite different process, and I appreciate in terms of the removal of section one two – in that final hour, there was no consultation, but there had been previous consultation on section 127(d) in other changes, so what was your association's involvement in, like, previous to these current changes? Were you, like, a key stakeholder group like that Te Akatea was in the previous refresh?

A. Yes, we – we sit on the Peak Bodies group, alongside Te Akatea and a number of other people in this room, and my understanding, because I wasn't the president at – at the time –

Q. Certainly.

A. – my understanding is that we – in – that group would often be consulted on things, but also, you know, there's two quite distinct arms to our organisation these – these days. There is our membership arm, which is

the arm that I lead and advocate for. There is the other arm of our organisation, which has the Ministry of Education contract, and so I can't speak on behalf of –

Q. Right.

A. – of that side of things, but I do know that often, there would be conversations where there would be involvement, and there has been on a few other things, like when we were looking at strategic planning, and the strategic planning obviously is very much a board kind of function, when that was going to be – the initial process was that the boards did a strategic plan for two years, and then they were going to be doing three-year plans and that got pushed out. Before that got pushed out another time, there was a conversation where we started talking about what would some of the key things be in those. So yes, we were often involved in – in that level of conversation.

Q. Okay. Kia ora. Tēnā koe. **Thank you.** Those are all my questions, nō reira, Ngāti Mohawk, tēnā koe. He mihi nui ki a koe. Kia ora. **And so, Ngāti Mohawk, Thank you very much.**

A. Kia ora. **Thank you.**

HEARING ADJOURNS: 11.29 AM

HEARING RESUMES: 11.33 AM

(11:33) MR JACK POTAKA: (#3.3.001)

Tēnā tātou katoa e te whare. **Greetings to everyone in the house.**

Ko wai tēnei e tū ake nei? Ko Mr Potaka tōku ingoa. Kua tae mai au i tēnei rangi, me te hōnore nui ki te kawe i ngā kaupapa kei runga i ngā pokohiwi a NZEI Te Riu Roa. **I appear, Mr Potaka is my name, and I have come today, it is a great honour to convey matters that are shouldered by NZEI Te Riu Roa.** Before I begin, your Honour, I have actually just filed what were originally my speaking notes today but have now become the synopsis of our argument to the registrar. I just wanted to ask whether you have received

that? You will have hard copies in front of you right now, but I wondered whether there could be an appellation number attached to that by the registrar.

HOUSEKEEPING (11:34:16)

MR JACK POTAKA: (CONTINUES)

Heoi anō, tēnā anō tātou.

Before I commence, I just wanted to highlight how much of a privilege this is for me today to stand before the Tribunal. A privilege, both in a personal and a professional sense. From a personal sense, I'm a son of a teacher, a nephew of a teacher, a mokopuna of a teacher, and a mokopuna of a principal. I come from a whānau of educators and that's why I ended up in the law.

Heoi anō, it's with that hōnore nui that I wanted to turn the Tribunal's attention to what I presented in front of you in hard copy. The following kōrero that I'm about to share with everybody should be read in conjunction with our written opening submissions and I understand that the Tribunal has taken that as read. So, we will get to it, he mea nui tēnei ki te whakarāpopoto i ngā kōrero, mai te 27 whārangi ki te rima whārangi, heoi anō **it is most important to summarise the kōrero from – to 27 pages to condense it down to five pages.**

BEGINS REFERRING TO SYNOPSIS OF ARGUMENTS, PARA 2

NZEI's standing flows from its members' daily professional responsibility for the education of tamariki Māori. That responsibility cannot be fulfilled if the governance and curriculum frameworks within which kaiako work have been stripped of their Treaty foundations.

This inquiry has a targeted scope. It concerns two Crown actions: first, the removal of section 127(1)(d) of the Education and Training Act 2020, which required every board of every state school to ensure the school gives effect to Te Tiriti o Waitangi; and second, the reset of the national curriculum through Te Mātaiaho and its parallel application to Te Marautanga o Aotearoa. These have been developed into ten issues for inquiry. Many of those issues map

directly onto these two substantive Crown actions and are addressed comprehensively in our client's evidence.

Every board of every state school in which NZEI members teach was bound by section 127(1)(d). Every one of those boards is now, free of it. NZEI's concern is not just for tamariki Māori but for every child in every one of those schools whose kaiako can no longer point to a binding statutory obligation on their board to give effect to Te Tiriti.

NZEI submit that there are not just three relevant principles as the Crown has asserted but rather five relevant principles engaged in this inquiry. Each is breached by one or both Crown actions.

We have identified partnership, active protection, tino rangatiratanga, equity, and redress.

Partnership. The Crown must act reasonably, honourably and in good faith toward Māori as Treaty partners. NZEI submitted, wrote to the Minister, and engaged throughout. None of it produced a substantive response. Amendment Paper No 428 was introduced at Committee stage against officials' own advice and after NZEI's own advisory group found the process not Tiriti-compliant. That is not partnership.

Active Protection. The Crown must actively protect Māori Treaty interests. Removing the statutory Treaty obligation from school board governance without consultation, without replacement, and with acknowledged uncertainty about practical outcomes removes the institutional backing kaiako depend on to do that work. You cannot demonstrate active protection of a taonga while simultaneously admitting you do not know what the practical effect of your legislative change will be.

Tino Rangatiratanga. The Crown must recognise and give effect to the right of iwi to exercise authority over the education of their tamariki. The knowledge-rich curriculum reset, developed without meaningful Māori partnership, makes

te reo optional and reduces tikanga to isolated facts. The curriculum is the primary tool through which kaiako give effect to rangatiratanga in practice. When that tool is designed without iwi, it cannot serve iwi.

Equity. The Crown must take positive steps to achieve equitable outcomes for tamariki Māori **Māori children**. Section 127(1)(d) was a direct legislative response to the Tomorrow's Schools Taskforce finding that 58% of schools did not have enough Māori on their boards to represent the proportion of Māori learners. Removing it, and simultaneously replacing a curriculum that integrated te reo and tikanga with one that makes both optional, works against equitable outcomes.

Redress. Where prejudice has occurred, the Crown must provide meaningful remedies. The window for effective redress is now. The longer these settings persist, the more deeply ERO practice, Ministry guidance, and kaiako initial teacher education will embed the assumption that there is no Treaty obligation at the governance level and no Treaty foundation in the curriculum. Once that assumption becomes the default, restoring it will require far more than reinstating a statutory provision.

I'd now like to turn the attention of the Tribunal to the Crown's own concessions.

The Crown has filed three briefs of evidence: by Ellen MacGregor-Reid, Andy Jackson and Pauline Cleaver. Read together, the Crown's case is that its officials advised well, Ministers made a different decision, and Parliamentary sovereignty is the answer. NZEI rejects that framing. A Crown that acknowledges its process was not Tiriti-compliant and then asks the Tribunal to find no breach has occurred, in our opinion, has confused the quality of its internal advice with the content of its obligations. These are not the same thing.

The concessions on the record are significant. In several respects, they are dispositive.

First, on Māori engagement: Jackson confirms the Ministry recommended no changes to section 127 unless engagement with Māori happened first. That advice was overridden.

Second, on the removal itself: the Crown concedes that the complete removal of the Te Tiriti obligation was introduced at the Committee of the Whole House stage, and that there had been no engagement with Māori in relation to this Crown policy prior to its introduction. None. Not reduced. None.

Third, on outcomes: Jackson acknowledges the practical outcomes of the change are, at this stage, uncertain. A Crown that acknowledges it does not know the consequences of removing a statutory Treaty obligation cannot simultaneously claim it has met its active protection obligations.

Fourth, the Crown's own Disclosure Statement accompanying Amendment Paper No 428, released the same day, the amendment was introduced, warned that the removal could reduce the Crown's ability to support Māori educational success, that Māori stakeholders have not been engaged with prior to policy decisions, and that this is likely to have adverse effects on the Māori-Crown relationship. The Crown published those words and introduced the amendment on the same day.

Fifth, Cleaver concedes the Ministry worked less collaboratively with people outside the Ministry in preparing the draft curriculum content. The Crown's own Māori Education Ministerial Advisory Group (MEMAG) assessed the curriculum process as not Tiriti-compliant. The Crown acknowledged that finding. It then overrode it.

The Minister's own words confirm this was not a process failure. It was a choice. On 23 July 2025 she told The Platform she would remove Te Tiriti from the Act "in one go" because she did not want to be "talking about the Treaty." Four months later, Amendment Paper No 428 was introduced at Committee stage.

Now I would like to turn to what you will be hearing today, from our evidence in a very, very short way, your Honour.

The Tribunal has before it the evidence of ten witnesses, full summaries of which are set out in our written submissions. Together, that evidence establishes: the legislative and consultation history of the removal of section 127(1)(d); the achieved and then reversed redesign of Te Marautanga o Aotearoa; the political and ideological network behind the curriculum reset; the structural impossibility the knowledge-rich curriculum creates for kaiako trying to integrate te reo and tikanga within mandated timetables; the documented record of what section 127(1)(d) was worth to schools that used it; and, in reply, the insincerity of the Minister's process.

Turning to the prejudice that our clients face

The prejudice is real, immediate, and it's irreversible if it's not addressed now. Every tamariki Māori in every state school in Aotearoa, has lost the guarantee that the board governing their school is bound by law to give effect to Te Tiriti. That guarantee was not removed with their knowledge, nor with the knowledge of their whānau.

The late filing of the revised Tab 26 is itself illustrative. It confirms that the Crown's own officials said do not standardise these clauses, do not proceed without Māori engagement, do not remove the specific Tiriti responsibilities that give effect to the Crown's obligations in education. That advice was ignored. The prejudice flowing from that choice is landing now, in every school across this country. The window for effective redress is now.

E te Taraipiunara, in conclusion:

The Crown's answer is Parliamentary sovereignty. NZEI's answer is that Treaty obligations do not dissolve in the wash of a committee stage amendment. The question this Tribunal must answer is straightforward: if the Crown's own officials told the Minister that engagement with Māori must happen first, that the

process was not Tiriti-compliant, and that the consequences of removal are uncertain — how can the Crown claim it has met its Treaty obligations? It cannot.

NZEI's members will not stop. They are continuing to honour Te Tiriti in their classrooms because they understand, as the Crown's own Disclosure Statement acknowledged, that placing Te Tiriti at the heart of education benefits every learner in Aotearoa, not only Māori. But kaiako **teachers** cannot carry that obligation alone. They need institutional backing, and a curriculum that does not work against them.

It is the role of this Tribunal to require that the Crown restore what it removed without consent. Not only for the members of NZEI and the schools they serve, but for every tamariki Māori in every state school across Aotearoa who is entitled to an education whose governance and curriculum are grounded in Te Tiriti o Waitangi, and to grow up knowing that the law requires it.

Nō reira, e te Taraipiunara, koirā ā mātou tāpaetanga i tēnei wā. Tēnā tātou katoa. **To the Tribunal, those are our submissions at this time. Thank you all.**

(11:48) MR POTAKA: (CALLS)

As I mentioned, e te whānau, it is my honour to call upon te manukura wahine o **president of** NZEI Te Riu Roa. It is our absolute privilege to have Ripeka Lessels here in attendance today, who travelled from Te Waiariki in her waka due to the disruptions that Cyclone Vaianu had presented, with cancellations of flights earlier this week. She has made an absolute effort to be here today and alongside her is her colleague, Shannon Walsh, who are here to present their evidence.

(11:49) RIPEKA LESSELS: (#A012)

Tēnā tātou, tēnā koutou katoa. **Greetings, greetings all.**

Me mihi tuatahi atu rā ki te hui, ki te waahi ngaro, ki ngā mate huhua kei tēnā marae, kei tērā marae huri noa nei i tēnei motu. Me mihi atu rā ki te hunga kua ngaro, ka tika. Me mihi anō rā ki te haukāinga, ki te mana whenua, ki te ahi kā o Ngāti Toa Rangatira, ki a Te Ātiawa, rātou nā i pupuri nei te mana o tēnei whenua e noho nei rā tātou. Tēnā koutou e te mana whenua. **Firstly, I must acknowledge this gathering. To the hidden realm, to the many deceased on each and every marae throughout this country, and I must also acknowledge those who have passed on. I must also acknowledge the local people, to the local iwi who are upholding occupation, Ngāti Toa Rangatira, Te Ātiawa. Those who uphold the mana of these lands that we sit on. So, I want to acknowledge the local iwi.**

Kia koe hoki rā, te kaiwhakarite o te rangi nei, nāu nei ā tātou wairua i whakakao ki te atamira o te waahi ngaro. Tēnā koe e te rangatira. **To our elder who recited our karakia. It was you who brought together our spiritual spirits in line with the hidden realm, so I want to thank you, leader.**

Kei te tēpu, kei te Kaiwhakawā, kei ngā tuakana, ngā teina, tēnā koutou katoa. **To the panel, to the Judge, the seniors and juniors, greetings all.**

I heke iho mai rā ahau i ngā pae maunga o Ngāi Tūhoe, o Ngāti Awa, o Te Arawa anō rā hoki. He mokopuna ahau nā Takurua Tamarau, nā Watene Wihape te tuatahi anō hoki. Tēnā koutou e te taumata, me ōku hoa, te hunga whakarongo i tēnei rangi. **I descend from the mountain ranges of Ngāi Tūhoe and Ngāti Awa, and also, Te Arawa. I am a grandchild of Takurua Tamarau, Watene Wihape, and I also descend from him as well, and so, greetings to the panel, and my friends, and those listening in today.**

WITNESS REFERS TO BRIEF OF EVIDENCE #A012

Ko Ripeke Lessels tōku ingoa, i whānako nei ahau tērā ingoa i te ao wīwī. Ko ahau te manukura o Te Riu Roa. Kua 40 tau au e whakaako tamariki ana, 40 tau, hipa atu i te 40, kua tata 45 tau au e whakaako tamariki ana. Mai i te kōhanga reo, te kura tuatahi, te kura tuarua, tae noa mai ki

Te Wharekura o Te Whata Tau ō Pūtauaki ki te riu o Kawerau. Kei ngā rekereke o te tipuna maunga a Pūtauaki. **My name is Ripeka Lessels, I stole that name from te ao wīwī. I am the resident of Te Riu Roa. For 40 years, I have been teaching children, 40 years, over 40 years, it's almost been 45 years I have bene teaching children. from kōhanga reo, primary school, and secondary school, including Te Wharekura o Te Whata Tau ō Pūtauaki, there Kawerau plains. We sit at the foot of the ancestral mountain Pūtauaki.**

I am the president of NZEI Te Riu Roa. Nā aku hoa mahi, nā ngā mēmā o Te Riu Roa au i tono ki a noho mai rā ahau hei manukura mā rātou. Kua tata 50,000 ngā tangata e noho mai nā i runga i te maru o NZEI Te Riu Roa. **My colleagues and the members of Te Riu Roa requested that I sit as the president of the organisation. There are nearly 50,000 members under the mantle of NZEI Te Riu Roa.**

Tēnei kerēme nei, he mea uaua ki tāku whatumanawa, he mea uaua ki tāku ngākau i runga i te mea, ko tēnei whakawhiu, tēnei tūkinohanga a te kāwanatanga ki runga, kaua i ngā mema katoa o Te Riu Roa, engari ki te ao Māori, ki ngā tamariki Māori, ki ngā kaiako, ngā whānau Māori o Aotearoa nei, ka pā tēnei whakawhiu, tēnei mahi ki runga i a rātou. Koia nei rā ngā kaiako, ngā tumuaki, ngā kaiāwhina, tautoko, kei roto i ngā kura huri noa i te motu, ia te rā, ia te rā, i mua i ngā tamariki Māori, ngā tamariki katoa o Aotearoa nei. **This claim is difficult for my heart and soul because this abuse of the government, not just upon the members of Te Riu Roa, but to the Māori world, to Māori children, to the teachers and Māori whānau of New Zealand. This disregard, this abuse will affect them. These are the teachers, the principals, the help and support workers in schools throughout the nation, each and every day in front of the Māori children and children of Aotearoa.**

Engari, i tēnei, e hia nei, kua tata toru tau nei kua pāhemo nei nā, kua kite mai rā ahau i ngā mahi a te kāwanatanga ki runga i a mātou, i a tātou te ao Māori.

However, over the past three years, I have seen the actions of the government towards us, Māori people.

I have seen over the last two and a half years, the ground being pulled from underneath teachers, children, whānau, iwi, and by stealth, actually almost like a thief in the night. My evidence today addresses two Crown actions, the removal of section 127 and one of the things sitting back here. I have understood is that, when you are the third or fourth witness, everybody else before you almost tells the same story as you and steals your thoughts right from underneath you. I guess that's evidence that we all alike, in this room, as witnesses as claimants, feel exactly the same about what has happened, what the Crown has done.

The first one is the removal, the second one is the curriculum reset through Te Mātaiaho, including the truncated consultation process. The inequitable treatment of Te Marautanga o Aotearoa and all of this taken together establishes a pattern of Crown conduct that has systematically dismantled and undermined Te Tiriti o Waitangi. The obligations and education, without genuine engagement with Māori, and in breach, I believe are the principles of partnership and as Tama has said, active protections and tino rangatiratanga.

You have already heard today from witnesses before me, about what section 127 of the Educations and Training Act allowed in every school and was required by every school board. But for me, that obligation had a tangible expression in the way that boards and schools strategically planned its policies, its localised curriculum and particularly through integration of tikanga Māori. The integration of mātauranga Māori, of te ao Māori, and the integration of this in all teaching and learning. Also recognising that tikanga Māori and te reo Māori, as core subjects, to delivering equitable outcomes for Māori are not just an add on.

In our submission to the education and workforce select committee in 2020, supported the introduction of this particular clause in the Act, and you can read that in our brief of evidence, I won't read it to you. But our support was grounded

in the evidence that ākonga Māori **Māori students** engaged most strongly with learning when their identity, their language, their culture are visible. They are valued, and they are upheld in their school and learning environments, and understanding well established in research and affirmed by intergenerational wisdom of members. Making it a primary objective for school boards to pay attention to getting this right, that was the backdrop.

Now, let's turn to what the government did with this clause.

In September, as we have heard, in 2024, the ministry opened a six week consultation process on the proposed changes to section 127 and this involved an online survey, or an email only. Not kanohi ki te kanohi **face to face**, none of that was given as opportunities for Māori to engage or even provided. The proposal was to demote the Tiriti obligations from a primary objective to a supporting one.

An NZEI submission on the 11th of October 2024, we said that the change was entirely unnecessary and damaging and we were certainly not alone in sending this message. But the minister proceeded, regardless, and even the ministry's own regulatory impact statement acknowledged that there had been inadequate time for comprehensive consultation with iwi, Māori, and hapū.

The Bill was introduced on the 7th of April 2025, and NZEI Te Riu Roa provided a written submission on the 12th of June 2025. Made an oral submission on the 11th of July 2025. Then that submission, we said that the rush to amend section 127 was government driven and came at the expense and exclusion of Māori. Then on the 4th of November 2025, at the Committee of the Whole House stage, Minister Stanford introduced Amendment paper No 428.

I was thinking the other day, I might get me a t-shirt that says, "No 428" written on it, so that I can tell my mokopuna, when they say: "Nanny, he aha tērā kei runga i a koe?". Let me tell you about amendment paper 428. It did not merely demote te Tiriti obligation, it removed it all together. What had been a demotion became an erasure. Gone was any reference to giving effect to

Te Tiriti o Waitangi, gone was tikanga Māori, gone was mātauranga Māori, gone was te ao Māori. At their time, I described the changes, the latest in a series of racist, dogmatic attacks on our education system and I still hold to that.

You can read that media release, it's in our pile, I'm sure Tama can find it for you if you want it.

This erasure was never consulted on. The 2024 consultation did not propose complete removal as an option. It was not in the bill sent to the Select Committee. Those who submitted had no opportunity to address it. Within one week, the bill passed its third reading and was swift and brutally gone in one foul swoop. The departmental disclosure statement accompanying Amendment paper No.428 stated, and I wanted to read this to you, but I think, in the interest of time that you should read it yourself. But clearly, clearly, in that disclosure statement, the government was told, as we have heard, by its own officials, what this meant. But they did not listen, the proceeded –

MS SYKES ADDRESSES RIPEKA LESSELS – TIMING (12:00:04)

RIPEKA LESSELS: (CONTINUES REFERRING TO BRIEF OF EVIDENCE #A012)

So, as a member, our members as kaiako, tumuaki, koia nei rā tāku whakakapinga – as members, as kaiako, tumuaki, support staff and many others, have spent years building culturally responsive learning environments developing local curriculums, as we have heard. Weaving tikanga and te reo Māori into their teaching, and a large part, this has been because of section 127(1)(d). That mandate is gone, they didn't ask for it to be removed, the change was government driven without any credible educational justification.

What I guess I most want the Tribunal to carry from evidence, from this part of my evidence, from this part of my evidence and from the brief of evidence, is that the Crown knew exactly what it was taking away. It knew, it knew. Its own disclosure statement made it clear, its officials warned against it, yet it chose to proceed. This is not a matter of policy disagreement, it is a breach.

NZEI gives evidence before this Tribunal in the hope that we will recommend the Crown restore and honour its Treaty obligations in education, so that the harm already caused can be remedied and further prevented.

Kia ora ki a koutou.

QUESTIONS FROM THE CROWN – NIL

JUDGE MULLINS ADDRESSES COUNSEL – LEGAL DISCUSSION (12:02:14)

KEVIN PRIME:

I just wanted to say thank you for your evidence, I really appreciate it, I don't think you were repeating what others said, I really, i rongo ā-roto i tōku whatumanawa te hā ō tō kōrero **I felt it within my heart and soul what you were talking about**. Nō reira, nei rā te whakamihi atu ki a koe, kia ora. **So, I want to thank you, thank you.**

(12:02) GERRARD ALBERT TO RIPEKA LESSELS:

Q. Kotahi noa iho te pātai āku. Ki ō whakaaro, nā te uruhanga o tēnā section 127 ki te ture, ka ū tonu ngā mema o te uniana ki ngā kaupapa Māori, ki te Tiriti ahakoa te aha, or kāo, ka rērea rānei? **I only have one question. In your opinion, due to the erasure of section 127, will the members of the union remain committed to Māori initiatives, and te Tiriti, no matter what, or not?**

A. Ki ngā kaiako, ki ngā tumuaki katoa o te motu, e taea e rātou te whakahaere o rātou kura i raro i ngā tikanga o Te Tiriti o Waitangi. Kei konei rā mātou o te uniana hei tautoko i ō rātou nā hiahia, ahakoa te aha ka ū tonu rā ngā kura, i runga i te whakapono ki Te Tiriti o Waitangi. Kaua ki ngā whakawhiu a te kāwanatanga, engari i runga i te hiakai o ngā kura, o ngā poari ki te whakatinana i Te Tiriti o Waitangi i roto i ō rātou nā kura. **To the teachers and the principals throughout the country, they are able to manage their schools under the tikanga of**

Te Tiriti o Waitangi. We of the union are here to support their desires no matter what. The schools remain committed due to their belief, their faith in Te Tiriti o Waitangi. But not due to the attacks on the government, but their earnest desire of the schools and the boards to fulfil Te Tiriti o Waitangi in their schools.

Q. Ka pai, kua mārama. **I understand.**

(12:04) DEREK FOX TO RIPEKA LESSELS:

Q. Kia ora, tēnā koe mō ō kōrero. Kotahi anake tāku pātai, ki tō whakaaro, he aha te kiko o tēnei kaupapa, ki te whakakore i te Tiriti i roto i ngā mahi a ngā kura. He aha te kiko o tērā? He aha ai kei te whāia tēnei kaupapa? **Greetings, thank you for your kōrero. I only have one question, in your opinion what is the essence of this matter to erase te Tiriti within schools? Why is this being pursued, this matter?**

A. Ki te whakakore i tēnei mea, te Te Tiriti o Waitangi ki roto i ngā kura, ki roto i te ao mātauranga, ngā kura, ngā waahi whakaako tamariki, ana koirā ki a au te ia o tēnei mahi a te kāwanatanga ki te whakakore te Tiriti o Waitangi me ngā tikanga e hāngai ana ki a tātou i raro i te Tiriti o Waitangi. Ō rātou nā mahi ki te Tiriti, ki te Tiriti o Waitangi. Koirā, nōku, ōku whakaaro. **If Te Tiriti o Waitangi is erased in the schools or in the education sector, the schools, the areas where children are taught. That to me, is the essence of these actions of the government to erase Te Tiriti o Waitangi and the tikanga which pertain to us under Te Tiriti o Waitangi. Their actions against Te Tiriti o Waitangi. Those are my thoughts.**

Q. Engari, i ia tau, ia tau, ka rongo koe i ētahi o ō tātou mema pāremata, pirimia katoa, e kōrero ana ko te Tiriti te kākano o tēnei whenua o tātou, o tēnei… āe.

A. Tika hoki. Kāore au i te whakahē i tēnā. E tika hoki rā ō whakaaro. Engari, nā te whakakorengia o tēnei wāhanga o te ture nei, ka whakakore ērā whakahē i ō tāua nā whakaaro. **You are right in that thought. If this part of the legislation is erased, then those –**

Q. Ka ngaro tēnei āhuatanga i ō tātou tamariki, me rātou kei te haramai tonu, ka ngaro pēnā. **Now, this aspect, in terms of our children, that it will become lost.**

A. Yes. Ehara.

Q. Kia ora. **Thank you.**

(12:06) DR PAUL HAMER TO RIPEKA LESSELS:

Q. Tēnā koe, Ms Lessels, tēnā koe i tō kōrero i te ata nei. **Greetings, Ms Lessels, and I thank you for your kōrero this morning.** I just wanted to ask you about some of these groups that the ministry has established to advice on the curriculum and other matters. The ministerial advisory group set up at the end of 2023, I just wanted to ask you whether there was any Māori representation on that group?

A. I guess, there are other people more informed than me to tell you that, whether there was. But I am aware that the minister set up a ministerial advisory group, Māori, which is different to the one I think that you are talking about.

Q. Yes, I'll come to that one in a second. The reason I asked you is because Ms Moss, in her evidence, said there were no Māori members on the ministerial advisory group and I just wanted to clarify that Mellissa Derby, on that group, is Māori. So, I just wanted to, because Ms Moss isn't appearing to ask a question –

A. You can ask –

Q. Yes. Okay, I also wanted to ask you about the curriculum coherence group and whether there were any Māori representatives on that group?

A. You can probably ask that question of Ms Moss, because she's going to come and give witness after me, soon after.

Q. Is she?

A. Yes.

Q. I beg your pardon, I –

A. Yes, she is, so you can ask her those questions.

Q. Okay, well, let’s turn to the Māori education ministerial advisory group and it was chaired, initially, by Mr Ngata?

A. Yes.

Q. And he resigned?

A. Yes.

Q. Do you know why he resigned?

A. No, but I'm sure that when the ministry comes up, you can ask them that question yourself.

Q. Yes.

A. They might be able to tell you why he resigned.

Q. Yes, yes, indeed. You refer in your evidence to the under representation of Māori parents on school boards. I wonder if, in your experience, you know how many school boards took the opportunity to co-opt Māori members on to the boards to kind of provide that representation?

A. I'm not sure whether even, the president of New Zealand School Boards Association even has that data for you. But what I do know is that the Tomorrow Schools Taskforce identified the amount of boards, over half the boards in New Zealand did not have Māori representation on them.

Q. I read that as 58 per cent did not have a proportion of Māori members on their boards that reflected the proportion of tamariki Māori –

A. The children, tamariki Māori in New Zealand –

Q. – so, that might be something slightly different.

A. Well, it could be, but, yes, you could very well be right, 50 per cent is still a high number, 58, of schools that can inadequately –

Q. Inadequate, yes.

A. Inadequate for the number of Māori children in their schools.

Q. Okay, ka pai. I just –

SHANNON WALSH:

In addition, you can look at the brief of evidence from the Newtown School Board that was part of our claim, that shows how that (inaudible 12:10:14) process happened for that particular kura.

DR PAUL HAMER TO RIPEKA LESSELS: (CONTINUES)

Q. I just had one other question, which was, you refer to an Ombudsman investigation into the ministry's response to you in November 2024.

About you request to pause further change to the curriculum. That Ombudsman investigation is still ongoing, there is no report that is issuing from that?

A. It's still active.

SHANNON WALSH:

We have provided an updated about a month ago.

DR PAUL HAMER:

Are we likely to expect a result from that any time soon?

SHANNON WALSH:

As far as my experience with the Ombudsman goes, I would expect that to be very soon, yes, but I would welcome it.

DR PAUL HAMER:

Okay. Thank you, Ms Lessels.

(12:11) JUDGE MULLINS TO RIPEKA LESSELS:

Q. Tēnā koe, e te māreikura. **Greetings, accomplished woman.** You have already answered a number of my questions to the other panel members. But I am just going to go back to one of the original questions, I spoke with Mr Jepsen and Dr Ford about, about Te Mātaiaho and the New Zealand Curriculum and Te Marautanga. What was your understanding of that relationship between Te Mātaiaho and Te Marautanga o Aotearoa. He aha te hononga? **What's the connection?**

A. Actually, I don't know whether there was a direct relationship between the two. The Marautanga o Aotearoa and I think, Jessie Moss is coming up, soon after me. She would be able to give you a better idea of what the connection was. What I can tell you is that the Marautanga o Aotearoa, which is the document that I have largely been engaged with as my time as a principal, school principal and my time as a practitioner, a teacher was in the Marautanga o Aotearoa. What it looks like now is not what it

used to look like, at all, the draft I mean, is completely not the same. But I'm sure Jessie would be able to answer that question fully.

Q. Ka pai. Just staying on the Marautanga, I think you have written, or you have certainly done a press statement on the brevity of the consultation period in relation to Te Marautanga.

A. Yes.

Q. What has been the response, if any, from the ministry?

A. I did ask the question of the ministry, and they were categorical to me and told me that they weren't going to extend the time for the Marautanga o Aotearoa past the 24th of April.

Q. Did they give an explanation as to the –

A. They did tell me that consultation will happen in several ways, by online, you know, video webinar, that sort of thing and online. My concern was about the pedagogical approaches to how we best take on stuff, you know, learning around kanohi ki te kanohi **in-person** setting, te wānanga, te kōrero **discussion forums**. That particular part of wānanga wasn't happening. I'm not aware that it is happening.

Q. And they did not, sort of, give you any explanation as to why –

A. No, they believe that the time given was adequate.

Q. Ka pai.

A. And of course, I disagreed.

Q. Well, tēnā koe, e te Pūtauaki Maunga, nei rā te mihi nui ki a koe. Kia ora. **Thank you, to you, Pūtauaki Mountain, thank you very much. Thank you.**

A. Kia ora.

WAIATA TAUTOKO

DISTRIBUTION OF DOCUMENTS (12:15:26)

(12:15) MR POTAKA: (CALLS)

Tēnā anō tātou. **Greetings once again.**

To my right, we have Mr Bevan Holloway and on the other side of the panel here, we have Associate Professor Richard Manning before you.

Before I hand it over to them, I just to put on to the record that Mr Bevan Holloway's appellation number for his brief of evidence was #A018, and Associate Professor Manning is #A015. They also had a joint brief of evidence in reply, which is appellation #A046.

(12:18) BEVAN HOLLOWAY: (#A018, #A018(a))

Kia ora koutou. **Greetings.**

My name is Bevan Holloway. I am an English teacher at Paraparaumu College, where I also hold the specialist classroom teacher role. I have taught at Wellington College and have been head of English at Wellington Girls College. I was a recipient of a Dr Vince Hamm e-fellowship and have worked as a professional learning facilitator in schools across Aotearoa. I have worked with Professor Guy Claxton, who has featured my classroom practice in one of his books, and I have written for NZCR's set journal and the New Zealand Literacy Association. I have also been a presiding member of two school boards and have two children that are now at secondary school.

Since July 2024 I have been examining and gathering OIA material related to the curriculum change process undertaken by Minister Stanford. My interest was initially peaked by the surprise news that broke in June 2024, that the senior English curriculum was being re-written. Something that was never in the scope of the MAGS review of the curriculum refresh. Initially, I approached them, just with general interests. The OIA materials and **(inaudible 12:19:32)** association for teachers of English had managed to achieve.

But I was quite shocked by what those documents seemed to suggest. Which was that a small group of, ideologically aligned individuals, so for example, eight of the 12 appointed by the minister to the MAG had extensive professional connections that spanned a number of years. So, suggested that they had had an undue influence over the resulting re-write of the curriculum refresh and they

had achieved that by acting in ways that are inconsistent with public policy guidelines and principles of democratic governance.

BEGINS REFERRING TO POWERPOINT PRESENTATION AND BRIEF OF EVIDENCE #A018

So, the three points that I want to talk to today are that the drafting process of the curriculum was really, really fast. The extent to which, the ministry was and was not directing that work, and that the curriculum change, and development process has been opaque.

To the first point, the MAG itself, while officially an advisory group, had begun writing curriculum materials within days of its first meeting. Now, while the MAGs turns allowed for example material to be developed. Emails between the MAG suggest they saw no distinction between that and writing the curriculum. Within days of their first meeting, email's show them sharing what they are writing and referring to it as their "work".

Elizabeth Rata and Helen Walls, who moved from the MAG into writing groups, so Rata on to the senior English writing group and Walls on to the years 0-6 writing group, were especially active in that space.

Ministry official Arnya Pollock warned at the time that creating a national curriculum content was the work of government, not an advisory group. Public service guidelines are really clear on that point. They state that advisory groups don't have the statutory authority to kind of cross the work of government, of which, developing secondary legislation, which is what a curriculum is. That warning was ignored.

The second point is that, by March 2024, the MAG was directing the work of government. So, on the 15th of March, the MAG chair, Michael Johnston met with ministry officials to "plan the project ahead". After that meeting, he emailed the MAG to tell them they had permission to organise the help they needed with the writing.

He asked them for lists of people that the MAG wanted to be involved in that process. He then said he was going to email the minister to ask what she wanted in the MAGs report. I have tried to OIA that email and I have been told that it doesn't exist.

A signed education report to the minister on that same day, so 15th of March, shows the MAG working with the ministry's own literacy contributors' group and the work they were doing was to prepare materials for testing with the sector. It also states, the ministry has been working closely with the MAGs chair to support the MAGs work and the MAG had been advising the ministry.

Public service guidelines are clear. Advisory groups are a mechanism for ministers to access outside advice. They are not to advice ministries, nor are ministries to support their work, especially when that work has not been approved by the minister.

On 25 March 2024, MAG chair Michael Johnston emailed the ministry with Professor Rata's preferred list for the senior English writing team, and the instructed the ministry to use it as the basis for developing a plan. This is not advisory conduct, it is directing the work of government.

In the December 2024 select committee, Ellen MacGregor-Reid admits that the Ministry of Education was getting a feed of information from the MAG before they submitted their report so they could understand the direction of travel and get ahead of the work. The Ministry of Education acting in this manner is not a ministry capable of providing the minister with free and frank advice.

It is worth noting here that the MAGs report was not submitted until the 19th of March 2024, and was not responded to by the minister until April 5. So, the fact that the ministry was supporting the MAGs work before that point, I think is concerning.

Members of the ministry's own procurement team, documented in emails, their concern that they could not find justification for some of the writers suggested

by the MAG, and that they were running a closed procurement process. The ministry was not running its normal process for comprising writing groups. One of the members of that procurement team asked to be removed from that piece of work because of their unease.

Closed procurement was used again, to select the maths textbooks. Where we know that the money for that was reallocated from the Te Ahu o Te Reo Māori fund. In parliamentary written questions, the minister said that she personally approved the criteria for selecting the maths textbooks.

To my third point, that the curriculum development process has been opaque. As part of the curriculum development, the writing groups were asked to have their work quality assured. The first submission from the years 0-6 group, from the English writing group, sent in May, ERO declined to quality-assure it. The reason that they gave was that the material was developed by the MAG, and it did not reflect up to date evidence on effective pedagogy.

The degree to which this was addressed is unclear. What I do know is that in EROs feedback, they said that aspects of that very curriculum were still "unsuitable, and not fit for purpose." That is the version that it seems to me, went out to the sector for feedback.

September feedback from EROs international review is, made the following point "there was concern about learners from diverse backgrounds, was noted, in particular, when considering pedagogical approaches that can lack an acknowledgement of what learners bring to a classroom.

With Rata's senior English curriculum writing group, she provided feedback on their feedback to her, at least three times. ERO have refused to release that to me.

After appearing on a panel with Minister Stanford in October 2024, I think that was the National party regional hui. That was the panel where Rata stated her desire to use the curriculum to end decolonisation success. Rata emailed

Minister Stanford after that appearance on the panel with her, urging her to save the English curriculum.

Stanford has confirmed in an OIA response that her office reviewed the senior English curriculum and gave advice and feedback to the ministry on 10 February, 14 March and 27 March 2025. She could not release the details of the advice and feedback, as no records were kept.

There are two versions of the senior English curriculum dated March 2025. One version instructed teachers to help students explore Aotearoa, New Zealand perspectives and required the inclusion of Māori and Pacific authors. That version was never released. The version that went to the sector for feedback, removed that instruction and replaced it with a mandate, to teach Shakespeare in 19th century texts.

Just finally, the last point, in April 2025, Rata emails Minister Stanford to thank her for her "herculean efforts" in bringing the curriculum to fruition.

That sums up **(inaudible 12:30:00)**.

HOUSEKEEPING – TIMING (12:30:05)

HEARING ADJOURNS: 12.30 PM

HEARING RESUMES: 1.02 PM

JUDGE MULLINS ADDRESSES MR WALSH – TIMETABLING (13:03:03)

MR POTAKA CALLS

(13:04) ASSOCIATE PROFESSOR RICHARD MANNING: (#A015)

Tēnā koutou katoa. **Greetings everyone.**

Ko Richard Manning tōku ingoa. Nō Porirua ahau, nō Porirua, te pito o te ao. **My name is Richard Manning. I am from Porirua, Porirua, the centre of**

the world. I try and use humour because of my Irish whakapapa. I'm proud to have grown up in Porirua and what I'm trying to say is, we all come from somewhere and place is important. My former teacher, Professor Russell Bishop wrote a book, Culture Counts, my thesis is place counts, so I want to stress the importance of local curriculum.

I also want to acknowledge my son, Luke, who has come to support me. Garret Cooper, a colleague form the University of Canterbury, and also, our co-vice president Māori, TEU, Tertiary Education Union. I also want to acknowledge my friend, Huia Puketapu who is somewhere here. Huia's whānau were really gracious in enabling me to start my post graduate studies and I wouldn't be sitting here as an academic if it wasn't for the Puketapu whānau. So, I want to acknowledge them before I present this evidence.

The brief I wrote with my friend and colleague, Nepia Mahuika and apologies Nepia cannot be here because he had so many other commitments on, and he does send his apologies. Came about as a result of work that Nepia and I have been working on in relation to a Marsden fund research project, exploring the teaching of Māori histories, and asking questions like, what is Māori history. By engaging with Māori historians themselves, to ask those sorts of questions.

I am a Pākehā, I am from Porirua, I never realised that Russell Bishop was right to tell me that growing up in Cannons Creek as a kid was a privilege. He was right, it took me a long time to get it because being immersed in that environment, you see things that maybe, a lot of your Pākehā teacher colleagues in the staff room don't see and don't respond to. Because it becomes part of your normal upbringing when you are maybe four or five Palangi or Pākehā kids in that school, your taken for granteds aren't the same as, maybe a lot of the young teacher trainee's I train. So, again, I want to signal the importance of cultural locatedness.

Our brief was, on behalf of Nepia and I, to outline political drivers behind the push to restore balance, because I have been documenting this ideological push for a long time now. I am also briefed – I was asked, who has and has

not been included in writing the social sciences curriculum and to conclude with an impact of standardised national history curriculum. Not just on the Crown's Treaty of Waitangi obligations and then upholding the principles of the Treaty. But I feel more widely that there's also broad international implications, at least in the prima facie basis related to the United Nations Declaration on the Rights of Indigenous Peoples, on their rights.

So, we answer, in this brief, issue e, issue g, h, i, and j. I'm not going to read them out because that will take too long, and we don't have that luxury.

WITNESS REFERS TO POWERPOINT PRESENTATION, SLIDE 2

Two things that I want to talk about here in relation to this first point is the attacks on the ANZHC's conceptual framework had been occurring for a long time. That conceptual framework was targeted by far right critiques and right wing neo conservative critiques as being too "Marxist", too "Māori", et cetera, et cetera.

In addition to that, there had been attacks on the local curriculum, and the key critiques of that conceptual framework, I would suggest are Julian Batchelor, Roger Childs. During the 2023 election, there was a lot of activity on social media attacking this curriculum, and it was, I would conclude, quite orchestrated.

The ANZHC was structured around three interlocking elements, so that's the conceptual framework. Understand, those are the big ideas. The know, contextual content, and I want to stress this, a contextual content included local, national, and international. To say that it only focussed on the local is disingenuous.

The Understand element consisted of three big ideas and this is what really triggered the right:

(i) Māori History is the foundational and continuous history of Aotearoa New Zealand.

I think that was widely accepted as fact.

(ii) Colonisation and settlement have been central to Aotearoa NZ histories for the past 200 years.

Well, I would consider that to be a fact too.

(iii) People's lived experiences have been shaped by the use and misuse of power.

I would suggest we are here today because of the misuse of power, in my opinion.

Attacks on the local curriculum, we need to see them also in light of a wider ideological agenda. So, the removal of local histories, from what we are seeing in our research most likely reflects the ideological positioning and the disproportionate influence of Professor Elizabeth Rata. Not just as a MAG member, but also as a former member of the Free Speech Union. Professor Paul Moon, the only known academic, the only known historian who has publicly come out and acknowledged that he has been involved in the design of the draft history strand.

Now, Professor Rata, for her part, has consistently stated between 2021-2025 that: "a local curriculum approach encourages 'tribalism', and that tribalism is a threat to 'democracy'.

Professor Moon, for his part, has relied on anecdotal to claim at least six or seven North Shore teachers he has spoken to, were struggling to engage with mana whenua. Minister Stanford (April 2024) echoed his suggestion that a local curriculum approach is nothing more than a "post code lottery". He prefers a grand narrative approach to that, which Dr Peter Gibbons (2003) would describe as an exercise in Pākehā nation building. It's about Māori without Māori.

So, both Rata and Moon overlooked that the ANZHC, the Aotearoa New Zealand History Curriculum encourages a socio-ecological approach, that is glocalism. You start with the local, the lived world experiences of the tamariki in front of you. So, you then build out into the region, to their nation, to the globe, and as they get progressively older, things become less abstract. So, if I was teaching young children about, given ANZAC Day is coming up soon, I might have younger children down at the Senator. Over time I might be looking at how World War I impacted us, or World War II impacted us regionally.

As someone who grew up in Porirua, alongside many Ngāti Porou people who has taught Ngāti Porou kids, was taught by Ngāti Porou teachers. It was an incredible experience for me last year, to go to Tikitiki and to see all the names on the church there. These are people who taught me, who I taught, these are their families, and it really brought it home and I'm thinking, this is the kind of curriculum we need. That does not mean that we do not look at bigger global issues, we start with the local.

Why would you start on climate change by focussing on the Amazon Rainforest when we have Putaringa-motu just down the road from us, where I live in Christchurch. Where the children can actually interact with what is left of the rainforest there. You start local, before you worry about the Amazon.

So, it's a point of teaching, I guess I'm doing here. See, I struggle with that argument about the local curriculum not addressing the global.

The second point, who has and has not been included.

I'm just going to go through some names, and you might want to question me later. Professor Elizabeth Rata described herself as the lead writer for the English curriculum and she said herself that her knowledge rich reform is designed as a “circuit breaker” for “ending decolonisation’s success”. She's

even acknowledging it's a success, because it's effective teaching and all the international research backs that.

Michael Johnston, MAG, fellow of the New Zealand initiative. Him and his friend James **(inaudible 13:13:34)** said they'd hosted Paul Moon on a podcast, making, what was it, the Free Kiwi's Podcast, et cetera. So, they are all in the same ideological echo chain, but let's not pretend that a curriculum and policy is not coming outside of a political context.

So, the alignment between Rata, Johnston and Moon and we heard the name, Minister Derby, added recently. Again, Mellissa is a Free Speech Union member, at least a founding member, alongside Paul Moon and Elizabeth Rata, that's no coincidence, that's why they are on the MAG. Their ideological alignment is there, Paul Moon is the only known academic to have said he was involved in developing the draft history strand, which many in this room consider to be abysmal, unteachable. Yet, Professor Moon has claimed but a triumphant and meanwhile, associate minister, David Seymour has said he's taken the politics out of history. How do you do that?

Those not involved:

Mandated representatives, mandated academics, not the New Zealand Historians Association. The History Association has not been approached like every other previous curriculum going back to 89, the NZHA were involved in the design. There's no Te Pouhere Kōrero, the Māori Historians Network should be there. That's not Nepia saying it, he's vice, he's the chair, I'm saying it and I've been saying it since I wrote my PhD with Te Ātiawa in 2008. It doesn't make sense if this is our curriculum that Māori historians are not involved.

We do not have the Professional Historian's Association, the National Oral History Association. We are at the Pacific and Asian historian communities, people like Professor Damon Salesa, Doctor Manying Ip, where are they? They should be there.

So, in conclusion, the impact, I think, is pretty straight forward. Firstly, again, as I said, they have removed the conceptual framework and what many of us in this room would agree is that what you have is like an unworldly shopping list of, here are things to teach. But against what, what are the big things we are trying to understand here? The importance of a conceptual framework, others, later, will probably pick up on.

The Crown says the ANZHC content has been distributed across other strands rather than lost and they talk about mātauranga Māori. I would go back to John Rangihau and I'm no expert in tikanga or mātauranga, and I don't pretend to be, but what about mātauranga ā-hapū, mātauranga ā-iwi **knowledge of hapū and iwi**.

My PhD looked at the status of Te Ātiawa histories of place in Port Nicholson Block secondary schools. What I found through my survey's, having to use the OIA Act on schools to obtain that information, was that 29 per cent of schools in this district avoided Māori content NCEA levels one, two and three, in a 2005 survey. By removing the section from the Act, you are going to take us back to that period of time where there is not that security of requiring schools to teach about, who are the people of this place.

What we are doing from my perspective feels something like, we have gone to America, and we are teaching about the American Indians, which one? The other thing to remember, is mātauranga, again I'm not an expert, I don't speak as if we are Māori. But what I do know is mātauranga sits in place. The knowledge of Te Ātiawa people ki Pōneke belongs to them. My older brother Tony is a customary fisherman for Ngāti Raukawa, his mātauranga is in the Ōtaki River. He works with local schools to share that knowledge and with the scientists from his iwi, so its context matters, place is important. Not a generic Māori, one sized standardised Māori culture that is more convenient for the colonial overlord somewhere else.

I'm sorry for using such emotive language, it's just, it's a bit of a hard pill to swallow.

Anyway, I just want to wrap up by reading from this to make a point and I want to take you back to the Waitangi Tribunal in 2004 and it's Turanganui-a-Kiwa, this is just the nervousness, sorry guys. The problem is this, as explained in this affidavit, the ERO, which the minister relied on to "restore balance to the curriculum" is highly contested, is highly problematic. There was too much secrecy surrounding its academic experts. We have no idea who the historians are, or the so-called experts are, who have shaped this curriculum, other than Professor Moon. That is problematic because his status amongst his pairs and particularly amongst Māori historians is questionable and again, that's outlined in the affidavit.

So, my fear is this, this ideological approach to curriculum design will only serve to privilege a Euro centric grand narrative of our histories. A grand narrative of our past that marginalises local whānau, hapū and iwi counter narratives to that grand narrative. Rather, it will return us to the same sort of problems the Waitangi Tribunal identified in Turanga, when it concluded and I'm quoting the Tribunal now:

> We cannot help but think that the unsettled state of relations between Māori and Pākehā [and/or tangata Tiriti] in this country is in part due to the fact that these stories are remembered only by tangata whenua and a few historians who specialize in New Zealand history. While only one sides remembers the suffering of the past, locally, dialogue will always be difficult. One Side commences the dialogue with anger, and the other side has no idea why.

That's not a recipe for social cohesion. What I have seen through the Aotearoa New Zealand Histories curriculum is people having those difficult conversations and I have seen progress. I have been critical in the past of curriculum capture, I have often felt Professor Graham Smith was right about

taha Māori, Pākehā capture. But I think we have seen a breakthrough and now it's being repealed.

So, the problem is this:

> Reconciliation cannot be achieved by this means. Thus, it seems no more than common sense that if stories such as these, from Tūranga, were more widely known in the community, particularly local communities more directly affected, the need to heal the wounds of the past before moving forward would be better understood by all.

Nō reira, tēnā koutou, tēnā tātou katoa. **So, thank you, thank you all.**

(13:20) MR WATSON TO BEVAN HOLLOWAY AND RICHARD MANNING:

Q. The first topic, I guess, Mr Holloway is just me trying to understand the nature of your brief, and in particular, of your investigation. You are a teacher, correct?

A. [Bevan Holloway] Correct.

Q. You haven't been involved in the curriculum reform process in any formal capacity?

A. No.

Q. Your evidence, as I understand it, is primarily on material you have received through official information requests. That's correct, isn't it?

A. That is correct.

Q. And the OIA requests were framed by, either yourself or organisations that you are associated with. That's right, isn't it?

A. That's right, yes.

Q. So, the material you have received reflects the scope of the requests that you made, correct?

A. If what you are trying to suggest is that I have come to a full blown conclusion, and therefore, decided to mine that as deep as I can. Is that the nature of your request right now?

Q. Sorry, I'm just asking you questions.

A. I'm just trying to understand what you are (inaudible 13:22:10).

Q. (inaudible 13:22:10) sorry. Where I'm coming from is trying to, as I say, understand the nature of your investigation and I think where we have got to is that, and I think we are on the same page. That you have made requests through the OIA process, which you are entitled to. You have reviewed the material you have received, and you have also, as I understand it, reviewed other publicly available material. That's right, isn't it?

A. Yes, correct, yes.

Q. And it's on the basis of that body of material that you have provided the opinions you have provided?

A. Perhaps it might help if I go back to my starting point. So, like pretty much every secondary school English teacher in the country, quite surprised at the revelation that English senior curriculum is being re-written. Then the New Zealand Association of Teachers of English had done their own OIA request around that issue. I started from a point of curiosity. Okay, there is some material there, I'm a teacher of English, how has this come to pass.

My process there was, all I did was go to the documents, they were very higgledy piggledy, they were out of order, so I just put them in chronological order to start off with. Then I did what any good English teacher does, is I just did a close reading. A close reading involves you looking at what's on the page, but also understanding that what's on the page is within a context. I'm an experienced teacher, I'm an experienced educator, I have a lot of expertise in this space, I kind of know what's going on, right.

What that chronology revealed to me, I was shocked, was the word I used. I was shocked, I was stunned to the degree that I took what I had written, and I sent it off to other people to read, and not just friends. I sent a draft to Doctor Sanjana Hattotuwa of the disinformation project. I sent a draft to Professor Guy Claxton, for him to have a read. Because I knew that what was in there was pretty, I mean, explosive, I think, would be a fair word. And I didn't want to put myself at risk by putting that stuff out in a public domain and it not actually being a coherent, valid, well-founded piece. Both of them came back to me with shock, to the extent that both

of them volunteered to provide appendixes to that report. I think that's significant.

I think, also, the way, if you are trying to suggest that on the basis of that, I have been narrow minded in my OIA requests and looking for material, I refute that. I have tried to be, in the way of framed OIA requests, as open and as wide framing as possible. Sometimes it has been, I just want to see the communications between these people, not, tell me about this or what the material is about this particular issue. I have just been looking for communications.

A lot of those requests have been denied, things have been redacted, things have been refused to be released. So, what I have put out into the public domain is based on the information that I have had revealed to me and at all times, I have tried to be, held that curious mindset. Does this change anything about what I'm seeing here.

Q. Thank you, that is very helpful, I think we are on the same page. Just wanted to very briefly, discuss the ministerial advisory group that you mention in your brief. I think it had a dozen members, is that right?

A. Yes, 12.

Q. And when it reported to the minister, reported on a collective basis, didn't it?

A. Yes, that's how advisory groups work. They provide a group from the collective themselves, yes.

Q. Yes, so the advice wasn't provided as the views of the individual members separately, it was the group. That's your understanding?

A. Well, it's not my understanding, that's exactly what happens.

Q. Thank you, and if we are thinking about – you have made certain comments about the drafting, or the role of the MAG in the drafting process of the curriculum and you are critical of that, I think is a fair comment?

A. That's a pretty wide lens, can you give me some examples?

Q. I mean nothing by it, I mean more, well, I'll stick with my first question. You have made comments about that in your brief, and I've asked you a couple of questions about it. If you were thinking, well, if one was thinking about the role, or trying to get to the bottom role that the advisory group

had in the drafting of a curriculum. One way to do that might be to compare any draft material provided by the MAG or one of its members with the final product. Would that be a fair motive analysis?

A. Well, I think the first point to make there is that the MAG was never there to draft the curriculum.

Q. I understand that, and I think that's the basis of your criticism, as I under it.

A. Yes, because they did what was beyond their terms.

Q. Yes, and I guess, what my question was more driving at is the extent to which they did go beyond their terms. And what I was suggesting to you was that one way to think about that, or to get at that issue would be to look at the extent MAGs drafting on the one hand. Then look at the final product of a curriculum and do a bit of an analysis. Would that be one way to get at it?

A. That would be, if you could get your hands on the initial drafts.

Q. Thank you. So, you are saying you haven't done that?

A. I've tried.

Q. Just a small comment, at paragraph 26 of your brief, you talk about – do you have it in front of you, sorry, Mr Holloway?

WITNESS REFERRED TO BRIEF OF EVIDENCE #A018, PARA 26

A. It's coming. Is that of my brief or the reply?

Q. Yes, sorry, it is your brief of 24 March, #A018, I think.

A. Yes, regarding the senior English curriculum, is that right?

Q. Yes, and you mentioned in comments there, you don't go on to, here, or anywhere in your brief, I don't think, go on to analyse the extent to which – sorry, my first question. I understand the English years 0-10 curriculum has been finalised, is that correct?

A. That's correct.

Q. And the senior secondary still, in draft?

A. Still in draft.

Q. So, now, my question to you is, you don't go on to analyse the extent to which the finalised 0-10 English curriculum requires the inclusion or envisages the inclusion of Māori authors, do you?

A. It makes it optional, whereas I've seen both of those March curriculums, all right, and if you had read, I have done an investigation into the process around that. If you have read that, it does go into details around the significant differences between both those documents. The highlight there, which I have revealed, is the significant shift, which was one of those March versions.

The one that was never released to the sector, it "instructed teachers to help students explore Aotearoa New Zealand perspectives and required the inclusion of Māori and pacific authors in teaching programmes. That version was never released to the sector. It was changed at the last minute and replaced with a version that removed that instruction and replaced it with a mandate to teach Shakespeare and 19th century texts." Elizabeth Rata has been very vocal in her advocation of Shakespeare and 19th century texts, being something that must be mandated. I don't know where the change came from, I'll leave it for people to make their own minds up around that, because I wasn't in the heads of the people that made that decision, but someone did, and the change is significant.

Q. Sorry, I think what I was trying to get at, but maybe we can take this no further, is that you don't provide any analysis of the extent to which, in your brief, the extent to which the finalised English 0-10 curriculum does require or envisage the teaching of Māori texts. That is correct, isn't it?

A. Well, it make sit optional, doesn't it.

Q. Can probably take that no further, Mr Holloway. A couple of questions about the role of the minister in consultation really. You accept that decisions on the curriculum content were ultimately made by the minister?

A. I don't know what the actual process was, if that's what you are suggesting. I think it is very worrying that, like, it's not unusual for a minister to be able to view curriculum that they have oversight of developing, I think that's part of the typical process. What is unusual is that we have a minister making unminuted suggestions to the ministry around that particular curriculum. Also, a key member, or an advocate, Elizabeth Rata, emailing the minister once a draft had gone out to thank her for the "herculean efforts".

Q. That's unusual in your experience?

A. Well –

Q. Just, you would also accept that the curriculum reform process included consultation with the public, didn't it?

A. I think, the nature of the consultation is significantly different to the type of consultation we have had prior to this.

Q. But you are not disputing that it occurred?

A. Yes, but the nature of the occurrence is significant.

Q. Thank you, and you would accept that the ministry themselves had input into the drafting of the curriculum drafting process?

A. The ministry should be writing the curriculum. It shouldn't be a case of the ministry having input. It is the ministry's job to write a curriculum. So, the fact that you are suggesting that it's good that they had input, I think, is a massive red flag.

Q. Thank you, and just finally, your brief expresses certain concerns about the potential impacts of the curriculum reforms on learners, that's right, isn't it?

A. Can you point to those things that you are looking at to help me understand what you are trying to suggest.

Q. I think it's at the conclusion of your brief, I'll just try to find what I was thinking about. Yes, I was just thinking about, you make comments about irreversible prejudice around 38 and 39 of your brief.

A. My thinking there when I was making that point was thinking about the process that we had had before, in the refresh of Te Mātaiaho. That process had been wide ranging and inclusive. It included communities, it included whānau, it included school leaders, teachers, universities, NZCR and it was iterative. If we are going to develop something that is going to provide a basis for learning for all students in this country, I don't think anyone would argue with that being a good process. That's what we would want right? We compare it with what's happened today and the stories we have heard of people being locked out, who were already in. I find it very hard to understand how the curriculum that can be the result of that process can actually be something that can be good for children.

If we are locking out a wide range of expertise of educators and experts, how can we end up with a good curriculum.

Q. That's helpful, my synthesis of that is, and you can correct me, is that you are making a prediction of harm based on the process chosen as compared to the process under the previous government.

A. It is a prediction of harm, but it's also one that's based on experience as well. Like, one of the outcomes of this curriculum development process is, we have ended up with a curriculum which is very narrow in orientation, that is highly achievement driven with a massive emphasis on stepping children through stages and keeping them up. We have been there before. This is national standards on steroids, and we know what happened with national standards. The highest acceleration, or deceleration, our achievement levels nose dived under national standards, (inaudible 13:36:48) data showed us that and we are going to do it again. So, yes, it is a prediction, but it's also an informed prediction based on experience here and also experience of what similar curriculums around the world have found, such as England. Who are now walking away from this approach.

(13:37) DR PAUL HAMER TO BEVAN HOLLOWAY AND RICHARD MANNING:

Q. I had a few for both of you, maybe I'll start with you, Associate Professor Manning. I just wanted to talk to you about the whole concept and notion of history wars. I remember Jamie Balloch once said that we had never really had serious history wars in New Zealand because we had never taken the contrarian seriously. Unlike, say Australia, where there had been, John Howard had embraced Keith Windschuttle and so, there had been much more pronounced history wars there. You know, Henry Reynolds versus Keith Windschuttle et cetera. I guess also, another factor in this kind of, greater sense of consensus in New Zealand, about our past, is that we have had a Treaty Settlements process that has been running for 30 years and there's no party in parliament that objects to it. You won't find, the time when a settlement bill is passed in parliament, there is pretty much universal

acceptance of its provisions. The celebration in the parliament of that. I'm just wondering if you feel that what we are seeing now, with the changes to the Aotearoa New Zealand Histories Curriculum, is showing that the contrarians have now got themselves into the system, as opposed to sitting outside it.

A. [Richard Manning] I think, well, I was taught by Jamie Balloch, so I appreciate that example and I think, even more recently, we have had Michael, I'm trying to remember, from Massey, he was with the Tribunal for a while. Arguing that we haven't had history wars, but I would argue we have –

Q. Michael Belgrave?

A. Yes, Michael Belgrave. Even working on the drafting of the ANZHC, had argued there is no New Zealand History Wars. I've been writing for a very long time, there is. But I guess, again, I would say, rather than the open sort of, if you are going to use Military metaphor, rather than the sort of open warfare, it's been more like a gorilla warfare. I'd go back to, and I think, a good starting point would be to take us back to what Graham Hingangaroa Smith wrote in 1990 around taha Māori, Pākehā capture.

One of my big concerns with the additive, or contributions approach that this government is taking, it's a clip on, it's tokenistic, it's a clip on approach. When people have wanted to go further in the past, i.e., more engagement with mana whenua, more thinking, more dealing with truth telling issues, or coming to terms with the violent histories that we are left with. The legacies of those, then the doors have become shut.

So, what I've documented in my studies since 2008 has been the gatekeeping process of the Crown and that gatekeeping process. You know, and it saddens me because I'm a proud teacher, I'm a proud union member. But in the past, we have had situations where Pākehā teachers have collaborated with Pākehā officials and politicians to basically, keep Māori out of the decision-making process. So, for me, Aotearoa New Zealand Histories Curriculum was a breakthrough and that at the very least, we final saw Te Pouhere Kōrero, the network of

Māori historians, at the table. That was groundbreaking and in the historical record.

But as you are saying, what we now have is a grab for power. What I see is very much like that, and I think we have our own, it's like we have our Keith Windschuttle determining the curriculum. If you want the Australian example. Windschuttle seems to be the only academic in the room, the contrarian. You and I both know who I'm referring to.

Q. Yes, I wanted to ask you about Paul Moon in a second, who I think you are referring to.

HOUSEKEEPING – TIMING (13:41:52)

DR PAUL HAMER TO BEVAN HOLLOWAY AND RICHARD MANNING: (CONTINUES)

Q. Just in terms of what I was talking about in terms of Treaty settlements as being something that we as a nation have, within the establishment, within the government, have consistently embraced, parties of both stripes. I was interested that you quote from Elizabeth Rata, who is obviously not an historian, or you know, one of the sort of, what Ian Paul called tabloid historians or anything like that, or anti-Treaty, I think, is Richard Hill's term. You quote from her denigrating Treaty settlements in saying, they are sending us to the third world status. She's been influential on curriculum changes, so I mean, that's partly why I asked you the first question.

A. [Richard Manning] Absolutely, it's actually really scary to think that somebody who sees a local curriculum as an exercise in decolonialism, an exercise in tribalism, and that tribalism's a bad thing. This is, who, as Bevan has clearly indicated, is at the helm, and fellow ideologs who we have seen before the election of this government. Who have been working the social media rounds, through the Free Speech Union connections, through the New Zealand initiative.

On the platform, these are not ideologically, politically neutral platforms. So, there has been a campaign to create this mythology around Aotearoa New Zealand Histories Curriculum that is promoting tribalism at the

expense of Pākehā. I am Pākehā, I would be thrilled to have my kids going to school where they could learn who are the mana whenua of this land, that's a terrible thing, isn't it. I do not think that they represent the broad expanse of academia, I think they are academic out rights, but they have the ear of Cabinet.

Q. Yes, but except, Paul Moon is an academic historian, he's a professor at AUT, I don't know how big their history department is. But does he give those people you have just been describing a kind of, cloak of respectability?

A. Absolutely, I think Professor Moon and Professor Rata give writers like Roger Childs, who has wrote a book about the New Zealand School History Curriculum is an exercise in indoctrination. They are the sort of, academic pillars for writers like Roger Childs, for the Hobsons pledge movement. They are the go to academics. They are not going to a Jamie Balloch, or a Claudia Orange, or Nepia Mahuika, or Aroha Harris. No, they are going to Jamie, and they are going to Elizabeth, and you are seeing their thinking reiterated over and over in their arguments.

Q. Now, speaking of Aroha and we have also mentioned, Michael Belgrave. You say that Professor Moon criticised the writing of the Aotearoa New Zealand Histories Curriculum as having been clandestine and when the names of the writers, including those two I have just mentioned, were publicly available. They include very reputable historians. Then, but you say that, who drafted the social science curriculum is not revealed due to a non-disclosure agreement. But we know that Paul Moon met Minister Stanford on the 17th of October last year, and then 12 days later, you had that opinion piece, describing it as a triumphant, the new social sciences curriculum. So, I'm just trying to work out, whether you are saying, there is an inference here that Professor Moon was one of the drafters of the curriculum, or has he actually been – then you also said he's been open about it.

A. Well, I think that the problem is, and this is what Bevan is alluding to. Just the lack of clarity, lack transparency from this government, from this ministry, around who is actually in the room. We have Paul Moon on the record as having met with the minister, 12 days later, she says, we are

just talking about the progress. I'm thinking, well, 30 minutes of the minister's time with one academic is quite unusual from my experience of tracing the development of history, the guideline, since I did my thesis. It's unusual to put it mildly.

Q. But has Paul Moon come out and said: "I was one of the drafters of the –

A. He's come out, from recall, we would have to go back to the article, which I have put in the references. That he was involved in reviewing it, so I would say, that makes you part of the drafting process. If you are reviewing it, you are giving feedback, you are part of the drafting process.

Q. Okay. So, I just had one last area to go to, which is the ERO report, because I think a lot, sort of hangs on that report and its reliability, doesn't it?

A. Yes.

Q. Because Minister Stanford points to it as a reason to go back and have a review of the Aotearoa New Zealand Histories Curriculum. It's a justification for change on her part, for less so-called vagueness and more structure, et cetera. Now, that report has a lengthy methodological section and I'm wondering, are you telling us that you have had a look at that methodology section and you think it's faulty, and is the survey invalid because of the non-participation in Māori medium schools for example?

A. There are problems with, again, the use of NDAs to withhold the identity of the historians, the experts it claims were involved. In fact, as I have said, I am quite happy to hand over all my OIA correspondence for the Tribunal if you wish to look at it. I took a complaint to the Ombudsman because of the withholding of basic information. I asked, well, if you really did have historians involved and you are not going to name them, could you give me some demographic. A sense of the demography of who is involve. Like, how many women, how many of the participants were Māori and they said, well, there were five people involved, more than two, less than five, and that was all they were –

Q. Why are they being so secretive?

A. Well, that is the question and again, the question that we are having, well who is actually writing this curriculum, so that's the first concern. As an

academic, I would be more than happy to be named as one of an expert panel, why would you hide your identity, unless you feel you need to hide it for some sort of reason. It just seems bizarre.

Q. Yes, okay, and then, did you find it odd that there was a reference to the participation of one kaumātua?

A. I thought it was astonishing. I mean, honestly, one kaumātua –

Q. Because that kaumātua, single kaumātua, we don't know where they are from but is held up as an example of the kind of outreach taken in doing this analysis. If you only had one , it sort of begs the question why you didn't have more and it draws attention, really, to there being only one.

A. Yes, it was astonishing, which is why I literally went on this path and started to send an OIA request to ERO: "Who are your experts?" Because seriously, if you are telling us in your report that you have only interviewed one kaumātua, we have a problem. In terms of the Treaty, how many hapū, how many iwi are involved. It's the 21st century and it's like we have gone back in time.

Q. So, just to finish on the ERO report, well, this is actually my last question for you. For us as a Tribunal writing our report, do you think, I thought, maybe there were a couple of key questions about it, which was one, were its conclusions robust? That's the first question and you can give me an answer to both these. Secondly, were the conclusions in that report used fairly or selectively by the minister?

A. I think, a) the methodology was so flawed that the conclusions are problematic. Then the way the conclusions were used by the minister on April 4, 2024, was basically, literally repeating what Professor Moon had said in statements elsewhere and other right wing activists had said on social media, we need to restore balance. That became an election year campaign and here she is, and ERO saying we need to restore balance to the curriculum. They were arguing that there was too much focus on local and Māori content.

The problem is, as the NZCER found in its research, well, of course there is because this curriculum has only just come into being and this is new contents. So, obviously, a lot of schools, a lot of kaiako, a lot of teachers are going to be focussing on introducing and dealing with this new

content. It's also disingenuous in the sense that, as I have said before, the Aotearoa New Zealand History Curriculum does require you to actually look at international and national contexts in the local. It's a glocal approach, you start local, you work up to the national, and international. You can go backwards and forwards. That's not how the minister presented that curriculum and it's certainly not how those two academics who were advising her, have presented it, it's misleading.

Q. Thanks Associate Professor Manning. Mr Holloway, you refer to, at one point, to the "second part of the work that Minister Stanford tells Michael Johnston he can make a start on when he wants to." Do you think the second part of the work, what do you think that refers to, is it the writing of the curriculum?

A. [Bevan Holloway] I don't know, that's a question I've had in my head ever since the moment I saw that text. The context in which that message was sent within was within a preceding text, I'm going off the top of my head here, where Michael Johnston had asked for a conversation about the MAG. So, I think it is in relation to the MAG, I don't know what the second part of it is, because she doesn't say and obviously, I'm not in her head and I didn't watch her or talk to her about it afterwards. I think it's up to us to draw our own conclusions around that.

Q. Yes, okay. Now, the minister's interview with Shaun Plunket on the platform, it's not available on the platform website anymore, you have to pay a subscription to get access to it. So, I didn't do that, but I'm wondering if you, because you quote from it, I wonder if you made a fuller transcript of that particular exchange?

A. I wasn't aware that it had been paywalled now, it wasn't when I found it, so I could go and check.

Q. Okay, well maybe, from your memory, are you sure – she says the Treaty would be gone in one go –

A. Yes.

Q. But I mean obviously there are lots of mentions of te Tiriti in the Act. The context here seems to be about section 127(1)(d), are we sure she's not also talking about section 4 or 32, or something else?

A. She doesn't specify and the context to which she gets to that statement is where Shaun Plunket is pressing her saying: "There are a lot of people that don't believe the Treaty should be in education." "Can we get rid of this Treaty, nonsense" et cetera, or the usual rhetoric that we hear from the likes of Shaun Plunket. Eventually, she yields after ducking and diving and weaving and doing her politician type responses, and it is exactly as I transcribe in that particular section.

Q. Okay, so, and this, I want to just refer to Mr Jackson's evidence for the Crown and I can put this question to him as well, of course. But I kind of read that as implying that it was the outcome of the Treaty references review in September 2025 that prompted Cabinet to agree to remove section 127(1)(d). But according to that interview from months before then, it would seem like the minister was already determined at that point. I mean, we are in the realm of a little bit of speculation here, I suppose. But certainly, that statement she made seems problematic in terms of process when the Treaty references review hadn't reported back at all. I think you will need to say yes or no, rather than nod.

A. I think I agree, it is a problematic statement.

Q. Right, well, it's just, I mean, I listen to her talk to Mike Hosking on the similar subject around the same time, which is not paywalled, and she wasn't so, she was more equivocal, really, there, in that interview. But still seemed to be saying that it was a valid question whether that Treaty clause should be there in terms of the obligations on school boards. So, I am interested in that interview on the platform. But anyway, the reply evidence of Stephanie Mills, Jessie Moss, and Shannon Walsh. I know Jessie Moss is going to come and talk to us soon, but I wanted to put this to you anyway. They say that the minister was deliberately using the overlapping timing of the progression of the Education and Training Bill, through the House and the treaty references review to avoid the scrutiny of its removal at select committee. Is that what you are saying as well, or are you –

A. They probably know a little bit more about it than I do, because they spend a bit more time on this than I do, obviously. But I think that's probably a fair assumption, based on what I know.

Q. Okay.

A. Yes.

Q. Well, we are having to speculate –

A. We are –

Q. – so, it's not ideal –

A. – and I'm a bit hesitant. I don't want to say things that I don't know are for sure and that's been my whole approach, the whole time. I haven't wanted to wonder into speculative realms too often, because it's a big thing, right.

Q. Well, thank you both for your evidence, thanks very much.

(13:58) DEREK FOX TO BEVAN HOLLOWAY AND RICHARD MANNING:

Q. Kia ora. I have one question, just to put to both of you and it's about the term that you use there, which is not, I mean, it's what was driven by, or is driving what's going on here. But the term: "To restore the balance" What sort of term is that, is that a neutral term, or is it an unbiased term, and what should people think when they see that term: "To restore the balance"?

A. [Bevan Holloway] I'd just make the point that if you are restoring balance, it suggests that something is unbalanced in the first place in someone's perspective. So, we would need to look at the source of their judgment around that. It's very that it's in reference to the Aotearoa New Zealand Histories Curriculum, which I think, Richard will talk to in more detail, in a second. But if that is being seen as a need of rebalancing, I think that is an insight into the motive of the people that have made these changes.

[Richard Manning] Yes, and to pick up on that, and I'm thinking, Dr Hamer has asked me. It's this notion of Māori at the centre and that is not its rightful place, and we need to restore balance by returning it to the periphery. Because these key, core understandings that Māori history is foundational and continuous history of Aotearoa New Zealand immediately triggered far right commentators, activists, academics, and politicians. So, this idea of restoring balance is, we want to recentre the Western cannon.

I would also say that that is happening globally on a global stage. We have seen this happen in indigenous Australia. I have been working with Australian academics who we have been tracking the movement of right wing commentators this side of the Tasman going over to Australia and speaking into the indigenous voice campaign. Where they are also talking about balance. We don't want too much of this indigenous stuff, it shouldn't be front and centre.

So, it's this idea of the great replacement, this idea that Western civilisation is under assault. So, here's a classic example, think about this, why is it now that our very young children are going to be so much emphasis on the battle of Thermopylae. Because isn't that where the Greeks, the West defeated the Persians and who are the Persians today, by the way, they are the Iranians. We have to see it in the broader culture wars on the global stage, what this is about, this is the local variant of a global culture war. That would be my opinion, that's also the opinion of Dr Mahuika, and probably a lot of other academics you would talk to. This is great replacement theory in action, in the curriculum.

Q. It seems that the restoration that is going on is aimed at Māori.

A. Yes.

Q. And to the best of my knowledge and I'm just a simple country bloke from Mahia, but to the best of my knowledge, there have never been an overwhelming number of Māori lawmakers in the parliament. Where all of these things derive from. How does that sort of statement resonate with you?

A. [Richard Manning] Because ideology transcends culture, and you can be a far right ideolog irrespective of your ethnicity and we are seeing that. Neo capitalists, whatever, far right nationalistic, that's global, this is a global happening.

Q. And it makes the oil price go up. Thank you very much.

(14:02) JUDGE MULLINS TO BEVAN HOLLOWAY AND RICHARD MANNING:

Q. It is time for our microbreak, but many of my questions have been answered in the course of the conversation today. I just wanted to clarify

with you, Associate Professor Manning, you gave an example, I think it was in this area of 28 per cent of schools have taken out NCEA 1, 2, and 3 of the Māori content –

A. Sorry, this was referring back to when I did my PhD in 2005. I did a survey as part of that, I was supervised by Wally Penetito and Richard Hill from the Tribunal. That survey showed, in 2005, it's a snapshot, but in the Port Nicholson Block, 29 per cent pf secondary schools at that time avoided any Māori content NCEA Levels 1, 2, and 3. My thesis argued, this is why we need it to be kind of mandatory that we teach Māori history. So, the problem in 2010, NCEA changed to say, it required schools to teach about events, or people of significance to New Zealanders.

But Peter Adds from Victoria University and I asked, well, which New Zealanders? Does that include Māori? What are the guarantees? It is not enough to say New Zealanders because we have seen, historically, so often, the sidestepping of Māori content. When you side step Māori content, we can end up talking about the Tiriti up in the Bay of Islands and so we should. But actually, I'm living here, and I need to be engaging with Taranaki whānui and Ngāti Toa Rangatira because they are my local iwi, and their Treaty narratives are not necessarily the same with those up north. So, that's what my thesis was arguing, we need those stepping stones. Start local, go to the regional, the national, and then look at treaty issues overseas, by all means. But as children get older it becomes more tangible.

Q. Ka pai.

A. Hope that helps.

Q. It does, thank you very much. E aku pūkenga, tēnei au ka mihi nui ki a kōrua.

HOUSEKEEPING – TIMING (14:04:24)

WAIATA TAUTOKO

HEARING ADJOURNS: 2.05 PM

HEARING RESUMES: 2.13 PM

(14:13) MR POTAKA: (CALLS)

Kia ora anō mai, e te Kaiwhakawā. **Thank you again, Judge.**

It is my privilege to welcome the third and final panel. My teachers always used to say, "Save the best for last." I'm not sure if that applies here right now, but we are very, very grateful to have three new faces to the Tribunal. You would have already met Mr Walsh earlier this morning, but to my right is Ms Jessie Moss, and her brief of evidence is at appellation #A010. And then, to her right is Ms Heidi Hayward. Her appellation number to her brief of evidence is #A047. And then there is Stephanie Mills on the end, sitting next to Shannon, who both – well, actually, the entire panel here prepared a reply evidence, and the appellation number is #A047.

I am going to hand it straight to Jessie, who is going to kick it off for this final panel for NZEI, and then we will take it from there. Kia ora tātou. **Thank you, everyone.**

(14:14) JESSIE MOSS: (#A010)

Kia ora koutou. E te Taraipiunara, tēnā koutou. Ki a koe, e te Kaiwhakawā, tēnā koe. Ki a tātou, ngā mema o Te Riu Roa me ngā kaitautoko kua whai wā, kua whai – kua whakapau kaha i tēnei kerēme, tēnā koutou katoa. E rere, ōku mihi, ki te mana whenua o tēnei rohe, ki Te Āti Awa, e mihi kau ana. He uri tēnei nō Airani, nō Ingarani, nō Kōtirani anō hoki. He māmā, he kaiako ahau. Ko au te Kaitohutohu Matua Mātauranga o NZEI Te Riu Roa. Ko Jessie Moss tōku ingoa. **Greetings. To the Tribunal, greetings. To you, Judge, greetings, and to the members of Te Riu Roa and the supporters who have taken the time and have expended much effort on this claim, thank you all. I also want to acknowledge the local iwi of this area, Te Āti Awa. I am a descendant of Ireland… and Scotland, and I am… a teacher, and Kaitohutohu Matua… of NZEI. My name is Jessie Moss.**

My name is Jessie Moss. I am the Senior Professional Advisor at NZEI Te Riu Roa. I will first talk about who I am. I will summarise my briefs of evidence, and I will talk a bit about engagement and then what we are left with.

The purpose of my role is to lead, activate and work with our members to enhance the quality of teaching and learning in Aotearoa New Zealand. I am a registered primary school teacher, and I have spent many years working around the Wellington region in various primary schools and intermediates, and then I spent two years working on national curriculum resourcing and supports for the Aotearoa New Zealand histories project at the Ministry of Education under the previous government. It was a really exciting, history-making time. I worked in the Curriculum Implementation team of Te Uepū Reo Māori, the Māori medium side of the Curriculum Centre.

My two briefs of evidence address the radical shift in the directions of both the New Zealand Curriculum and Te Marautanga o Aotearoa taken by the Ministry of Education after the National-led government came into power. So, my first brief of evidence concentrated on the New Zealand Curriculum. That's because that's what we had in front of us at the time, December last year, when we first put in our submissions and our – into this inquiry. And then I have followed up with that, in March, a second brief of evidence that focuses on Te Marautanga o Aotearoa, because that was not released in its entirety until this January. So, the New Zealand Curriculum and Te Marautanga o Aotearoa together make up the national curriculum. We've got two documents. So NZC is primarily taught for English medium and Te Marautanga o Aotearoa in Māori medium. Either can be used by either – either setting, and then our – our bilingual and our reo rua akomanga use both.

So I – in my evidence, I show that what was drafted – originally drafted as a bicultural framework for the New Zealand Curriculum, Te Mātaiaho, now serves as a Trojan horse for imported ideology, is pedagogically unfit for the tamariki of Aotearoa, and does not uphold Te Tiriti o Waitangi. And what was being developed as a uniquely indigenous curriculum model for Te Marautanga o Aotearoa, Te Tīrewa, underpinned by Te Tamaiti Hei Raukura, which was

rooted in te ao Māori, is now a Western framework that organises mātauranga Māori, te reo and hītori alongside a lot of content directly translated from the New Zealand Curriculum into a Western framework. This is completely unacceptable in 2026 and is a breach of tino rangatiratanga.

The inequity is not just structural, it is procedural. In January this year, when the Ministry released the draft wāhanga ako for consultation, it only granted Te Marautanga o Aotearoa half the consultation time afforded to the English-medium curriculum. This is not partnership, it is marginalisation, and yet the Ministry of Education are comfortable with this. And further to that, we had the release of the final wāhanga ako of Te Marautanga o Aotearoa just two weeks ago, and it is only being afforded two months of consultation. That's Pūmanawa Tangata, and its sister learning area in the New Zealand Curriculum, Social Sciences, has had six months for consultation, and it's really important to note that in these two wāhanga ako, that's where the history sits.

Te Marautanga o Aotearoa is not a subsidiary document. Together with the New Zealand Curriculum, it makes up our national curriculum, which I've already said. Yes. And the vast majority of our tamariki Māori, which we have heard several times today, around 95% learn in English medium for a range of really complex historical reasons, but regardless of where tamariki Māori learn, under Te Tiriti o Waitangi, they have rights to their taonga, to their reo, to their ways of being, and especially to Māori knowledge systems when learning at school or kura. So the Māori – the knowledge-rich curricula that we have in front of us, I don't believe that they are truly bicultural, nor are they derived from te ao Māori. They seek to mandate what is taught at school, and I believe they are knowledge impoverished.

Over – for over 180 years, education has been a key tool of colonisation. In recent decades, Māori and educators have led the way in turning education into a site of reclamation and decolonisation. In recent years, policy and legislation have responded to the sector, and it caught up with professional practice in a genuine commitment in communities to Te Tiriti o Waitangi, and this was really clearly seen in the changes to the Education and Training Act 2020 to be explicit

about giving effect to Te Tiriti o Waitangi and the centrality that was given, that was afforded, rightly afforded to Te Tiriti o Waitangi in the initial refresh and redesign of these curricula.

I will now talk a little bit about the engagement with the sector. What had begun as arguably the most genuine process of a te Tiriti partnership the Ministry has ever facilitated with Māori diverse communities and the education sector – in the education world – has turned into a recolonisation of the poor of the education system, our curricula and teaching practice itself, by a small group of people who are not widely known or regarded in the sector, who have imported ideology from jurisdictions that do not resemble the cultural makeup of Aotearoa and certainly do not arise from the people of Aotearoa and from Māori in particular. The Crown witnesses' evidence relies heavily upon engagement that occurred in relation to earlier curriculum work under Minister Hipkins. That engagement was real, but it does not describe the process by which this knowledge-rich curriculum, curricula, were developed. The sector was largely locked out after the shift to this knowledge-rich approach, and in the Ministry's – the Ministry has made an acknowledgement by Pauline Cleaver in her brief of evidence that the sector involvement was curtailed because it was, quote, "adding complexity and not supporting the development of curriculum materials at pace". This is the most honest statement in the Crown's evidence about what happened. The sector did not withdraw. It was excluded.

The curriculum review groups convened from July 2025 operated without any public disclosure about their composition or outputs, and from the sector's perspective, these groups are invisible. The claim that they have provided meaningful engagement cannot be assessed because there is no transparency about who was in the room or what they said. This has engendered a climate of secrecy. It has unwound the years of trust so recently built by the Ministry with the sector and has ultimately undermined design processes. I contend that the draft curriculum learning areas for the New Zealand Curriculum and the wāhanga ako for Te Marautanga o Aotearoa that we have in front of us are not representative of the earlier genuine engagement that NZEI members and staff were a part of. Furthermore, they are structurally inappropriate for Aotearoa

New Zealand and do not adequately reflect our people, communities, and I have said, do not give effect to Te Tiriti o Waitangi, while alarmingly, retaining enough aspects of the original drafts and titles to look as though they do.

The Tribunal should understand that the Ministry has positioned itself as the sole arbiter of what counts as genuine engagement. The Ministry decided the engagement was adequate and that is the evidence that they have offered.

Our members are exhausted, they're deeply concerned, and they're angry. Still, they are determined to do what is best by tamariki. They are committed to Te Tiriti o Waitangi.

In my two years at NZEI, my work has been absorbed with supporting our membership to respond to round after round of rushed consultation on changes to the Education Act, to curriculum documents, education policies, assessment and evaluation changes that have not been called for by the teaching profession or education experts. In each case, these changes have had shaky evidence bases and are ideologically driven. In each case, our members have expressed immense frustration at being asked to engage in consultation processes with near-completed documents at unworkable speed, with Ministry-imposed timeframes, while continuing to manage their already-overloaded professional working classrooms throughout the motu, all the while implementing whatever the most recent change was.

As a result, they have often felt unable to fully participate, and as time went on, increasingly despondent about the value of adding their practitioners' knowledge and experience as time and time again, their voices were ignored.

The Crown tells us curricula in front of us are in draft, and that they will read and listen to our views, and that changes can still be made, but two weeks after the New Zealand Curriculum learning areas were released for consultation last October, the Education and Training System Reform Amendment Bill was dropped out of the blue, and if passed, a key amendment to this Bill, which is anti-democratic, will grant the Minister of Education, whoever that might be, the

power to change the curriculum themselves at will without review or report from their own ministry. So my question is: why should educators spend the little time they have providing feedback on what look like completed documents at the moment in good faith when the Crown is legislating the power for the Minister to overstep the entire profession anyway?

It has been a hugely disempowering and demoralising two and a half years for our members in the education sector broadly, and at the centre of all of this is heartbreak, true grief at seeing Te Tiriti o Waitangi systematically removed and demoted throughout the system, either outright or by removing te reo Māori, tikanga and mātauranga from curriculum, from removing essential PLD programmes, workforce-essential to teaching and learning that upholds Te Tiriti o Waitangi.

The drafts under consultation are unfit for purpose. They are knowledge-impoverished, and I support our organisation, NZEI Te Riu Roa and the New Zealand Principals' Federation joint statement around curriculum that we need to halt the finalisation of these drafts pending Treaty-compliant consultation with Māori, kaiako, whānau, iwi, hapū and the education sector. Tēnā koutou. **Thank you.**

(14:25) HEIDI HAYWARD: (#A047)

Tēnā koutou. I whānau mai au ki Ōtepoti. Ko ahau te Tumuaki o te kura o Dunedin North Intermediate. Ko Heidi Hayward tōku ingoa. **Greetings. I was born in Dunedin, and I am the Principal of Dunedin North… My name is Heidi…**

I've been an educator since 1999 and have served in school leadership for the past two decades. Beyond my own school, I've also been deeply involved in national curriculum development since 2022, initially serving on the Curriculum Voices Group during the refresh phase. Currently, I lead the curriculum pou for the New Zealand Principals' Federation and represent them also on the NZEI Principals' Council. I'm also the Vice-President of the New Zealand Principals' Federation.

I'm here to provide a practitioner's lens on how recent Crown actions have fundamentally destabilised the classroom environment for all learners, but especially for Māori learners. My evidence centres on a shift in the education system from one that was beginning to honour Māori identity to one that now prioritises uniformity and compliance, and I noted the comment from one of your Tribunal members about things seeming different in New Zealand, 15 years having left the country, and I think that that's true and largely because of education and what we've been able to deliver in the last 20 years.

The Crown suggests that the move to a knowledge-rich curriculum is a positive reform, yet my evidence shows it's been written largely in secret. Three questions remain unanswered by the Crown, and we've heard about this a number of times this morning already. Who wrote this curriculum? How were Treaty obligations genuinely met? And how was the sector meaningfully engaged in the writing process and in the ongoing consultation? These are not rhetorical questions. They're central questions in this inquiry, and the Crown's evidence does not answer them.

The Ministry has confirmed at paragraph 92 that it worked less collaboratively with people outside the Ministry in preparing the knowledge-rich curriculum than it had on the 2023 draft. That is an admission. It's dressed in neutral language, but the effect was that Māori educators, hapū and iwi were most significantly excluded from the very stage of development where the foundational content choices were being made.

Jessie's already referenced the Ministry positioning themselves as the sole arbiter of content, explicitly stating that the sector's involvement was curtailed because it was adding complexity and hindered the pace. This is not partnership. This is the Crown substituting its judgement for the voices of Māori communities and educators.

As a sector, we're struggling to understand the purpose of the secrecy or the evidence that supports this style of reform, and again, we've heard that come

as a question from the panel. We're being painted as resistant to change, born of an attachment to an outdated framework. The reverse is true. Our resistance is a legitimate and principled response to a reform process that's been conducted without transparency, partnership or robust evidential foundations that such a significant shift demands.

Richard outlined a lot of detail around the social sciences curriculum this morning, and the same can be said for all of the remaining curricula. Even if the sector thought the proposed content was fit for purpose for students growing up in Aotearoa, the mechanics of a shift to this type of syllabus of facts delivered in a year-by-year fashion as opposed to the composite nature of the vast majority of classroom settings in New Zealand, have not been accounted for. Having been involved in the reform since 2022, I distinctly remember the first time I heard mention of this curriculum being taught in a year-by-year fashion. It was the 5th of November 2025. How can such a significant change have come about without discussion or engagement with the sector and without consideration of something as fundamental as the staffing ramifications? If I consider the rural school that I led before DNI, this would mean that I had 8 curricula to teach, one for each year group, and three teachers to deliver it. It's nonsensical.

The review groups from July 2025 are presented as evidence of engagement. From the sector's perspective, they were invisible. No public disclosure of membership, no disclosure of outputs. The sector does not know who represented them or what was said on their behalf. Effectively, we're being asked for feedback on a set of curriculum documents that are fundamentally flawed, and had we been engaged from the start, I don't believe this would have been the outcome. I ask this Tribunal to look past the language of collaboration used by the Ministry and see the reality of erasure taking place.

The principle of active protection requires the Crown take positive steps to protect the rights and interests of Māori, including the right to an education that reflects and affirms mātauranga Māori **Māori knowledge**. Pauline Cleaver's own evidence acknowledges the Ministry grappled with how to reflect

mātauranga Māori in the New Zealand Curriculum through 2023 and 2024, but it did so internally, without transparent engagement with those best placed to speak to that kaupapa. That is not active protection.

This curriculum process must be halted. A finding that the Crown has failed to honour the principles of partnership and active protection is essential. By locking hapū, iwi and the sector out of the design process, the Crown has breached its duty.

We must start anew. We need a national curriculum that is genuinely te Tiriti-compliant, places Māori educational aspirations at its centre, and puts sector expertise at the forefront.

And just because I'm under time, I've been pondering a little analogy as we've been – as I've been hearing evidence this morning, and I think it feels a little bit like the Ministry has positioned themselves as the architect. They've reverted back to an outdated model of building code and compliance. But they've gone ahead and built the house anyway. They've not consulted with the clients, the students, the whānau, the hapū, the iwi, the sector. And then they've delivered a three-storey building with rotten foundations. And the consultation that we're being asked now to provide is, "What does the upper level of the house look like and how much do we like it, from 'Like it not much' to 'Like it a lot'?", as opposed to "It's not fit for purpose." And – yes, I'll leave it there.

(14:33) STEPHANIE MILLS: (#A045)

Tēnā koutou, e ngā rangatira mā. Ko Stephanie Mills tōku ingoa. Ko Manaia te maunga o tōku ngākau. Ko Waipū te awa. Engari ko Tapu te Ranga tōku kāinga ināianei. Ko au te Korimako Tangiata o NZEI Te Riu Roa. **Greetings to the leaders. My name is Stephanie Mills…**

Thank you for listening to members and to leaders across the sector. I want to also acknowledge the kaimahi behind you. It's a very long day for them, and I know there have been long hours and long weeks before this.

I'm just going to briefly summarise some of the key issues without hopefully going over the problems too much.

I think the first one that – that you heard from Jack in the original opening submission was that the Crown cannot simultaneously claim that schools aren't able to discharge Treaty obligations and then fail to do so so obviously itself, and I think if you just take a very small example, the Crown – the Ministry, in its first Pitopito Kōrero, the school bulletin to principals this year, advised schools that they no longer had to give effect to te Tiriti, that section 127(1)(d) had been removed. They no longer had to report in their annual report. They did not advise that there were still obligations in the supporting objectives. So I think even at that level, the Crown is not following through on its, you know, stated claim that somehow it is still upholding te Tiriti in other ways.

So what we've seen is not an accident but a trend in the Crown's behaviour. Failure to consult in the very removal of those obligations of school boards; failure to consult on the curriculum, the NZC or Te Marautanga; failure to maintain and uphold indigenous frameworks for curriculum; and failure to provide equitable timeframes for consultation.

A second point is that we are obviously concerned about section 127(1)(d), that there is damage, that there is harm already happening. It's not, as I think Meredith Kennett pointed out, easy for boards to balance all their obligations, and without a clear priority, a clear focus on te Tiriti, it's – there is no doubt in my mind that schools will not have the institutional resources and prioritisation to keep te Tiriti, to give effect to te Tiriti in the day-to-day operations of schools and in their strategic plans.

I think, again, the use of these overlapping mechanisms, we argue, was intentional to avoid scrutiny, to avoid consultation, to avoid public debate. In a way, what we saw was a twin-track demolition derby for te Tiriti in education, and now we're having a third route, through, no doubt, legislation soon based around the Treaty review references group's recommendations.

But whatever route they took, it wasn't about efficiency, it was about secrecy, and I think that is a fundamental problem when this Tribunal fired a warning shot at the Crown in 2024 when the Treaty references review was first elaborated by the Crown, and the Minister decided to go as many routes as you could, essentially, and then to try and pick the best one, so she asked the Social Outcomes Committee if it could go through the Treaty reference review, she had the other section 127 consultation, and then ultimately she went through the Committee of the Whole, and now we see that there may be further damage.

And this is real damage, because many of our kaiako and tumuaki **teachers and principals** live in communities, whether for – whether through ignorance, through racism, through – they live in communities that are hostile to schools upholding te Tiriti. I think, although 75% of boards stood up and said they would continue to still give effect to te Tiriti, there were a lot of ākonga Māori and a lot of kaiako Māori **Māori teachers and students** and a lot of our mokopuna in schools in that other 25% of our community, and we have to be real about what damage that does when we remove that mandate, that protection from our boards and from our school staff.

A third point, I think, is around the further impact that that creates, and an example, really, that conflicts with this government's own priorities, is around attendance. So, there's been evidence over many years that ākonga Māori are most engaged with learning when they are present at school, when they feel in relationship with kaiako **teachers**, when their whānau are more engaged, and when their school boards are part of their community, the day-to-day activities, and trust is built through that accretion and accumulation of small activities. So, while boards have a strategic plan that they must meet or have had to meet. There's also that slow buildup of trust over time. And I think that's the great tragedy here, that – that that clause of giving effect to te Tiriti which only came in in 2020 has only just started to live, and it's been throttled at birth.

I also want to address the – the – I guess the fundamental binary that the Crown continues to assert that somehow academic achievement for students and upholding te Tiriti are – are polar opposites and never the twain shall meet.

When we look at New Zealand's student achievement over the – the past decade and a half, it almost completely mirrors that of the OECD. So you will hear "crisitunity" language, if you like, about declining rates of achievement. Unfortunately, this is a really, really tough problem that not just New Zealand is facing but every single other OECD country. So we remain above the OECD average. We're still in the top ten in reading. We've declined in maths and science at approximately the same rate as every other OECD country. So that is not to say that this isn't a problem, but it is to put the blame, if you like, on the fact that we're trying to create a system that sits under te Tiriti, that speaks to tamariki Māori **Māori children**, is again, I think, a tragic mistake.

The other thing that I think it misses is what's possible, because for every damage that we cause, we lose the opportunity to create something good, and so when we look at where New Zealand does well in PISA, the international rankings of countries, we're top ranking in creative thinking. We're in the very, very top of that group. And if you go to Study New Zealand, the government's own propaganda for its bringing international students to – sorry, advertising – to bring New Zealand – international students to New Zealand, the picture that's presented is fantastic. It trumpets the fact that we're in the top three in a – in a study called Educating for the Future. It talks about our – it quotes children and their parents talking about students being able to really succeed because they have their culture and identity affirmed, and that they're part of the natural environment, and that teachers give them agency to learn. So I think what we really need to be thinking about is what's possible.

There is a different way of doing curriculum development. We see that in countries like Ireland, where there are independent statutory councils that bring diverse voices together and iterate change in curriculum over time. There are so many examples that we could be following to produce really great results,

and what we need to see now is section 127(1)(d) restored and a pause on this curriculum scope and pace so that we do get a truly te Tiriti-compliant process.

Kia ora.

HOUSEKEEPING – TIMETABLING (14:42:09)

MR POTAKA:

Tēnā koe **thank you**, your Honour. That concludes the evidence in chief on this side. We are now open to questions.

QUESTIONS FROM MR POTAKA – NIL

(14:42) GERRARD ALBERT TO JESSIE MOSS, HEIDI HAYWARD AND STEPHANIE MILLS:

Q. Tēnā koutou. Just one quick question to the – to the panel. Been comments about the process from other witnesses and experts today as well on curriculum development. In the education sector and in particular teaching profession, how much is – is – well, the validity of the curriculum you have to deliver based in its integrity of its design and creation? Is there a element of hollowness that might appear and be apparent if those who have to develop it know that it wasn't done in a fashion that they would consider as in alignment with their professional, academic and – and other standards and values?

A. [Jessie Moss] Tēnā koe. I think I can kick us off. If you look at a really macro perspective here, when we're talking about engagement and co-design, we're talking about co-constructing curriculum and designing it from the outset, and what we've been presented here is near – near-completed results, and that process of co-design is around figuring out what counts as knowledge, what counts as important for teaching and learning programmes, and we're really unclear about who it is that has decided what it is that counts as knowledge in these curriculum documents that we're looking at.

And then that then impacts the delivery, so – and assessment as well, so if teachers are unsure of where all this information comes from and how it fits together, or if it is incoherent, which it is in these curriculum, it becomes really hard to deliver, when it's just ultimately a list of bits of knowledge or bits of facts to deliver.

And then, when we're looking at assessment – so there's been a lot of changes in, and changes coming down the track, too, around how assessment for learning and of learning happens, and there's a real focus at the moment on reading, writing and maths, and we don't debate that that's appropriate, but what – what the scope of assessment focuses on is what gets taught, so there's also questions there around who is deciding what we assess and how we assess, and that ultimately sends a message of what counts as success.

So those are some sort of macro issues, and I think Heidi can probably give some really great examples of the really nitty-gritty, on-the-ground, day-to-day potential implications of what this curriculum will look like.

[Heidi Hayward] Yes. Maybe, just before I start, if I can also add that in the pre-2023 design phase, we were in the room as the sector, so we were in real time discussing the viability of ideas and proposing solutions and able to – to work in a back-and-forth way to be proactive in – in curriculum design, but as Jessie said, this has been presented to us almost complete.

And the real problem comes about where – well, a real problem, but a significant problem is that our – most of our classrooms are composite, and I mentioned that before, but that means if you – if I go back to my school in – in rural Dunedin where I had four levels in one classroom, I am now trying to teach four different curriculum, none of which mesh together, so I might be teaching one age group, which could be two or three children, about ancient Egyptians, and another two or three children in the same class about the suffragettes, and – I'm just drawing themes that I recall from the curriculum in there – and then I've got another couple of – of subjects to teach, all at the same time.

I've got no ability to try and work with the kids, as we've done in the New Zealand education system for such a long time so successfully, to

try and develop their area – area of interest, you know, because we know that kids are like, you know, if you present them vegetables, they're not going to like all of them. You've got to give them a little bit, and then a little bit, and you know, the one that they could tolerate, and could you have a wee bit more of the one that you can tolerate. This curriculum means that you give them all of the content, and as a teacher, there is no time at all to try and design it so that it's more tolerant to the vegetable-resistant kids, or, you know, the ones who have no interest in ancient Egypt.

[Stephanie Mills] I was just going to add that this – the six new learning areas that are the subject of this new draft curriculum come on top of multiple changes to literacy and maths curriculums as well, and so I think the other thing about consultation, which is a really pragmatic thing to do, which Heidi has already alluded to, is that consultation shouldn't just be about the content, it has to be about the feasibility of implementation, and we did a survey a couple of weeks ago and had, within just one week, more than 450 schools – no, sorry, 700 schools responded. Two thirds reported more workload as a result of the pace of curriculum change. 68% said it was rushed and poorly managed. Three quarters said the pace and extent of change was overwhelming. And just 4% said they were enjoying all the change. So even people that are happy with the direction are finding the implementation difficult. And so I think there's a really pragmatic reason to involve educators in curriculum design and development.

[Heidi Hayward] If I could just one other thing to that, the mandate for an hour reading, writing and maths has also – and this style of syllabus-type curriculum, where it's just a – a series of facts – has really put the pressure on in the classroom setting, because you can't really integrate successfully because you've got discrete knowledge that needs to be taught in English, and then quite discrete knowledge, also, that has to be taught in the other subject areas, so there's not really any scope for integration, which leaves, really, an hour and a half a day to do all of the other curriculum.

[Jessie Moss] I just have – if it's alright for something else, a couple of – more things to add. Just on the base – talking about this sort of idea of a knowledge-rich curriculum, so, that's not something that's come from here, from Aotearoa. It's a – you know, it's a Western theory that's been brought here, and the idea with it is that it sets out very clearly the content that must be taught, and there's – there's no objection from our membership that greater clarity is good, and there's even been calls, you know, in recent years from across the education sector for some more clarity in the curriculum, given that the 2007 curriculum was very, very high-level. So that's not something that we dispute, to have more clarity or even to have more content.

However, the knowledge-rich curriculum, this idea of "knowledge-rich", which is a Western theory, sets out the learning that is – has been decided as being essential by people who are unknown to us and unknown to the education sector at large; by a small group of people, it's becoming apparent.

And something that's really important to note here is that our Minister of Education talks a lot about equity. She talks a lot about "all children", you know, regardless of where they live, regardless of their background, regardless of what they do or don't have in their home, that they all receive the same education and the same knowledge. I think the opposite should be true, that that's not equity; that to have equity, you have to be considering exactly the background of these children, where they have come from, where they live, what is and isn't in their homes, in order to give them what they need. So there's this – yes, misconstrual of what "equity" means going on at the moment, and I'm fearful that what actually is meant by delivering equity, by giving all children the same, if then what we're giving them is set by – is not set in partnership with Māori, then what are we giving them? That's the question.

These are the questions we're asking – yes, asking ourselves.

HOUSEKEEPING – TIMETABLING (14:52:39)

(14:52) DR PAUL HAMER TO JESSIE MOSS, HEIDI HAYWARD AND STEPHANIE MILLS:

Q. Tēnā koutou. Ms Moss, I'd better start with you, and the question I directed at Ms Lessels before. I apologise; I didn't realise you were presenting today 'til I turned the other side of the paper over and saw your name there. So you – you did say that there were no Māori members on the MAG, and you – you'd accept that Melissa Derby was on the MAG –

A. [Jessie Moss] Yes, yes, yes, and my apologies; I was going on what was on – on public record, what's publicly available, and on the press release about the Ministerial Advisory Group members that came from the Minister.

Q. Yes, well, well, having cleared that up, I'd want to give you an opportunity to make comment about whether – I mean, I don't want to focus on Dr Derby in particular, but whether the – the interests of Māori in the education sector were represented, either on the MAG or on the Curriculum Coherence Group.

A. Sure. Yes. I guess it's fairly telling that in all the conversations I've had with colleagues and our membership over the last however many years since – yes, two and a bit years since the Ministerial Advisory Group was – was established, that the general feeling has been that they have not been representing the views of Māori and that, you know, and I – and I had had many discussions expressing my deep concern of the composition of the group and the apparent lack of Māori on the group, and I mean no disrespect to Melissa in having got her whakapapa wrong, but it's telling that none of my colleagues or any of our membership ever knew any – you know, knew to the contrary about her whakapapa, as well.

Q. And – and – but the Coherence Group has six members, and are any of those people Māori?

A. Not to – not to my knowledge –

Q. Right.

A. – not identifiably Māori, yes, on public record.

[Heidi Hayward] It's quite – it's quite interesting that the Coherence Group has also had to sign NDAs now, so they form part of the secret –

Q. Right.

A. – groups.

Q. Okay.

A. [Jessie Moss] I think it's notable, too, that Te Marautanga o Aotearoa did have a curriculum oversight group, Te Rōpū Whāiti, that was disestablished in April 2024, and since that group was disestablished, Te Marautanga o Aotearoa has not had its own oversight group, whereas – and it's – and it's become nestled in under the Coherence Group, so yes.

Q. Yes. Yes, I wanted to follow up on that matter with the Crown tomorrow. Just in the interests of time, I just wanted to raise one other thing, which is the PISA results, and I – I think this is very important, that there's a global international trend, because, I mean, one of the things that has been spoken about by the Minister and maybe others is that we've got a crisis here because of these plummeting rates of achievement, and put in a global context, it looks quite different, and I – but I really wanted to know if there's been – if – if there's some explanation for why this is happening internationally, and because I – I don't know if that's come through in any of the evidence we've received. I mean, it's very important context for us to know about this international kind of trend, but – and I hear that you're saying that it's not something that can be solved through a knowledge-rich curriculum, but what is driving it?

A. [Stephanie Mills] I – I wouldn't pretend to have all the answers. I was going to show you a little chart. I think that there are a number of things. We saw dips during COVID, for example, so there were those external circumstances.

We know that in New Zealand, well, across the OECD, socioeconomic status plays a very big part in student outcomes, so we are no different here, and the equity issues are exacerbated for Māori and Pasifika learners. So that's, you know, not rocket science, that if you come with, you know, less social and economic capital to schooling, it's going to be a harder – harder – harder road.

I think the other thing that we do know is that, for example, our Māori learners in Māori settings do considerably better at NCEA Level 3 than in

mainstream settings, so that is part of the evidence that the Ministry itself has supplied about the importance of –

Q. Can I –

A. – culture, language and identity –

Q. Can I interrupt you? It's – and I wanted to ask somebody about this, because a lot of witnesses refer to much better achievement levels for Māori in Māori-medium settings, because I remember in 2007, when Karen Sewell was the Secretary for Education, she appeared before the Wai 262 Tribunal, and she was asked this very question, and she said that it was – that there were some promising pockets of success but the numbers going through Māori medium were too small to be emphatic about it, and I wondered if this had changed and with the accumulation of another 20 years of data, that the indicators are much more solid?

A. Well, I've got a statistic here, and I can't remember where I found it, but it would have been on either the Ministry or Education Counts, I think. In 2022, the statistics in mainstream schooling for Māori students were that 35% left with NCEA Level 3, compared with 58% at kura kaupapa, so I – I would suggest that you do follow that questioning out with the Ministry.

Q. Yes.

A. [Jessie Moss] The Minister herself has accepted that fact in an interview with Mihingarangi Forbes about a year ago, and she conceded that the difference is contextual and it's whānau that – that makes the difference –

Q. Right. Okay.

A. – in that learning at kura kaupapa.

Q. Okay. Well, okay, we'll see how we go with the Ministry witnesses, but otherwise, if you have anything more that you'd like to put in front of us, you could consider that a follow-up question to – to respond to later.

A. Thank you.

Q. But thank you. That's all I had.

JUDGE MULLINS:

Ēnei wāhine tokotoru, tēnei e mihi ana ki a koutou. **To these three women, I want to thank you.**

Not really a question, I was just listening, because one of my wonderings as I was preparing was about this knowledge-rich curriculum, and thinking about how you have explained that today, and I think – I can only talk about my own children, because that is what I know, and I hope they are not watching, but you know, if I think about my son, statistically speaking, he is on the back foot. For a start, he is Māori. He has also got ADHD. So by the end of the day, he is often bouncing off the walls, because the medication has worn out by the end of the day, and if he is being asked to digest A to D on Monday, E to H on Tuesday, he will find that really difficult, and I thought, Ms Mills, one of the comments that you made about the holistic and relational nature of education in New Zealand – and it is those teachers that have taken the time to form a relationship with him that have – he never had any problem, and yet the problems that he had with the complications that he has is when they have not taken the time to have that relationship.

So, yes, ka nui te mihi ki a koutou i tō koutou kōrero **thank you very much for your kōrero**. It was interesting, and I guess as parents, as whānau of children, it impacts on everyone in this country, so appreciate your evidence and appreciate the time. It is a bit nerve-wracking – being the daughter of a teacher, it's like being in a room of my mother for the last few hours, but thank you all for your evidence and I appreciate your time that you have taken. Kia ora.

WAIATA – WHAKARONGO

HEARING ADJOURNS: 3.05 PM

HEARING RESUMES: 3.26 PM

JUDGE MULLINS:

Ko tēnei te wahanga whakamutunga whānau, kia kaha, kia māia. **This is the final session whānau, be strong, be courageous.** Kei a koe te wā, Mr Ferguson. **Over to you Mr Ferguson.**

(15:26) JASON KEREOPA:

Me tuku i tētehi takutaku, hei wāwāhi tēnei wahanga ki aku rangatira e noho mai. **I just want to lay out a karakia to open (inaudible 15:26:55).**

KARAKIA (JASON KEREOPA)

(15:27) MR FERGUSON: (OPENING SUBMISSIONS (#3.3.008))

Tēnā koe, tēnā koutou. **Greetings one and all.** Te Whakakitenga o Waikato is an interested party to this inquiry but has participated in that capacity in other inquiries relating to education matters and the concerns of Waikato in the area of education in particular, te reo Māori, are reflected not only in their Te Tiriti settlements with the Crown but also in other actions including Court proceedings which touch on those issues and as much as Waikato and its settlements are often heralded with reference to their place in time, being the first substantive Treaty settlement in 1995, and in terms of pūtea and a relativity clause that is obviously almost unique alongside Ngāi Tahu, and more recently with reference to innovative and ground breaking arrangements in relation to the Waikato River, those matters have always been fundamentally linked to the health and wellbeing of the Waikato always and iwi and it's hapū, marae and individual tribal members, and that fundamental growth and development in terms of social health, educational and other wellbeings have been as important, if not more important or unless a necessary and fundamental corollary of improvement in both economic and environmental terms, both of which are, themselves, still struggles in the face of more recent reforms and proposed reforms of this government.

Therefore, participation in this inquiry is to reinforce and support the claimants and the issues that they have brought before the Tribunal, but to do so, by reinforcing and giving the Tribunal some understanding of the experience on the ground of Waikato in the education space and the how that has been enhanced as a consequence of past developments in more recent times, including what was in the section 127(1)(d) and related initiatives directly between the tribe and the Ministry of Education and local schools and the scenario that these reforms and its dramatic shift in curriculum, create a

pathway towards. And so, that's really the focus of Waikato's participation in this regard.

I don't want to repeat the written opening submissions that are already made. I am conscious that we are already a little bit behind time, and we are going to try and catch up if we can and that the most valuable that the Tribunal can hear today is probably less from me and more from Dr Raewyn Mahara who is giving evidence on behalf of Waikato in this inquiry. So I wanted, instead of going to the written opening and acknowledging that there will also be scope of closings in due course, but really just to observe because one will have seen from the opening that a great emphasis be placed by Waikato as they do place on the honour of the Crown and that owner of the Crown as reflected or at least purporting to be reflected in the commitment and purpose of this Act, which still – touch wood – remains in place in section 4 which is one of the purposes of honouring the achievement of – sorry, honouring the Te Tiriti of Waitangi in that context and the relationship between the Māori Crown relationship which is a fundamental importance in that regard.

And so, when one considers that that is the purpose of one of the purposes of the legislation, then one would reasonably expect that the balance of the legislation with that purpose in mind and remaining as we sit here today, should be necessarily delivering on that purpose of statement and delivering on, therefore, the Crown's commitments to honour Te Tiriti o Waitangi and its principles. And really that's the fundamental premise I have always thought of the Treaty of Waitangi Act 1975 and the jurisdiction and role of the Waitangi Tribunal itself, really, that here in contemporary Aotearoa, New Zealand, I thought it was beyond doubt that Te Tiriti and it's principles are foundational to our nation, and secondly, that the Crown respects Te Tiriti and its principles, and is committed to acting consistently with them, that's always been the premise and that one would normally expect, in a contemporary setting, that the Crown is appearing before the Tribunal in order to explain how the decisions and actions that's taken and that are under inquiry, are consistent with the principles of Te Tiriti.

Having looked at the Crown's opening submissions, at least it seems that we now have a Crown that, perhaps necessarily and there's no due disrespect to Crown counsel, is no longer focused on trying to suggest that decision-making or processes are consistent with Te Tiriti and its principles, or rather, almost a plea of mitigation about – well, it's not as bad as it looks and you need to take time and these are political decisions et cetera, et cetera. And with all due respect, that represents fundamentally a regression in the position of the Crown as a whole with reference to Te Tiriti and its principles, that we are increasingly seeing not just in this space but in others in recent years, and fundamentally changes the nature of the inquiry that the Tribunal is undertaking and the dynamic that the Crown's participation reflects in that respect.

And while the Crown welcomes the Tribunal's comments and says that they will be considered, given that the Tribunal's role is to make findings in respect of Te Tiriti and it's principles against Crown action and proposed action, one would suspect that the starting point for that would be not to deal with that post-decision-making and through a reactive Tribunal inquiry process, but to actively uphold Te Tiriti and its principles through the decision-making process itself, to avoid or limit the scope for the Tribunal's inquiry and that is not the scenario that we seem to currently been faced with.

Mention was made of Treaty settlement in that context and Waikato, like many iwi in the country, now have Treaty settlements in place, but those are also fundamental in the – while using slightly different language, they all refer expressly or at least impliedly to the fundamental importance of the Crown in entering into those Treaty settlements of restoring the honour of the Crown, of entering into renewed and enduring relationships between the Crown and Māori based on mutual trust and cooperation and respect for Te Tiriti and its principles.

And with that foundation one would reasonably expect that we are moving into an era, and we have been for the last 20 plus years, at least, moving into an era in which we have seen a greater appreciation for and acknowledgement of and respect for the place of Te Tiriti and its principles within a range of statutes,

within a range of policy frameworks and other matters including in the educational space.

Unfortunately, what we seem to be faced with now, as I said, is a complete regression from that place. These reforms, being the removal of Section 127(1)(d) and the substantive shift in the New Zealand curriculum, appear, from all I can see, to be Crown decisions driven by coalition agreements and recolonising ideologies, not decisions based on and following well-reasoned, empirically supported and transparent policy review and development processes. And that's I think, while there obviously is a narrow focus on the two fundamental issues of Section 127(1)(d) and the New Zealand Curriculum changes, one, with respect, cannot consider those proposals – sorry, those decisions and those changes in the abstract and without reference to the broader context in which they are occurring. Where we are seeing this new chilling stage of deliberate Crown decisions that, in my viewing, are knowingly taking steps to undermine Te Tiriti and its principles in both in legislation and policy and therefore I endorse the comments that my friend, Ms Sykes made this morning in relation to concerns about the broader range of clauses within the Education and Training Act, that are under review and appear, to at least, have in principle decisions being made about them following the Treaty clauses review process. Those matters aren't before this Tribunal at present, but like the Tribunal, we are interested in hearing the update in relation to that because, again, to the extent, one is looking at the effects of these proposed changes, if there are other changes afoot that are going to be materially alter those several other provisions within the legislation, then they will have a compounding affect on even the delivery or the impact of these changes that are already in place. And so, I think there is a legitimate area of concern for the Tribunal in that respect and I suspect there are other documents that exist in relation to the Treaty clauses review including the Cabinet Paper that my friend Ms Sykes referred to, and related regulatory impacts statements and in fact, the advisory report of the group that reviewed all of those Treaty clauses including, as I understand it, the ones that are including 125(1)(d), which was still in place, I understand it, at the time that work was done and more recently, the other clauses that are material and relevant to this inquiry

and one needs to carefully consider how that can be grappled with in a timely way given the need for, obviously, urgency in relation to the consideration and delivery of report on the matters that are currently before the panel. And so, I just raise that issue finally.

I don't wish to take any further time in that regard, but rather pass over to Dr Mahara in relation to her evidence that will be lead by my friend, Mr Gucake and unless there are any questions from the Tribunal and hopefully we can make up a little bit of the time as a result, kia ora.

JUDGE MULLINS:

Kia ora Mr Ferguson. There are no pātai at this point, thank you. Tēnā koe.

MR WILIAME GUCAKE CALLS

Tēnā koe, Ma'am, members of the Tribunal. On behalf of Te Whakakitenga o Waikato, it is my honour to call Dr Raewyn Janeen Mahara to testify before the Tribunal. She has provided a brief of evidence with appellation #A031 and a supporting bundle with appendices number #A031(a). I will now hand it over to Dr Mahara to address the Tribunal.

(15:42) DR RAEWYN JANEEN MAHARA: (#A031, #A031(a))

Tēnā tātou. He hōnore, he korōria ki te Atua, he maungārongo ki te mata o te whenua, he whakaaro pai ki ngā tāngata katoa. Whakahōnoretia tō tātou Arikinui, Kuini Nga wai hono i te po tae noa ki te whare kāhui Ariki. Pai Mārire ki a rātou. Ki a koe, Jay, i wāwahi nei mai te karakia ki a Tawhaki, tēnā koe. Ki te pātaka wairua, nāu tō ngākau i tuwhera ana ki te ao wairua hei arahina tātou katoa, tēnā koe. Ki te mana whenua, Te Atiawa, nei rā tētahi o ngā uri whakatipu, nō te maunga Titoia e tuku mihi ana. Ki te Kaiwhakawā, ngā mema o te Taraipiunara, te Karauna, ngā ringa hāpai o te kaupapa, nei rā ngā mihi. Ngāti Hine, Kapotai, NZEI, tēnā koutou mō te tuwheratanga o te kūaha mō mātou. Ki ngā tini hononga i waenga i a tātou katoa, tēnā tātou katoa. Ki aku hoamahi, whanaunga anō hoki kua tae mai ki te tautoko, nei rā ngā mihi maioha. He uri whakatipu tēnei nō Waikato, o Ngāti Mahuta, nō Ngāti Atiawa, nō Taraua, nō Taranaki, nō Ngāti Moeahu. Ko Raewyn Mahara ahau.

Greetings. Honour, glory to God, peace upon the land and goodwill to all people. We honour our Arikinui, Māori Queen, Nga Wai Hono I Te Po and the royal house, Goodness through peace to all. To you Jay, who opened us with a karakia to Tawhaki, thank you to the spiritual cover. You opened your hearts and guide us to that realm, thank you. And to the local people, Te Atiawa, I am one of your descendants, from the Taranaki mountain. To the Judge and the members of the Tribunal, the Crown and those supporting this kaupapa, greetings. To Ngāti Hine, Kapotai, NZEI, greetings to you. Thank you for opening the door to us, for us. And to many, greetings all. To my colleagues and relatives that have come here to support me, my thanks to you. I am from Waikato and Ngāti Mahuta, also Ngāti Awa o Taraua and Taranaki and Ngāti Moeahu. I am Raewyn Mahara. Greetings all.

Kia ora tātou. I am the General Manager – Mātauranga (Education and Pathways) at Te Whakakitenga o Waikato Incorporated, where my focus is driving educational initiatives for Waikato-Tainui.

I hold a Doctorate of Indigenous Development and Advancement, and over 30 years' experience in the education sector as a teacher in the classroom in kaupapa Māori and at broader leadership and governance levels.

I give this evidence on behalf of Te Whakakitenga o Waikato Incorporated, the representative governing body for Waikato-Tainui. Waikato-Tainui reach over 200 schools within our rohe and have 12,000 learners across the education sector. Waikato-Tainui aspires for all tribal members to be lifelong learners and leaders who determine their futures, ko te mana motuhake tērā **That is distinct mana**, with whānau and marae and hapū at the heart of that journey.

This evidence provides an iwi perspective on the Education Act Reforms and the Mātaiaho changes for the New Zealand Curriculum. It outlines what we have seen work, how iwi were empowered through those arrangements and contrast that with the current position and the practical issues we anticipated merging.

I will first outline the importance of these issues for Waikato then consider the implications of both the removal of section 127(1)(d) and the shifts within Te Mātaiaho, the New Zealand Curriculum.

Why this is important to Waikato-Tainui. In the negotiation of our raupatu settlement, Tā Robert Te Kotahi Mahuta's vision, was that education was part of the liberation of our people. These concerns are reflected in the settlement which had an educational component. The settlement created an enduring relationship between the Waikato-Tainui and the Crown built on foundational education objectives of our descendants – for our descendants.

The removal of Section 127(1)(d). Moving now to the impact of the removal of Section 127(1)(d) for Waikato-Tainui. The provision provided a clear and actionable mandate for school boards to work directly and meaningfully with iwi. It was a legislative foundation upon which Waikato-Tainui could partner with schools to uphold local tikanga, amplify iwi aspirations and embed Waikato marae, hapū and identify, language, histories and mātauranga in schools, more specifically, English medium schools.

Section 127(1)(d) provided an explicit legal mandate for iwi to be recognised in school governance as the Te Tiriti partner. It shifted iwi engagement from optional consultation to a statutory expectation that boards must work with Te Tiriti partners to enact these obligations. This section was a practical tool that opened space for genuine iwi, marae, and hapū school partnerships across the rohe. One of the best examples of this was the Te Ara-a-Taikehu programme which provided principles with the space and support to work alongside Waikato-Tainui as a Te Tiriti partner.

By contrast, the removal of Section 127(1)(d) creates systemic and far reaching prejudice for Waikato-Tainui learners. We do not think 127(2)(e) is an adequate replacement or an example of an enduring Te Tiriti, Crown, iwi relationship. For Waikato-Tainui we consider the provision weakens the protection of our reo, our tikanga, our mātauranga and local marae, hapū and iwi identity reduces

access to marae, hapū and iwi specific marautanga or curriculum and provides culturally safe teaching environments.

The current responsibility for equity is now shifted away from governance, removing the very conditions that support Waikato-Tainui learners, education success and cultural wellbeing.

Finally, the current provisions changes iwi engagement and educational achievement from a mandatory obligation to an optional consideration undermining genuine partnership in accountability and practice. This has undermined decades of progress towards restoring iwi authority within education for our tamariki and compromises the Crown's ability to fulfil it's Te Tiriti obligations to us generally and under our settlement.

Te Mātaiaho, the New Zealand Curriculum. With regards to the shift within Te Mātaiaho, from a Waikato-Tainui perspective, the 2023 draft of Te Mātaiaho aligned closely with iwi aspirations for our learners. That foundation created clear and practical space for Waikato-Tainui to work directly with schools, to embed Waikato and Tainui waka marae, hapū and iwi tikanga and mātauranga. Because Te Mātaiaho framed identity and whakapapa as central to learning, schools sought iwi engagement not as optional but as one – as a part of a curriculum integrity.

The implementation of Te Mātaiaho enabled Waikato-Tainui to bring together Pou Whirinaki or iwi co-ordinators from marae across the rohe and hapū to lead the development of iwi driven, marae driven and hapū driven resources, programmes and professional learning that supported schools to reflect local tikanga, mātauranga a-marae and hapū, knowledge in their curriculum.

While the 2025 Te Mātaiaho is promoted as knowledge rich and grounded in science of learning, we see it really as a shift from a Te Tiriti partnership belonging and iwi endorsed pedagogies to one based on standardisation, prescription and centralised control.

We now know that such shifts can increase the risk of inequitable outcomes for our learners. We already know that policy settings focused on standardisation and streaming do not deliver equitable results for Māori as seen in the He Awa Ara Rau report. Really, the 2025 version represents the diminishment of iwi authority as a Te Tiriti partner, and a weakening of mana whenua partnership. It results in a loss of visibility for Waikato-Tainui waka identity and mātauranga, and significantly reduces the space available for culturally sustainable educational practice.

From our experience, there's also been insufficient consultation and engagement with iwi over the changes, including via the Māori Education Ministerial Advisory Group. Instead, iwi have been presented with a predetermined curriculum framework, that pushes our voices to the margins. But rather than engaging us in a genuine co-design to achieve better outcomes for our people as we experienced during 2023. As a result, we have little trust there will be meaningful consultation and engagement on our views by the Crown under the current process.

Hei whakakapi **In conclusion.**

The Crown actions here are stepping away from a Te Tiriti grounded partnership. This is not a minor policy adjustment, it's a change in relationship. When the law no longer requires boards to give effect to Te Tiriti partners, to reflect local tikanga and mātauranga in our school curriculum or to achieve equitable outcomes for Waikato-Tainui learners, our people are pushed back to the margins. We know that achievement is strongest when learning is anchored in whakapapa, reo and tikanga, when school governance stand confidently alongside iwi, marae and hapū and when local curriculum tells our stories in our own places.

We have already shown what is possible through the initiatives we lead whereby belonging drives engagement, engagement drives progress, and progress sustains excellence as we determine it to be.

Our ask is simple and consistent with the Crown's own settlement commitment, put the relationship back at the centre so that our learners can stand tall as Waikato and excel on their terms, kia whāia ko te mana motuhake. Tēnā tātou. **Pursue mana motuhake, complete autonomy. Thank you.**

JUDGE MULLINS:

Tēnā koe. Kia ora Mr Watson.

MR WATSON:

Sorry, your Honour, you've caught me in a moment of reflection. I don't have any questions for that witness, I, again, listened very carefully and I mean no disrespect to the Dr in not asking any. So, that is our position on that.

(15:52) DR PAUL HAMER TO DR RAEWYN MAHARA:

Q. Tēnā koe Dr Mahara. I just had one question. You talk at paragraph 40 about the Crown's potential breach of your Treaty Settlement, and I note that in, I think it was late 2024 or early 2025, Te Whakakitenga, took legal action related to your Treaty Settlement about the Crown's treatment of te reo Māori in the public service, and I was interested if there was – if you could tell us the status of the litigation and whether Te Whakakitenga might take similar action here?

A. Tēnā koe, thank you for your question and I might had it over to our legal to answer that, but certainly we had not heard any update back from that particular claim.

JUDGE MULLINS:

I was going to say, Mr Ferguson looked ready to…

MR FERGUSON:

Yes, that litigation is still on foot. It was part of an issue raised as part of a broader statement of claim that dealt with a range of Treaty settlement related issues. So, it's still extant but hasn't proceeded to hearing at this stage. Waikato has, I can say without speaking out of school, actively considering all

options in terms of addressing these and other reforms including litigation. And so, yes, that is under contemplation.

DR PAUL HAMER:

Thank you Mr Ferguson. I hadn't want to ask a question that you had to answer, but thank you very much for stepping in.

DR PAUL HAMER TO DR RAEWYN MAHARA: (CONTINUES)

Q. I suppose I will leave an observation which is that, sometimes if an iwi, a large and natural grouping can get some commitment in its Treaty settlement, it seems to be on much firmer, safer ground than might otherwise be the case. That's just an observation on my part, I don't expect you to answer that.

A. Just a comment to that. I am not sure about safer ground there, but yes, tēnā koe.

MR FERGUSON:

Yes, I won't answer that question. It's something I can address in closing submissions, but I think it's certainly the expectation that there is a change in relationship, and that those matters do become manifest in the direct relationship between the Crown and Waikato and that the Crown will be acting to uphold and further those commitments and their broader sense, not just on the wording on the page, that is becoming increasingly an illusory commitment in Waikato's experience and I can – I develop that at an appropriate time given that we are in evidence and I am not giving a…

DR PAUL HAMER:

Kia ora.

(15:55) DEREK FOX TO DR RAEWYN MAHARA:

Q. Kia ora and thanks for all of the speakers who have spoken. Given what you have said and what's included in your evidence and the importance of education to Waikato-Tainui and also because you will be – you have

a leadership role in Maoridom. Is it likely that you would be willing to actually go to other courts to pursue this matter?

A. Yes.

Q. Kia ora.

A. Kia ora.

(15:56) JUDGE MULLINS TO DR RAEWYN MAHARA:

Q. E ai te kōrero, mahia te mahi hei whāinga mō te iwi. Koirā te whakatinanatanga o tērā kōrero o tō tipuna, a Te Puea, nō reira e mihi ana ki a koe. **It is said that, to do the work of the benefit of the people. That is the fulfilment of what your ancestress said, Te Puea, and so I want to thank you.** Just wanting to pick up on some of those iwi led initiatives that you spoke about in your brief of evidence. I know some of them, well at least one anyway, predates the 2020 Amendments in section 127(d) in there. I am just wondering because as I – I am not sure if you were here earlier, I said earlier in a former life when I was providing presentation and training for boards of trustees on what giving effect to Te Tiriti o Waitangi could look like, I actually went out and spoke to iwi and hapū about what that could look like because they were a little bit worried that time that, you know, there's a small rūnanga office and there's 30 schools knocking on their door for a relationship in what giving effect to Te Tiriti o Waitangi could look like in practice, right, and it was putting a lot of pressure on them. And as Dr Hamer's alluded to, Waikato in this instance are in a fortunate situation that you had your Treaty settlement, there were systems, there were processes, there were entities that already existed. So, I was just wondering as to get a bit more detail about some of these iwi leader initiatives post-2020, and so for Waikato, what did giving effect to Te Tiriti o Waitangi look like in schools within te rohe o Waikato?

A. Tēnā koe. I will just probably start prior to 2020. So, our commitments to our learners and our whānau predate that without a doubt. Prior to that, between 2016 and 2019 we had 32 secondary schools who were Kawenata schools across our rohe. So, we would do this anyway, without a mandate, right. It's about the relationship for us. So, post-2020 – in

2019 we undertook a piece of work when Ngāi Tahu, **(inaudible 15:58:58)** and the Southern initiative called He Awa Ara Rau to start to identity the journey of 100 Waikato learner and where were the gaps, how were they going from primary school right through to tertiary education, to inform us about direction but also to identify where we need to advocate for our people. So, post-2020 we – 2021, Te Ara a Taikuhe was born out of a group of principals who were a part of a Kawenata who were willing. So, post-2020, Te Tiriti, equitable Te Tiriti partnerships were important, they were willing and so they came to us and said, 'As a rōpū, how do we support this? How do we actually do it?' At the time, of course, as it happens across the education initiatives, there were templates coming out for boards to fill out and how to do a Te Tiriti partnership part of your board. These principals came to us genuinely wanting to know how do we do this. Of course, as a post Treaty settlement entity, we are tasked with looking after 68 marae and 33 hapū and so our role there was to work with these principals to engage them genuinely with their mana whenua, like Ngāti Wairere, like Ngāti Mahanga, like Tamainu-pō, as part of their willingness to engage with mana whenua. So, we took them on this journey for a whole year and we walked along side them, we did a lot of kōrero, I heard about this morning, about racism and systemic racism and they were very open. You will see in the appendix the book that we produced at the end about some of their reflections and the things that happened for them. So, it ranged from their physical surroundings changed to reflect mana whenua narratives to their mindset towards a power shift from the school being the centre of the community to actually 'we are apart of the community' and there's a mana whenua partnership here that is important. So, this journey was incredibly important. So, we spoke about being change agents as tumuaki, as principals and these were all English medium secondary schools. So, they all had their journey, you will see the results of that in the appendix. It was a bit exhausting to be honest, but meaningful, meaningful work. I do want to say at the time, the ministry funded this and so it's indication that pre-2023, the relationship, as you have heard today, was really good, it was inclusive, we were apart of the narrative, we were a part of having a

meaningful co-design. So also, we were able to develop Pou Whirinaki. So these are pou mātauranga. So, in response, also, to PLD being offered by the ministry, in terms of cultural competency, Waikato-Tainui don't want to be the centre of the universe or central middle earth, it is not our role to do that, it's our role to empower our marae and our hapū to be that in their own right. And so, our role was to go and support these pou at marae and hapū, to reclaim, regenerate the mātauranga that they wanted to share with kura, schools, how they wanted to share it, where they wanted to share it, not between nine and three, and not with a super engaging kind of person, sometimes that schools actually wanted rather than the nana. It was actually – mana whenua had the right to do it how they wanted, where they wanted. Our role was to support them and so that's where pou whirinaki came about. It still exists today even though we do not get any resourcing from the ministry. We committed to this in the long term and so we carry this anyway. We don't need the resourcing, but what we do need is the relationship with the ministry to improve. So, these are just two initiatives that we did. We also had a kawenata set with Ngāti Tūwharetoa and Raukawa, He Pua Wai Nui, He Ia Rere Roa signed by ministers, signed by our leadership to ensure that mātauranga was revived along the awa, our awa tipuna, mai Tūwharetoa tae noa ki te puaha o Waikato. And so, that was a collaboration with three iwi to regenerate mātauranga, but also how might we engage with kura and schools in our own respective ways as different iwi but aiming for the same thing in our way. So, those are three initiatives that we, you know, were really successful for us and why I say successful, probably not successful in an education system sense, but successful in terms of how iwi measure success which is identity, belonging, reo, mātauranga, revitalise, and reclaimed for our people starting at marae, hapū and whānau level. We know that our tamariki, if they come from that strong base, they can go anywhere. It doesn't matter if they are going to go to an English medium school, kura kaupapa, ahakoa te aha, that strong base is what we were aiming to do and in that, we are equitable Te Tiriti partnerships with schools, that was crucial. So, those were three initiatives that we thought were successful. One of them is still carrying

on and that's our pou whirinaki, because we are committed to supporting our whānau at marae and hapū level.

Q. So, that one is carrying on and self-funded by –

A. Self-funded.

Q. So were the other ones reliant on pūtea from the Government to continue or?

A. What I would probably say to that is that, yes, the resourcing helped but there has been a shift in willingness and commitment –

Q. From schools?

A. Yes, from schools, from schools.

Q. Right.

A. Not that we've been chasing them, to be fair, however if it's not mandated they are not coming to us to say, you know, we would like to do this. We already have great relationships with those principals that we've been on the journey with, that's only 10 schools out of over 32 within our rohe and this is just secondary schools. So, yes.

Q. So, just taking it back a little bit. So, you had noticed a shift?

A. Yes, yes, definitely noticed a shift, mostly in the relationship between us and the ministry. So, prior to 2023, great relationship. We were probably exhausted from being on so many advisory groups, but it was great, we were at the table and we were co-designing, particularly with the curriculum and then the refresh of NCEA back then and the assessment of NCEA. Change of government, it stopped. It's about the engagement. It's not so much for us about the resourcing and the money, it's about the relationship, being at the table and actually being considered not as one stakeholder amongst everybody in terms of the consultation for the curriculum, and here, just fill out this form and send it in, it's actually, we know what it's like to be a partner and we know what it's like to be at the table and we know what it's like to be co-designed. It's not easy, it's exhausting but we were at the table. The shift has been the change of government and the change of attitude towards meaningful relationship with iwi with us.

Q. Because certainly, following on the Tomorrow Schools review that the Labour Government initiated. I mean, I recall there were roadshows,

there was so, so much and it seems and certainly from the evidence that we've heard so far today, that everybody that had an interest in being at the table, had the opportunity to be at the table. And, it seems, certainly what we've heard to date and obviously we will hear from the Crown tomorrow, that it has been a very different approach this time. So, those various hui, working groups, te mea, te mea, that you were involved with, that or Waikato was involved in '21, '22, '23 ish, it's just very different landscape now.

A. Absolutely. It's like a big halt. We've been knocking on the door, we've been asking. We shouldn't have to ask. It's a big u-turn. And I will just think about – I think about the Māori education MAG for example, as three iwi, Tūwharetoa, Raukawa and us, we've been asking for a conversation with MAG, with the Māori Education MAG. It's taken a long, long time to even have a conversation with them. So, it's a very different, very different environment and it's disheartening because at the end of the day it's our learners that we are trying to look – and we are committed to enduring relationship beyond our generation here. Yes, it's actually – we're actually going to have to probably find an alternative, alternative ways to get a seat at the table.

Q. And that's the – when you say you've been knocking on the door of the Māori Advisory – MAG, that's the one that's over the New Zealand Curriculum, as opposed to He Marautanga o Aotearoa, is that right?

A. I see it as –

Q. He rerekē ngā rōpū?

A. No, I see it as her advisory – sorry, as the minister's advisory on Māori education.

Q. Māori education.

A. Yes, Māori education.

Q. Te katoa?

A. Te katoa.

Q. Te katoa?

A. Yes. And so, not being able to have a conversation with them, they're appointed, almost like about us without us. You know, where's the equity in our appointments of this rōpū who are meant to represent us.

Q. And that was the one Wayne Ngata was on.

A. Yes, yes.

Q. Okay. Ka pai. Just going back to the shift that you speak of, you've certainly spoken about the shift in the ministry. Has there been a shift in kura in terms of them wanting a relationship post the removal of 127(1)(d)?

A. I can say that the momentum isn't there as it once was. You know, we used to be inundated with requests all across the rohe which is why we needed to then go and support our marae and hapū. Certainly with the change in the PLD provision, the cultural competency, there's a focus now on literacy and numeracy. Schools are now not funded for professional learning development in cultural competency which is what our pou whirinaki were supporting schools with. So, when that's not apart of a requirement or part of the criteria, regional ministry criteria and national ministry criteria, they are not as forthcoming to want to engage. Unfortunately, it's probably driven by resourcing and then also mandate. So, yes, definitely a shift. I must say though, after COVID we did do a focus on our marae and hapū to start to build them up and regenerate and support them to be able to engage with schools as well.

Q. Ka pai, kia ora.

JUDGE MULLINS:

That's all our questions, thank you. Tēnā koe. You've done well Mr Ferguson. Ka pai.

WAIATA TAUTOKO

KARAKIA (JASON KEREOPA)

JUDGE MULLINS:

Tēnā koe, tēnā koutou. Take that paku wā whakatā **brief break** as we change.

HEARING ADJOURNS: 4.13 PM

HEARING RESUMES: 4.19 PM

(16:19) MR CLATWORTHY: (#3.3.007)

Kia ora tātou. **Greetings.**

Tuatahi, me mihi ka tika ki ngā kaiako me ngā kaiwhakahaere katoa kua kawe mai ō koutou mātauranga, pūkenga ki a mātou i tēnei rā mō te ruku tātari nei katoa, nā koutou i rangatira ai te hui, kei te mihi mahana. **Firstly, I must acknowledge all of the people who have brought forth their knowledge and their expertise. To us, during this inquiry, you have noble this gathering, warm greetings.**

Tēnā koe e te Kaiwhakawā, otirā, e te tēpu rangatira. Ko Mr Clatworthy ahau. **Thank you, your Honour, and acknowledgements to the esteemed panel. I am Mr Clatworthy.** Your Honour, I'm standing to speak to the opening submissions of Wai 3504 and that has appellation number #3.3.007. Nā te roa o tērā ka whakamātau ahau ki a whakapoto ai tāku kōrero. **I will attempt to shorten my submission.** Engari, I consider it is important to introduce the claimants, the claim, the evidence filed, and most importantly, the position of the claimants with regard to the issues before the Tribunal.

BEGINS REFERRING TO OPENING SUBMISSIONS #3.3.007

The Wai 3504 claim is brought on behalf of the Post Primary Teachers Association of New Zealand, or the PPTA, which is the primary trade union that represents more than 90 per cent of secondary teachers within Aotearoa. The PPTA exists, not only to advocate for the interests of kaiako **teachers**, but to act as a collective voice for the more than 25,000 kaiako that it represents.

The PPTA is committed to honouring te Tiriti and that's enshrined in its constitution. For over 50 years, they have been actively involved in reviewing, supporting, advocating, advising, and if need be, opposing the government on

numerous kaupapa within the education system, including the two issues before the Tribunal today.

The PPTA brought a claim to the Waitangi Tribunal because it came to a position that it must hold this government to account for the breaches of te Tiriti that it was witnessing within the education sector. The claim was first filed in May 2025 in the wider Wai 3310 Education inquiry and included significant pleadings regarding the two issues before the Tribunal. Namely, the amendment to section 127(1)(d) and the changes to the Mātaiaho curriculum. Subsequently, they sought to participate and file evidence for this urgent inquiry.

The position of the claimants that these two policies are in breach of te Tiriti is not one that came from the top down. It is the culmination of the whakaaro of the many kaiako that the PPTA represents, both Māori and non-Māori. This position is drawn from the deep mamae and helplessness that these kaiako feel. Caught in the tide as they attempt to navigate the policies of the Crown that they know are harmful, but they are forced to implement.

At the time that the original claim was filed, the two policies were still in proposal and draft stage. Since that time, the amendments to the Education Act have become law and more information has come to light regarding proposed changes to the curriculum, in particular, with regard to Aotearoa histories.

As time has passed, the claimants have only become more concerned. A clear picture has been painted of a Crown driven to uphold political decisions at all costs, even at the expense of the wellbeing of our tauira **students**.

The claimants welcome the filing for urgency from their whanaunga **relatives** and hoa mahi **colleagues** regarding these two policies. As all other avenues they have taken to oppose these policies have reached a dead end. The claimants consider that anything that can be done, must be done, in order to prevent the irreversible impact that these two policies will have on the vast majority of tauira within Aotearoa.

But the effects of these policies will ripple far beyond the classroom. What, how, and in what environment that tamariki and rangatahi learn is foundational. It will affect them for life and then be passed on to the next generation. The legacies of the forced prohibition of te reo Māori and the false historical narratives perpetuated within schools throughout the 20th century are still felt today.

Kei te rite tonu pērā, ka heke ngā akoranga o te rā nei ki ngā reanga e heke mai nei. **That's still the case then it will fall to the students, current and future.** The weight that educational policies hold is only heightened by the hugely desperate outcomes suffered by tauira Māori in the modern day. No evidence has been shown by the Crown that these policies will address or improve these outcomes. In fact, the witnesses are telling us quite the opposite.

While I will not speak at length to Treaty principles at this stage, we concur with the principles as identified by Crown witness, Ms McGregor-Reid with regards to education. We submit that these two policies breach every one of these principles.

As part of their advocacy mahi, the claimants have been heavily involved in voicing opposition regarding these policies to the Crown. The advocacy and the reason for their opposition is canvased in the claimant's evidence. The claimants filed five briefs of evidence to this effect, including from the president of the PPTA, matua Chris Abercrombie, kei korā. Its Māori Vice President, whaea Te Aomihia Taua-Glassie, kei muri. As well as branch co-chair, whaea Karena Ngata, and PPTA members and lead educators, whaea Alicia Poroa and whaea Jane Jarman, who will be presenting to this Tribunal across today and tomorrow.

Ka mutu tāku kōrero i konā, kia kore e roa ai. **That concludes my submission at this time.** Engari **however**, I would like to restate the vehement opposition of the claimants to these two policies and note the strong desire that we have heard from all those who have spoken today. That they do not want to stand

idly by as we are dragged back into the historical legacy of an education system that minimises, belittles, and fails tamariki and rangatahi Māori.

MR CLATWORTHY CALLS

(16:26) ALICIA LYNNE POROA: (#A026)

Nei rā aku mihi ki a koutou, ki a mātou mā i tēnei wā. Nei rā aku mihi ki te Waitangi Tribunal, ko tēnei hui. Nei rā aku mihi ki a koutou mā mō ngā hau e wha i tēnei wā. **I want to acknowledge you and we, everyone. I want to acknowledge the Waitangi Tribunal at this gathering. I want to acknowledge you all from the four winds at this time.**

Ko wai au? Ko Waikato te awa. Ko Taupiri te maunga. Ko Tainui te waka, nō Waikato Tainui ahau. Nō Te Puuaha o Waikato te rohe. Nō Ngāti Te Aata me Ngāti Tiipa aku hapū. Ko Alicia Poroa tōku ingoa. **Who am I? Waikato is the river. Taupiri is the mountain. Tainui is the waka, and I am from Waikato Tainui. From the Puuaha o Waikato. Ngāti Te Aata, and Ngāti Tiipa are my hapū. My name is Alicia Poroa.**

I am a mother of three tamariki and soon to be a nana. I have been a kaiako for 28 years and I have been a kaiako in English median, reo rua, kura-ā-iwi, within primary, secondary, and area schools. I'm on a life long journey to reclaim my identity as Māori by way of learning te reo, upholding the mana of those who have walked this path before me and those who will walk in front of me. I am here today because of my whakapapa.

The purpose of my statement is to ensure that our mokopuna **grandchildren** have untethered, equitable access to an educational journey that is honouring of Te Tiriti o Waitangi by way of having tikanga Māori ā-rohe, te reo Māori ā-rohe and mātauranga Māori ā-rohe **local Māori language**. Respected, cared for, authentically visible in all schools across Aotearoa. That way, our mokopuna will flourish in the intent that is captured in this whakatauki **proverb**: “He kakano ahau i ruia mai i Rangiatea.” “I am the seed sown from Rangiatea and I will never be lost.”

I am also here today as an expert experienced educator to ensure that Te Tiriti o Waitangi is given the mana of place in asserting authentic and equitable partnership. Authentic and equitable participation, and authentic and equitable protection of the rights of tangata whenua Māori and tangata Tiriti **Māori and non-Māori**.

The removal of the legislative requirement for school boards to give effect to te Tiriti, coupled with the tokenised use of Te Mātaiaho and the updated changes in the current refresh curriculum reduced the mana and the importance of Te Tiriti o Waitangi. Which will have resoundingly regressive, negative effects for the whole schooling system in Aotearoa, New Zealand and consequently, the fabric of our society.

The witness statement I share offers a brief overview of my experience and expertise from my career as a kaiako and educational leader who pursues excellence, equity, and rangatiratanga. It also draws on my role with the subject expert group, network of expertise, Te Kāhui Whakaako o Tikanga ā-iwi, the Aotearoa Social Studies Educators Network. In which, I have been a mātanga o te ao tangata, which means an expert in social studies education. I am also a member of the stewardship group, where I am the treasurer.

As a member and as a mātanga, I have led professional learning workshops, conferences, and online webinars supporting kaiako from across the motu, teaching and leading in secondary, primary, and bilingual settings. The professional learning development we designed and facilitated provides support, guidance, and implementation strategies for leaders within schools and school clusters, which were formerly called kāhui ako.

To implement best practice using Aotearoa New Zealand Histories Curriculum and late, Aotearoa New Zealand histories within te ao tangata, the social sciences refresh curriculum. Later, this became Te Mātaiaho, the New Zealand curriculum refresh. We emphasised, best practice, which is science informed, knowledge rich, including explicit teaching strategies and teaching sequences, which included mātauranga Māori.

Which leads me to talk about the second draft of the curriculum and the tokenistic consultation that we experienced. After the election in 2023, it was clear where the political shift was leading, especially with the introduction of the Treaty Principles Bill. After lengthy discussion with our Aotearoa social studies educators network stewardship group and support networks, I was nominated for the primary curriculum focus group, for the second refresh of the social studies curriculum.

This involved a group of primary school educators from different curriculum backgrounds and disciplines, looking at six curriculum areas all at once. The process lacked professional rigor, true consultation and time frames were unreasonable. It seemed to be a tick box process to justify the Ministry of Education having consulted with the sector. I resigned from this group as it was clearly tokenistic.

When I asked about Te Tiriti o Waitangi when I was participating, and mātauranga Māori, and Te Mātaiaho, this was brushed over with a comment that the MOE are working on this. I also asked about the dilution of Te Mātaiaho as it was in the draft year 1-6 English document. The answer was, we are working on this.

Once the final draft of the refresh of the social sciences curriculum was released, as an organisation of experts, we determined that our efforts to share our knowledge and expertise were futile. Although we had the evidence and the experience of developing excellent learning sequences that we had shared with our member network, through our face to face, and online workshops. The refresh of the refreshed draft curriculum designed in the vain of a rebalance of Aotearoa histories presents a narrowed version of knowledge rich and the science of learning. Confusing powerful knowledge with the knowledge of the powerful. Essentially, privileging Western knowledge systems over mātauranga Māori and other knowledge systems.

The erosion of te ao Māori within schools and the impact on Māori learners and their identity. Within the draft, there is little to no references that express a rebalance regarding te ao Māori, it is regressive. Te Mātaiaho has been diluted and the essence of its meaning has been cast into the shadows. Māori histories have become minimal in the current document and mātauranga Māori seemingly non-existent. Posing a real threat for Māori achievement in schools.

The removal of the legislative requirements affords to give effect to te Tiriti, the removal of mātauranga Māori from Aotearoa histories and the refreshed New Zealand curriculum. Coupled with tokenised colonial presentation of Te Mātaiaho has resulted in the erosion of Māori leadership and support systems. Which could lead to erosion of visibility and experiences of mātauranga Māori and Māori identity. Erosion of hope, erosion of mana, of Te Tiriti o Waitangi, and potentially, the erosion of our society.

Nō reira, tēnā koutou, tēnā koutou, tēnā rā tātou katoa. **So, thank you, thank you, thank you all.**

QUESTIONS FROM THE CROWN – NIL

(16:34) GERRARD ALBERT TO ALICIA POROA:

Q. Tēnā koe. **Greetings.** One question, I missed the group that you withdrew from, sorry?

A. The Aotearoa Social Studies Educators Network.

Q. Okay, thank you.

A. That I withdrew from, sorry. The Curriculum Focus Group for the Primary Refresh Refreshed Curriculum in 2024.

Q. That's probably why I missed it a bit there –

A. Yes.

Q. So, it was a refresh of the refresh?

A. Yes.

(16:35) DR PAUL HAMER TO ALICIA POROA:

Q. Tēnā koe Ms Poroa. I just had one question, and it was about your participation in the social sciences curriculum focus group. We were, today, to have heard from Philippa Tinning, I think, an NZEI witness. Who couldn't be here, and she talked about being involved in curriculum writing, or being consulted at some level and having to sign a non-disclosure agreement. So, she's not here to ask about that, but I just wondered if you understood the difference between her situation and yours in terms of why, for example, you didn't have to sign an NDA about the social sciences curriculum focus group?

A. I absolutely chose not to because I chose my mana motuhake to not sign that non-disclosure agreement.

Q. So, the Crown, the ministry tried to say that you should sign one?

A. Yes, and I wouldn't. I would of if it felt like a proper process, but it didn't, it actually reminded me of what happened, quite some time ago when te Tiriti was sign, so I didn't sign it.

Q. Right, okay. But you were able to keep involved with the focus group after your refusal to sign, or did that signal the end of your involvement?

A. Okay, for clarity, I was able to – I didn't refuse, outright. Just the timing and pace of the release of things and then the requests, so I chose to read some of the material before I chose to sign. And I chose not to sign and then I chose to resign, as opposed to having to be forced to sign.

Q. Okay, and what was the experience of your colleagues in that regard? Did some colleagues sign those NDAs, or –

A. The challenge is that the online hui that we had, there was no cross kōrero with the other experts in the group. It was quite frightening, it felt unsafe that we wouldn't speak to one another. Although, I will declare that I did ask for an email of one of the people because he was my lecturer when I was at Waikato University, only for a personal connection. When I resigned, the person accepted my resignation graciously.

Q. Right, well, thank you, that was all I wanted to ask about.

(16:38) JUDGE MULLINS TO ALICIA POROA:

Q. Just picking up that particular theme, how were you approached to be part of that group in the first instance?

A. It came through ASSEN because one of our members was on the writers group. I don't know if that's because – it just comes through in the networks of expertise pānui, and a request for nominations and I was nominated by my colleagues at ASSEN.

Q. Okay, and what was the timeframe between you accepting that nomination and you were just saying to Dr Hamer that it was the pace of things, and you wanted to read things before you agreed to sign that NDA. So, what was that sort of time period, I guess? I appreciate it is the end of the day, sorry to ask –

A. No, no, that's okay. I think the time it took between my nomination going through and then, the response from the ministry that I had been accepted as part of the team, was around about four weeks. But I can't be really specific on that. But in between those times, there was no information apart from that, you know, you had to sign a non-disclosure agreement but there was no, what for, to be on this group you had to sign that, so that's what I got.

Q. So, you could not continue without signing that?

A. No, I chose not to because I felt that it was a disingenuous process.

Q. All right, but you are not sure whether you could have continued –

A. No, I'm not sure, possibly not.

Q. All right. So, was the NDA given to you prior to any hui that you had as a group?

A. I believe so, I could look back in my emails.

Q. Did you not just say that you did hui with the group, online?

A. Yes, but that was post having received the non-disclosure agreement and the perimeters of the contracts, so to speak.

Q. Okay, so you took a little while to consider the NDA?

A. Yes.

Q. And so, how many of those hui did you attend prior to making the decision not to sign and then to resign?

A. One.

Q. Were you heavily involved in any capacity, in any of the focus groups or anything in terms of the – not the refresh of the refresh, the original refresh?

A. No, I wasn't. I was contracted with ASSEN post the release of the Aotearoa New Zealand Histories draft. We were in partnership with NZHTA, where we had extra funding to support the implementation of that curriculum. So, no, I wasn't part of the writing group or any focus groups prior to that.

Q. All right, thank you.

GERRARD ALBERT TO ALICIA POROA: (CONTINUES)

Q. Sorry, I just have a supplementary question around that non-disclosure agreement and your participation on the social sciences curriculum focus group. You probably already said, I just want to be quite clear for myself, late in the day. Your withdraw from that group was based on a professional assessment of the appropriateness of the approach, and not any idealistic tendencies that clashed with the ideologies that might have been at play, it was merely professional –

A. Absolutely, yes.

Q. Okay, thank you.

HOUSEKEEPING – TIMETABLING (16:43:34)

WAIATA TAUTOKO

JUDGE MULLINS ADDRESSES MR WATSON – UPDATE ON PROCEDURAL MATTERS (16:45:36)

HEARING ADJOURNS: 4.46 PM

HEARING RESUMES: 4.52 PM

JUDGE MULLINS ADDRESSES MR WATSON – CROWN EVIDENCE UPDATE (16:52:18)

HOUSEKEEPING – TIMETABLING (16:54:25)

MIHI (GERRARD ALBERT)

KARAKIA WHAKAMUTUNGA (KEVIN PRIME)

HEARING ADJOURNS: 4.58 PM

5

HEARING RESUMES ON THURSDAY 16 APRIL 2026 AT 8.51 AM

KARAKIA TĪMATANGA (KEVIN PRIME)

(08:52) JUDGE MULLINS: (MIHI, PROCEDURAL MATTERS)

Tēnā koutou, otirā tēnā tātou. Kei te kaiwhakarite, tēnā koe i whakatopa i te manu aute o whakapono ki te rangi kia purea tātou e ngā hau o wairua mākohakoha, o wairua whakapono ki te Atua, ki konei tuitui ai te ngutu runga ki te ngutu raro, kei aku rangatira kia whakairi ake kia pai tara ā-whare ngā whakaaro nui o te hui i konei. Ka tau, ka pai. Nō reira, e mihi ana ki a koutou. He rā anō tēnei, nau mai, haramai, nau mai, hoki mai ki a koutou. I mua i te hoatu i te rākau kōrero ki a Ngāti Pikiao mā, i tērā pō ka tae mai ētahi atu pepa o te Karauna, nō reira i te tuatahi ki tōku nei whakaaro i kōrero tātou e pā ana ki ērā pepa. **Greetings, greetings all. To our elder who opened our karakia, who imbued our faith into the heavens and our faith in God, and we bind together above, below, and to the assembled leaders and all of you, we pay respect to this gathering here. And so, to everyone present, greetings. This is a new day and so welcome, welcome back. Before I pass it over to Ngāti Pikiao and others, last night other papers from the Crown were received, and so firstly in my view we speak in relation to those documents.**

Mōrena whānau. **Good morning.** Welcome to day two. Just before I pass things over to Annette Sykes & Co and Ngā Kura ā Iwi, the Tribunal and counsel received, as discussed by Mr Watson yesterday, some more information in relation to the Cabinet decisions regarding the balance of the Act and the proposed changes in there. So I thought this morning briefly I would hear from the Crown on that, okay, so they have now been filed, they're now on the record, whether the Crown had any views on next steps in that regard because I suspect counsel in here would be keen to cross on that this afternoon, so I'm just wanting to get an indication from initially Crown counsel and then from claimant counsel as to some proposed next steps.

(08:54) MR JAMES WATSON: (PROCEDURAL MATTERS)

Thank you, your Honour. I guess addressing your last point first about what the witnesses could speak to in regard to those documents, I think probably the fundamental point is they can speak to what's within their knowledge in terms of the policy processes that they've been a part of. So, if a question is put to them that is not within their knowledge because it concerns a policy process or decisions or analysis inputs that they haven't been part of then it's not for them to just speculate on that in my view and I think that's fair, but they might be able to speak to the Treaty Clause Review process insofar as it is intersected with policy processes that they can speak to, so I think that will be the line.

(08:55) JUDGE MULLINS TO MR WATSON:

Q. But in terms of the scope of this inquiry –

A. Yes.

Q. – do you have instructions on the impact on that in regards to what's been filed overnight?

A. Not instructions on the scope of the inquiry as such. We've had, I mean, we've obviously thought about that and I had understood that, you know, we would all put our minds together on that at the judicial conference at the end of the hearing, so I don't want to pre-empt that necessarily now, and I think that'll be a matter for everyone to weigh in on. I guess just a couple of points on that. We, from the Crown side, we'll obviously work very constructively to make sure that all the effort that's gone on today is not derailed or undermined in any way. We feel very strongly about that and we will do that. And I guess the second point and it's just the germ of an idea really is that the matters that have very recently arisen, we don't think that they do in substance derail what's going on here, we think it's possible for, you know, potentially a third discreet issue to be added to the inquiry's processes and how that's done is a matter for discussion. But we don't see necessarily that these developments do undermine or radically change what's been discussed yesterday and what will be discussed today.

Q. So the Crown is open to potentially further issues being added?

A. We're open to any – yes, and we're open to a constructive approach. Not advocating an artificial line drawing exercise, we're open to an approach that assists the Tribunal's processes.

Q. Okay. Because I suspect, although I will hear from claimant counsel, they would be loathed to go through a separate process for what is essentially, so something so intrinsically tied to why we are here today. No doubt, I think Matua Ruakere termed it 'te kōngengetanga o te Rōpū Whakamana', Tribunal fatigue. And so, I suspect that they would be loathed to go through a completely separate process. So, it would assist if the Crown was willing to be flexible and nimble in that regard.

A. And just to be clear yes we will be flexible and I hope I wasn't – I wasn't suggesting a completely separate process.

Q. Ka pai, kia ora. **All right, thank you.**

JUDGE MULLINS:

Did claimant counsel at all want to speak briefly?

(08:58) DR SEASON-MARY DOWNS: (PROCEDURAL MATTERS)

Tēnā koutou. **Greetings.** We gave a little bit of thought to it overnight and we do think that the matters are substantive and potentially the best way forward is to regroup as counsel and to put forward a joint position on how we might procedurally deal with it. Obviously matters that are related to the briefs of evidence that are being heard by the Crown today, there may be some questions that can be put to the extent that they can answer them, we can do that, but it does seem like there needs to be an additional procedural process to hear them all thoroughly and make submissions.

(08:59) MS ANNETTE SYKES: (PROCEDURAL MATTERS)

Ma'am, it's Ms Sykes here. Following on from that, I have three responses to the Crown. There was a second undertaking took, I sought, that I am unclear as to whether or not there is now an undertaking from the Crown that there will be no Bill introduced until the conclusion of this hearing, and you have reported. So in that regard, there needs to be some timing allocations in a timetable. They're more than procedural for me. They go to whether or not there will be a

substantive opportunity for us to have a fair hearing and enable natural justice issues to be dealt with. Te tika me te pono e whakahaere ana i a tātou. **True and correct – our managing ways**. So that issue it remains silent, and I understood from discussions not with those Crown counsel but with Mr Goff that they were proceeding last night or endeavouring to get some further understandings about that. I notice my friend was silent on those matters this morning.

The second issue is the question of cross-examination of the three witnesses that are available. If they have not the personal knowledge of these matters then my submission would be they should provide us with a witness that does. It's not unusual for there to be many advisors or Dep. Secs. that may be available to actually understand how their ministers are briefing them on these matters, and given that we've only had the material over night I'm sure if there was someone of that superiority that's able to give evidence they would be able to grapple with the evidence just as we are in 24 hours. So I would like a witness today who can speak to those issues and has an understanding of them, otherwise, again, I think that it's just – my friend said he's not stonewalling, I think that's a disingenuous comment to make, I think that it's, again, the responsibility of them under the duty of candour to provide that information and for it to be examined not in an adversarial context but in a reasonable way, and that should be provided for.

The third point that I wish to raise is that I would like to lead at least from one witness some of the matters in the RIS that we got yesterday. I'm really concerned about the RIS. It's already in our statement of claim. The first RIS was released in April then not actually disclosed to us until November of 2024. Now we have a RIS that was prepared in 2025 and not released to us until yesterday evening which is I think more than an oversight on their part. It's starting to show a pattern of conduct. And the RIS is quite fundamentally different than the paper. But aligned to that is if you look at the paper that I put in that we got in the Climate Change, there's significant redactions in the paper that you got last night from the paper that we got in Climate Change, and we can't understand why those redactions are different, in particular paragraph 14

is in the Climate Change documents that were presented by Mr Fong and others of the Crown, and in this document we received last night that is redacted, and I think Mr Ferguson has concerns about that because they will be the matters of cross-examination with the third witness today.

So those three matters I think are more than just procedural in terms of adding an issue, the procedure and how we go forward today.

(09:02) MR WATSON: (RESPONSE)

Thank you, your Honour. I was trying to write a fair bit there and I hope I address. If not, my friend or your Honour I'm sure will let me know. Addressing the undertaking first. So, Ms Sykes referred to her knowledge that Crown counsel, including not just us, were working hard to pursue the issue of the undertaking not to introduce a Bill et cetera. That has been happening so we have been working hard on that, and I have an update but not a milestone if I can put it that way. So, the update is that the undertaking request is being considered at a ministerial level. It requires discussions beyond any one particular minister because of the nature of the undertaking sought and its interaction with the law making process and the parliamentary process. My understanding is that we're unlikely to have the milestone today, but this is an issue that we are actively pursuing as counsel and will keep the Tribunal apprised as we have any updates that are worth updating your Honour, so that's that.

Ms Sykes, my learned friend referred to some issues about redactions and a comparison between certain documents that were filed in a separate inquiry. I can't speak to that right now because I need to go through the exercise of looking at it, but we will seek instructions on that urgently as well and try to get to the bottom of that, so I'm grateful to my friend for raising that point.

Suggestion for some other witnesses to appear. I have no instructions on that, no insight to the realistic, you know, the practicability or otherwise of that, but I will reflect on that further and, yes, and update the Tribunal. And I guess what we do have, so that's a separate department, a separate policy process from

the ones that our witnesses, our Ministry of Education witnesses who are here, and so I just want to make that distinction clear.

JUDGE MULLINS:

It's the Crown, Mr Watson.

MR WATSON: (CONTINUES)

I understand. I understand that. I think especially from the perspective of our witnesses that that distinction is important to them, so I raise it in that spirit. Yes, and – just receiving live updates of sorts. So there are issues, agree, and I think the best way to deal with them is to try to work together on those, and that's why I really like, respectfully, the idea of the JC to enable us all to get our heads together and come up with a solution. I think dealing with it on the fly is difficult. So, that's all I can say.

JUDGE MULLINS:

And I understand that. I think probably though, I spent – I think I lost the paper war at about quarter to one this morning, but as I was going through the chronology of some of the key events, you know, that Cabinet decision was made on the 26th of February and this Tribunal and claimants are being told about that on the 14th of April. It had been made known to the Climate Change Tribunal that there was at least in the existence of a decision as early as the 30th of March, and that was filed in the Climate Change Tribunal on the 10th of April. So, on the 26th of February when that Cabinet decision was made, to the 14th of April when this Tribunal was told, and in that time the Statement of Issues was developed post-that Cabinet decision being made. I have some questions about whether the Crown should have been more proactive about what issues should have been in that Statement of Issues when that process was going on post- that Cabinet decision being made and the Crown had made a decision on those further changes to the Education Act. So, in terms of doing things on the fly I can understand the position of the claimants as to, well, actually the Crown has known of this for some time now. So, while I appreciate that the decisions in terms of the timing of the introduction of the Bill to the house are a matter of cross-minister discussion and you're doing your best to get those, I think some

of the other matters that have been raised by claimant counsel really need to be worked on quite hard by the Crown over the next 12 to 24 hours so that we can land at a place where actually this is a process that is fair, is transparent, and that the parties have come to in good faith. Ka pai? **All right?**

MR WATSON:
Yes your Honour, that's come through loud and clear, I understand that.

JUDGE MULLINS:
Kia ora. **Thank you.**

MS SYKES:
Ma'am, before we start, I was given a news article that you requested yesterday from the witness for Mr Clatworthy and I'd like an appellation number. It's the RNZ article.

MS SYKES ADDRESSES JUDGE MULLINS – APPELATION NUMBER FOR RNZ NEWS ARTICLE (09:09:00)

JUDGE MULLINS ADDRESSES MS SYKES – IMPACT OF RIS ON TIMETABLE (09:09:12)

MRS CHELSEA TEREI-TIPENE ADDRESSES JUDGE MULLINS – TIMETABLE (09:09:53)

JUDGE MULLINS ADDRESSES MR JAMIE FEGUSON – TIMETABLE (09:10:19)

JUDGE MULLINS:
Kei a koe Mōkai Pātea. **Over to you, Mōkai Pātea.**

(09:11) MR JACK POTAKA: (#3.3.002)
Tēnā koe e te Kaiwhakawā, otirā te Taraipiunara, tātou katoa kua karapinepine mai nei i tēnei rangi tuarua o tēnei kaupapa nui whakaharahara. Kia whāia anōtia ngā āhuatanga a kui mā, a koro mā, tēnei te rere atu o ngā mihi ki a koe.

E te uri o Hineāmaru mōu i taki i ngā kupu karakia ki te wāhi ngaro i tēnei ata e tau iho ai ngā manaakitanga o rātou mā ki runga i a tātou, otirā e whai niho ai tēnei kaupapa i tēnei rā, kāore e ārikarika ngā mihi ki a koe kei taku rangatira. Huri noa i a tātou katoa, mōrena ki a tātou katoa. Kua kite rā au kua tae mai te kāmera nui i tēnei ata. **May it please your Honour and the Tribunal, greetings to everyone who have gathered on day two of this most important matter. I must adhere to the aspects of the elders and so I acknowledge the descendant of Hineāmaru who recited karakia to the hidden realm this morning so that those who have passed on can bless us so that this matter gains teeth so to speak, and so I want to thank you very much, chief. And turning to everyone, greetings. I can see that the cameras are here this morning.**

Ko te painga atu it's got my good side. Heoi anō e te iwi, ka kuhu atu au ki ngā mahi a te wā. **Nonetheless, I will delve into the matters before us.**

These oral opening submissions are presented on behalf of Watson Ohia, Haywood Kuka and Sophie Tukukino for and on behalf of Ngā Kura ā Iwi o Aotearoa, the Wai 3603 claim as a confirmed interested party in this inquiry. They are to be heard or read alongside the statement of claim of Ngā Kura ā Iwi, the briefs of evidence of Watson Ohia, Heywood Kuka, John Heremia, and the brief in reply of Watson Ohia, as well as our written opening submissions and the Presiding Officer's Directions of 19 March 2026.

Yesterday this Tribunal heard from the practitioners of mainstream schooling. We learnt that 97% of tamariki Māori attend mainstream schools. This morning I have the privilege of introducing the remaining 3%: Ngā Kura ā Iwi, the tribal schools of this nation, where tamariki learn te reo Māori grounded in mātauranga and whakapapa **knowledge and genealogy** of their hapū and iwi. Their platform for being is sourced in te ao Māori, and that system is protected by te Tiriti o Waitangi.

The Ngā Kura ā Iwi whakataukī speaks directly to what is at stake in this inquiry:

"Mō tātou, mā tātou, e ai ki a tātou."

For us, by us and according to us.

Translated as: For us all, by us all, as determined by us all.

Tātou describes the Treaty partnership, standing side by side. What this Crown has done is act from a position of mātou looking down. The Treaty partnership was not intended to be hierarchical. It was not intended to place the Crown above Māori and Māori below. Yet that's what the removal of section 127(1)(d) communicates to every kura, to every board and every tamariki Māori in a state school in this country. They are above and we are below. Their decisions about our tamariki are final, not subject to te Tiriti, and not subject to consultation with us.

Ngā Kura ā Iwi does not accept that characterisation. Following the removal of section 127(1)(d), 1,859 schools made formal declarations to continue giving effect to te Tiriti regardless of legislative change. Of Ngā Kura ā Iwi's 53 kura, 47 signed that petition. Those kura were not consulted before their statutory protection was removed. They responded not with resignation, but with resolve. It is in that same spirit Ngā Kura ā Iwi appears before this Tribunal today.

As everybody will know, this inquiry concerns two Crown actions: the removal of section 127(1)(d) of the Education and Training Act 2020, which required every state school board to give effect to te Tiriti o Waitangi; and the reset of the New Zealand Curriculum through Te Mātaiaho. The Crown's witnesses advance a single position: officials advised well, Ministers decided otherwise, and Parliamentary sovereignty prevails. The Crown concedes process failure but resists the characterisation as a Treaty breach.

Ko te tāhū o Te Marautanga o Aotearoa, ko te Tiriti o Waitangi. E ahu mai ana i te Tiriti ko ngā mātāpono whānui e whai ake nei, hei arataki i te marautanga o ngā kura. He mea hanga ngā mātāpono i runga i te whakapono ko te ākonga te pūtake o ngā mahi katoa. Ko ngā mātāpono e whakaatu mai ana, e whakatau ana i te tuakiri o ngā ākonga, ko ngā kura reo Māori. Mā ngā mātāpono e arataki ngā mahi ako ki ngā kura. Me mātua whakauru ēnei mātāpono ki ngā mahi ako. Mā konei e eke ai te ākonga, te kura, me te whānau

ki ngā taumata o te mātauranga. **(The ridge pole of the New Zealand Curriculum is te Tiriti o Waitangi. From te Tiriti comes the following principles to guide the curriculum of the schools. The principles were created in the belief that the students is the foundation of all of things, all of the actions. And the principles that demonstrate and determine the identity of the students, the Māori language schools. The principles that guide the teaching in the schools. And these principles must be included in the teaching so that the student, the school and the whānau can reach the pinnacle of education.**

Ka whakaritea i te marautanga ā-kura ngā hōtaka ako kia ū, kia puāwai te reo Māori me ngā tikanga Māori. **The school curriculums have the (inaudible 09:16:34 - teachings) so that the language can flourish along with the tikanga, the culture, the customs.**

Ko te tino whāinga, kia tū tangata te ākonga i te ao Māori. Tuarua, mā te marautanga ā-kura e whakarite wheako e whai wāhi ai te ākonga ki ngā kaupapa whānui o te ao. Nō reira, ko te marautanga ā-kura: **The main objective is for the Māori student to succeed in te ao Māori. And through the school's curricular they're able to arrange for experiences and all of the opportunities of the world. And so the curriculum of the school:**

1. he mea whakamana i te whānau me te iwi. **Empowers the whānau and the iwi**
2. he mea hei whakarite wheako e hono ana ki ngā tikanga tuku iho a ngā iwi me ngā hapori o ngā ākonga. **And also arranges for experiences that are linked to the tikanga of that iwi and the students.**
3. He āwhina i te ākonga kia tū tangata i te ao Māori me te ao whānui. **And it assists the students who stand proudly in the Māori world and throughout the world**
4. He whakatutuki i ngā whakaritenga, i ngā hiahia me ngā wawata o ō rātou ake hapori. **And also is in line with the aspirations and the desires of their communities.**

5. He whakarite wheako me te mātauranga e taea ai e te ākonga te uru ki te ao whānui i runga i ēnei kōrero, ēnei taonga tuku iho. **And sets out the experiences and the knowledge where the student is able to participate and live throughout the world in line with their traditions, customs.**

Ngā Kura ā Iwi have a unique kaupapa that guide their teaching methodology and objectives. This is given life in this hearing's process by the evidence which follows this presentation today.

The New Zealand Curriculum, Te maho, and Te Marautanga o Aotearoa all guide teaching and learning for Years 0–8 in Aotearoa, but differ in purpose and approach.

The New Zealand Curriculum is flexible, competency-based framework for English-medium schools. It focuses on broad achievement objectives, key competencies, and school-led curriculum design.

Te Mātaiaho is the refreshed version of the New Zealand Curriculum. It provides clearer learning progressions, stronger structure, and a greater emphasis on building knowledge over time while still supporting competencies and equity.

Te Marautanga o Aotearoa is designed for Māori-medium settings. It is grounded in te ao Māori, mātauranga Māori, and te reo Māori **Māori knowledge and the Māori language**, with a holistic, culturally embedded approach to learning that prioritises identity, language, and whānau aspirations.

In essence, your Honour, the New Zealand Curriculum is flexible and competency focused. Te Mātaiaho, the New Zealand Curriculum, is more structured and knowledge progressive. Te Marautanga is Māori worldview-based, it is holistic and a language-immersed learning framework.

The Crown has identified the following principles that inform how the approaches its advice, engagement, and implementation responsibilities. They have identified partnership, active protection, and redress. Those principles are framed at a high level and reflect a Crown-centric articulation of Treaty obligations. They do not fully capture the substance of te Tiriti as understood by Māori, in particular, they fail to give proper expression of tino rangatiratanga and the requirement for equitable outcomes.

While maintaining the primacy of te Tiriti itself, Ngā Kura ā Iwi recognise the Tribunal is required to engage with its principles and identified the following as relevant for this inquiry;

We summarise those principles which has been expanded in our written opening submissions, your Honour, but those principles are:

1. Te mātāpono o te tino rangatiratanga **principle of tino rangatiratanga**;
2. Te mātāpono o te kāwanatanga **principle of good governance**;
3. Te mātāpono o te whakaaro nui o tētahi ki tētahi **principle of mutual respect**, which is the principle of mutual recognition and respect;
4. Te mātāpono o te houruatanga **principle of partnership**; the principle of partnership;
5. Te mātāpono o te matapopore moroki **principle of active protection**, the principle of active protection;
6. Te mātāpono o te whakatika **principle of active redress**, the principle of redress; and te mātāpono o te ōritetanga **principle of equity**, the principle of equity.

In the context of the kaupapa that Ngā Kura ā Iwi are founded upon and have worked tremendously to achieve, this means ensuring that kura ā iwi are adequately resourced, supported and recognised in a way that reflects their distinct role. It also requires policy settings that enable Māori learners to achieve as Māori, rather than forcing alignment with Mainstream standards that do not reflect their identity, their language, or their aspirations. A failure to take

these steps perpetuates inequity and is inconsistent with the Crown's obligations under te Tiriti.

The same principles were considered in Stage One of the Wai 3300 inquiry in the interim Ngā Mātāpono report. The Claimants say the Tribunal's findings in that report are directly applicable here. In that inquiry, the Tribunal found that the Crown had failed to act consistently with the principles of partnership, active protection, including by failing to recognise Māori interests in a meaningful and equitable way. The Tribunal found that such failures decontextualise Māori claims and undermine the integrity of the Treaty framework itself.

The Tribunal further found that these breaches caused significant prejudice to Māori. It concluded that the proposed reforms would risk the legal extinguishment of tino rangatiratanga, apply across all areas where Te Tiriti is engaged, and advance a discredited agenda of assimilation by eroding the distinct status of Māori as tangata whenua **indigenous**. The Tribunal also found that prejudice arose not only from the substance of the reforms, but from their introduction, which damaged the Māori–Crown relationship and contributed to social division.

In light of those findings, the Tribunal recommended that the Crown abandon the proposed reforms, and if not, that the matter be referred back to the Tribunal given its constitutional significance. It also reserved its jurisdiction to consider further evidence and submissions should the reforms proceed.

The Claimants say the present inquiry raises the same underlying issues, your Honour. The removal of Treaty-based protections in this context reflects the same pattern identified in the Wai 3300: a failure to act in partnership, a failure to actively protect Māori interests, and a shift toward assimilation. The extinguishment of Treaty clauses is not a neutral act. It removes the legal mechanisms through which tino rangatiratanga is recognised and protected, and in doing so, reproduces the very prejudice identified by the Tribunal in the Wai 3300 claim.

Your Honour, in this hearing you've asked witnesses throughout – you've asked the differences between Te Mātaiaho and Te Marautanga o Aotearoa. Mr Ohia answers that from Ngā Kura ā Iwi's direct experience. The most consequential factual matter in this proceeding: at least 75% of Ngā Kura ā Iwi wharekura draw from both curricula, particularly at secondary level. The Crown's erroneous assumption that Ngā Kura ā Iwi only use Te Marautanga o Aotearoa meant that Ngā Kura ā Iwi was simply excluded from the design of the New Zealand Curriculum reset entirely.

Today you will hear from Mr Watson Ohia and Mr Heywood Kuka, but I'd just like to highlight the kōrero that Mr John Heremia highlighted in his kōrero who is not able to make it here today, your Honour, and from there I will conclude my point.

John Heremia said in his evidence that he has served Te Wharekura o Rakaumanga for over 47 years. He was educated under the Native Schools system in Ruatoki, where speaking te reo Māori at school was prohibited. He has spent his entire career building the alternative. His brief carries the central insight that should be held throughout this hearing and the entirety of this Tribunal's deliberations. At his kura, mātauranga Māori **Māori knowledge** is not woven through curriculum:

"It is the loom."

Something woven through a fabric is not the fabric. The Ministry's language, mātauranga being 'woven throughout' is a language Mātua Heremia has heard for 40 years, used to justify the inclusion of Māori culture as decoration, rather than foundation. At Te Wharekura o Rakaumanga, mātauranga Māori is the structure from which everything else hangs. It is not an ingredient. It is the recipe itself.

Mātauranga Māori has been here since time immemorial. It predates the Crown, it predates Parliament, it predates the New Zealand Curriculum. Te Tiriti was signed to protect it. What is being dismantled by the Government

is not a checkbox or a policy lever. It is the constitutional architecture that allows those kura, and everything they carry, to exist.

If I can just conclude, your Honour, the Crown's position is that Parliamentary sovereignty provides the answer: officials advise, Ministers decided otherwise, stewardship was not satisfied by the quality of the advice given. Ngā Kura ā Iwi's response is direct: the Crown's obligations under te Tiriti run to Māori, not to the quality of its internal processes. The Crown cannot outsource its Treaty obligations to Parliamentary process. In acting as it has, it has repudiated the very partnership of te Tiriti that te Tiriti was intended to uphold.

Ngā Kura ā Iwi will not stop. Their constitutional obligation under the Kaupapa Here 4.10 is not extinguished by Parliament. But the Crown's side of the equation has been removed without consent, without replacement, and in breach of its own bilateral agreement. It is the role of this Tribunal to require that it be restored, not only for the 53 kura of Ngā Kura ā Iwi, but for every tamariki Māori **child**, uri whakatipu of **descendant of** every hapū and iwi across Aotearoa who attends a state school and who is entitled to grow up knowing that the institution their whānau entrust with their education is bound by the law to honour te Tiriti o Waitangi.

Matua Heremia closes his brief anchored in the words of Kingi Tawhiao:

Māku anō e hanga tōku nei whare.
I shall build my own house.
I will build and fashion my own house.

After 47 years, he is still building it. He asks this Tribunal to ensure the Crown does not tear it down. Tēnā tātou. **Thank you.**

(09:28) MS RANGIPUREI MANLEY: (MIHI, CALLS)
Tēnā koe e te Kaiwhakawā, otirā e te tēpu rangatira. Ko counsel Manley tēnei. Mō te Taraipiunara, i te mea ko tēnei taku tū tuatahi, he Raukawa ki Wharepuhunga, he Maniapoto, he Whakaue hoki. **May it please your Honour**

and the esteemed panel. Counsel Manley speaking. Because this is my first appearance, I am Wharepuhunga, Maniapoto and Whakaue.

Ko te wāhi ki ahau he whakamōhio atu ki te pae matua, otirā ki te whare ko wai te pae kōrero e whai ake nei. Kua kōrero kē a Mr Potaka mō te toki a Matua Heremia rā, kāore a Matua Heremia i wātea ki te waha i tana tāpaetanga i te rā nei, hoi kei te pepa #A028 te roanga o āna kōrero. Ka kuhu ki tō mātou tēpu ko Matua Watson Ohia. Kua waru tau a Matua Ohia hei tumu whakarae mō Ngā Kura ā Iwi. I mua i tērā, tū hoki ia hei kaiako, hei pou ārahi anō mō Te Wharekura o Rākaumanga. Ka mutu, i te whakarewatanga o Ngā Taiātea, i kōwhiria ia hei tumuaki mō te kura. Kō atu i ngā tau 15 ia ki taua tūranga. Nā wai, nā wai ka kohaina a Matua Ohia i ōna pūkenga ki a Ngā Kura ā Iwi, ā, kua mana tōna nohoanga ā mohoa noa nei. Atu i ērā haepapa nui, e toru hoki āna tohu paerua kua tutuki i a ia. Kei te pepe #Ā029 me te pepa #A029(a) āna kōrero. Kei te pepa #A048 hoki āna taunakitanga whakahoki. **I want to inform the panel and the room who is the following panel. Mr Potaka has talked about the toki, elder Bhana Heremia. He's unable to give evidence today but his brief is at appellation #A028. And so, to introduce our panel, on the panel is Watson Ohia who has been CEO of Ngā Kura ā Iwi for eight years, and before that he was teacher and leader of Te Wharekura o Rakaumanga. And when Te Wharekura o Ngā Taiatea – he was chosen as the principal of the school. He was principal for over 15 years. Over time, Watson Ohia shared his skills and expertise for Ngā Kura ā Iwi. Aside from those major obligations he has completed three masters degrees. #A029 and #A029(a). #A048, his evidence in reply.**

Hei taunaki i ngā kōrero a Matua Ohia, ko Matua Heywood Kuka, tumuaki o Te Wharekura o Mauao. I whakatūria a Matua Heywood hei tumuaki mō Te Wharekura o Mauao i te tau 2018. Kua ono ngā tau ia i te tūranga hei heamana mō Ngā Kura ā Iwi. Katoa ngā kōrero mō ēnei kerēme i tae mai ki a mātou o te tari nā Matua Heywood i roto i te reo. Kua whakangāwari ake mātou i ērā kōrero mā te Taraipiunara me tātou katoa hei whakamāori ki te reo Pākehā kia mōhio atu he aha te aha māna. He tohu tērā o tana kaha ū, kaha whakapono, me tōna ngākaunui ki te kaupapa o Ngā Kura ā Iwi. Ā, kei te pepa #A030 me

te pepa #A030(a) āna taunakitanga. **To support the evidence of Watson Ohia is Heywood Kuka, the principal of Te Wharekura o Mauao. Heywood appointed as the principal – and he's also been chair of Ngā Kura ā Iwi. And all of the evidence for these claims were received – were shared by Heywood Kuka and it's all in the Māori language, and we have simplified that for the Tribunal and for everyone, and it's been translated into English so that we know what he's saying. And that's a sign of his commitment and belief and passion for Ngā Kura ā Iwi. At #A30 and #A30(a) is his briefs of evidence.**

Nā, ko tā Ngā Kura ā Iwi he whai i te kīanga: *Mō tātou, mā tātou, e ai ki a tātou.* Nō reira, ka waiho mā Matua Watson rāua ko Matua Heywood ō rāua ake pepeha e tuku e ea ai te taha ki ā rāua mihi. Kei ngā mana nui whakatiketike kua roa e whakapeto ngoi ana ki te kaupapa nei o Ngā Kura ā Iwi mō ā tātou tamariki mokopuna te take, ā, hei painga mō ngā iwi o Aotearoa, kei a kōrua te wā. **Ngā Kura ā Iwi adheres to the saying: *By us, for us and determined by us.* And so I leave it to Watson and Heywood to share their pepeha as part of their acknowledgements. And so to the great authorities that have expended much energy, tireless efforts for our children, for Ngā Kura ā Iwi, for the benefit of all the people of Aotearoa, and so I pass it over to you.**

(09:31) WATSON OHIA: (MIHI)

Kāti rā, tēnā tātou. Kei te kaiwhakarite, tēnā koe, nāu tātou i whakarite i tēnei rā. Kei ngā mana, ngā reo, ngā karangatanga maha o te motu, tēnā koutou, tēnā tātou e hui tahi nei i tēnei rā. Kia kotahi atu au ki ngā kōrero. **Greetings. To our elder who recited the karakia, opened our day. To the authorities, to the voices from throughout the country, greetings, greetings to everyone gathered here. I will dive into my brief.**

Tēnā koutou. Āe, Watson Ohia. Mataatua, Te Arawa, Tokomaru me Tainui ngā waka. **Greetings. Yes, Watson Ohia is my name. Mataatua, Tainui, Tokomaru and Tainui are my waka.**

Yes, I'm the Pou Kōkiri, CEO of Ngā Kura ā Iwi. Also, a parent of three Kura ā Iwi daughters, husband of a Kura ā Iwi teacher who is also now a principal. I was also a Kura ā Iwi primary teacher, secondary teacher, assistant principal as mentioned before of Te Wharekura o Rākaumanga, and founding principal for 14 years of the then new Kura ā Iwi secondary school Ngā Taiātea Wharekura. And as mentioned, I've been Pou Kōkiri **CEO** for Kura ā Iwi for eight years.

Ko tētahi mea, I've spent my entire working life serving kaupapa Māori education. I know what it takes to build a kura from nothing, to hold it together when the system does not support you, and to grow it into something that gives iwi real authority over how their tamariki learn and grow. That experience is what I bring here today.

E rua ngā tino kaupapa, kua kōrerohia kētia te rā nei. **The main purposes that have been mentioned today.** The removal of section 127(1)(d) and the curriculum changes and the flow-on effects to our communities, iwi, whānau and uri, children.

Ngā Kura ā Iwi o Aotearoa represents 53 kura throughout the country, tribal kura. Each kura is established, affiliated and endorsed by an iwi or hapū. Each one is a school whose educational character is defined by the people it belongs to. Their language, their tikanga, their whānau, their mātauranga **knowledge**, their vision for their mokopuna **grandchildren**. These are the conditions of membership for every kura that affiliates to us.

Uri means a family member or relative, which is the name that we like to us for our students. They're more than students, they're whānau, he uri.

Our strategic framework is Te Tihi o Angitu. All the peaks of achievement and success. Te Tihi o Angitu is not a government framework, it's not borrowed from any Crown curriculum document. It emerged from within our movement, from the collective aspirations of our iwi for their tamariki **children**. It sits

alongside Te Marautanga o Aotearoa and the New Zealand Curriculum as a framework our kura can draw from.

Ngā Kura ā Iwi have a proven track record. We aren't theorising about what works for our uri to succeed. We're doing it and have been for 40 years. This is why kura from general stream education are applying to join Ngā Kura ā Iwi, to join the movement.

Now, Ngā Kura ā Iwi did not bring this claim before the Tribunal because we are only focused on our 53 kura. We brought it because we understand that the legislation that has been taken away affects all of our whanaunga, all of our tamariki in every state school in this country, not only ours.

Section 127(1)(d) ensured the obligation of school boards to give effect to te Tiriti o Waitangi and to support our young Māori across New Zealand state schools, including our whānau, nieces, nephews, mokopuna in the general stream in English Medium education, by ensuring that there is an important layer of advocacy, care, protection at the governance level of their schools.

In regards to Ngā Kura ā Iwi kura boards, the legislation provided protection so they could take control of and responsibility for the education of their children. Provided affirmation that each board can focus on the magic of their iwi and community, their mātauranga Māori, their aspirations, their values as the educational foundation that nurtures and grows all uri in their kura. Power. Power to each board. The rangatiratanga of the board to go to the Crown so that the Crown honours their obligations and supports the board's obligations and aspirations for their uri **people**, for their tamariki **children**.

The key point for Ngā Kura ā Iwi is that the Crown's removal of section 127 removes the Crown's own Treaty obligations to each of our boards, their students, their whānau, their iwi.

We are deeply disappointed with the Crown's conscious decision to not consult with Māori, those who will be most affected by the removal of the legislation.

Ngā Kura ā Iwi and the Ministry of Education on behalf of the Crown committed to Te Kawa Whakapūmau, a genuine Treaty based partnership grounded in mutual respect and trust. In regards to the legislation and other recent key Crown decisions that are majorly impacting on Ngā Kura ā Iwi, the Crown has chosen to undermine our opinion and not meaningfully consult with us. This attitude blatantly undermines our Treaty based partnership in Te Kawa Whakapūmau. How can a Treaty partner who behaves like this, like the Crown has, be trusted to fulfil their Treaty obligations to Ngā Kura ā Iwi and to Māori in general?

For Ngā Kura ā Iwi, each kura has their own mana motuhake, founded in the rangatiratanga of their iwi, their hapū, their whānau. Our kura are totally focused on their uri, on their tamariki **children** so that they thrive and are confident, resilient and prepared. Our kura exercise their rangatiratanga **authority** and the curriculum of our kura draws from a range of frameworks, including Ngā Kura ā Iwi's own Te Tuhi o Angitu, the knowledge base of their hapū and iwi, Te Marautanga o Aotearoa and the New Zealand Curriculum, especially in the wharekura area, secondary school area of our schools.

So we heard previously, more than 75% of our Wharekura draw from the New Zealand Curriculum. Our uri sit exams, they pursue careers in medicine and law, engineering, trades and arts. The reason we draw from the New Zealand Curriculum is partly because we want the breadth for our ākonga **students**, and partly because Te Marautanga o Aotearoa is simply not adequately resourced, especially at the senior secondary level. The New Zealand Curriculum is very important to us and our kura do a lot more New Zealand Curriculum based learning and qualifications in a senior secondary level than the Te Marautanga o Aotearoa based learning.

Although Ngā Kura ā Iwi utilise New Zealand Curriculum (the New Zealand Curriculum), Ngā Kura ā Iwi has been excluded from any consultation regarding the New Zealand Curriculum reset and the development of its key drivers and priorities.

The Crown's actions. The exclusion of Ngā Kura ā Iwi from New Zealand Curriculum consultation, from the design of the kaupapa Māori component of the SMART tool, the poor consultation regarding Te Marautanga o Aotearoa, and NCEA is reflective of their disregard and lack of respect for Ngā Kura ā Iwi and for kaupapa Māori education in general.

The philosophical direction of the New Zealand Curriculum and Te Mātaiaho is a major concern. The knowledge rich approach as it is being applied treats mātauranga Māori as additional content. Something you layer on top of a curriculum that has already been designed, where the Māori culture is a decoration rather than a foundation.

At our kura, mātauranga Māori and the aspiration of our people are not add-ons. As my tuakana Bhana mentioned, they are the foundation of our kura and our movement. They are the loom that everything else is woven from.

Nō reira e te whānau **and so whānau**, what I'm asking for us is not complicated, but it requires the Crown to understand something it has so far refused to accept, that you cannot design a good future for our tamariki without us. Everything that has happened in this reform programme, the removal of section 127, the curriculum reset, the SMART tool, the exclusion at every stage has happened to us, not with us. That has to change.

I'm asking the Crown to put back what it removed which is the obligation on school boards to give effect to te Tiriti, not for our kura alone but for all tamariki Māori in state schools in this country. For Ngā Kura ā Iwi in the wider kaupapa Māori movement, this will also reinstate the Crown's obligation to support each school board, each community, each iwi, and return to them and their communities this layer of protection, affirmation and power. That was the law. It should be the law again.

On the curriculum, I am asking the Crown to stop finalising Te Mātaiaho until it has genuinely engaged with Ngā Kura ā Iwi and the kaupapa Māori sector. Not

a briefing, not a submission portal. A designed process. One that actually incorporates our philosophies, our frameworks, our ways of knowing into the design itself. For too long, the Crown has treated our knowledge, our language, our tikanga as a strand to be woven into a fabric it has already designed, picked up when it suits, set aside when it doesn't, but we are not a thread to be incorporated into someone else's cloak. We are the loom. We all fashion a cloak that suits our iwi, our whānau and our uri.

If the Crown wants to create something that genuinely serves our tamariki, its work must weave into ours, not ours into theirs. This applies to the SMART Tool. Te Marautanga o Aotearoa reset, NCEA, the design of the new secondary schools qualifications. This will require commitment from the Crown to a genuine partnership and authentic engagement with our people.

Honouring te Tiriti o Waitangi in the education system does not require perfection, it requires good faith as was agreed to in Te Kawa Whakapūmau. It requires the Crown to act as the partner it promised to be, to come to the table before decisions are made, not after. To protect what it agreed to protect. The Tribunal is the constitutional forum through which the motu speaks back. Ngā Kura ā Iwi ask that this Tribunal hear that voice and give it effect.

Kāti rā i konei e ōku rangatira, huri noa i tō tātou whare, tēnā koutou, kia ora tātou. **And so I conclude here to the assembled leaders in this room, thank you all.**

(09:44) HEYWOOD CHRISTIAN KUKA: (#A030)

Ka horo te pā, kāhore! Tēnei te ngārara kopaia nā mai ē. Ko Ranginui, au. Ko Pūkenga, au. Rangihouhiri, au, au, au. Ko Waitaha, ko te ara mai ki ahau, ue. **[This is a haka.] It is Ngāti Ranginui, Ngāti Pūkenga, Ngāi Te Rangihouhiri. It is Waitaha. 'Tis I.**

Kei te Taraipiunara, kei te upoko whakahirahira o te Taraipiunara, tēnā koutou. Tēnā koe kei taku rangatira mōu i whakawhāriki mai te hono ki te kauwae runga i tēnei rā, tēnā koe. Otirā, te ikapahi tangata, tēnā tātou i tēnei rā. Ka whai tūru

ahau. **To the Tribunal, to the Presiding Judge, greetings. To my chief who laid out a link to the celestial realm, thank you. And to the gathering of people, greetings on this day. And so, I will resume my seat.**

Tēnā tātou. Ko Heywood Kuka tōku ingoa. He uri tēnei nō Tauranga Moana. Ko tōku iwi ko Ngāti Ranginui. Ko tōku hapū ko Te Pirirākau. Ko tōku kura ko Te Wharekura o Mauao. Kia ngākaunui mai. Ahakoa ehara ahau i te tamaiti kōpū reo Māori, kaha anō ōku mātua ki te whakaako i te reo Māori ki a au i a au e tipu ana. Ehara i te tohungatanga o taku reo Māori taku āmaimai i tēnei wā, ko te koretake o taku reo Pākehā, ahau ka whakatakoto te nuinga o ēnei kōrero ki te reo Māori. **Greetings. My name is Heywood Kuka. I am from the Tauranga Moana district. My iwi are Ngāti Ranginui. My hapū is Te Pirirākau. My school is Te Wharekura o Mauao. Be patient. Even though I am not a person who was born with the Māori language, my parents strove to teach me the Māori language when I was growing up. I am not an expert in the Māori language, I'm just nervous about my English language skills, and so I will lay out most of my kōrero in the Māori language.**

Ka tīmata pēnei au. Ka tāia tētahi pikitia mō te nohoanga o Te Wharekura o Mauao. Te Wharekura o Mauao, tōna 16 tau tū mai ai hei Kura ā Iwi. Ko te hapori te wāhi noho o Te Wharekura o Mauao kei tētahi taone whai rawa. Tekau mā ono tau ki muri whakatakoto ai te tono kia whakatūria ai Te Wharekura o Mauao ki tēnei hapori whai rawa. Inā te nui o ngā tohe kai kaua rawa te kura nei e tū ki tēnei wāhi tonu. Anei te mātotoru o te pukapuka tono ki te Kaunihera, ki a wai atu, ki a wai atu, ki te whakahē i tō mātou whakatūria i tēnei kura. Kāre au mō te tāruarua i ngā tono, engari he kaikiri. **I will commence thus. I drew a picture about the site of Te Wharekura o Mauao. It's been a kura ā iwi for about 16 years. The community where Te Wharekura o Mauao is situated, it's in an affluent area. And 16 years ago we laid out the request for Te Wharekura o Mauao to be built at this affluent suburb. There were many objections against the kura to be built in this area. And this was how thick the book was to reject us building**

this kura. I won't repeat or go back to those claims, those requests, but they were racist.

Ā, haere ake nei, haere ake ngā tau, mō tēnei wā tonu, mō te whakakorenga o te Tiriti o Waitangi i roto i ngā kaupapa here o ngā poari, mō te mukua hoki o te mātauranga Māori ki ngā tuhinga o ngā marau. Kei te pērā tonu, te hapori e nōhia nei āku tamariki. I tērā wā tonu, kāre te hapori i te hiahia ki a rātou. I tēnei wā tonu, ka tohua mai te Karauna kāre i te hiahia ki tēnei momo mātauranga. He hoki kōmuri, he hoki kōmuri, he hoki kōmuri te mahi. **And over the years and at this time, the deletion of te Tiriti o Waitangi in policies in relation to school boards, and to also erase Māori language in the written curriculum documents. That's still the case, the community where my children live. At that time, the community did not want them. And at this very time, the Government has directed us that they want our knowledge. It's regressive, we're going back, going back, those are the actions.**

Nō roto mai i taku kura me ngā kura ā iwi whānui tonu, tika tā Matua Heremia, tā Matua Ohia, ko te tāhuhu o te whare ko te mātauranga Māori. Ko ngā heke, ko ngā kōrero o te iwi. Ko te manawa, ko te pou tokomanawa, ko te reo Māori. Engari rā ia, ko ngā tuhinga pēnei i Te Marautanga o Aotearoa me te NZC, he mea whakarākei i te tāhuhu e taea ai ngā mātauranga katoa kia whakairia ake ki te tāhuhu o tō mātou whare. **And within my school and the tribal kura throughout, elder Heremia and elder Ohia were right, the ridge pole of the house is Māori knowledge. And its heke are the narratives, history of the people, iwi. The centre post is the Māori language. However, the writings such as Te Marautanga o Aotearoa, New Zealand Curriculum, are part of the ridge pole so that all of the knowledge is to be placed in the ridge pole of the house.**

Ko ngā tuhinga ēnei me te whakakorenga o ētahi wāhanga ki roto me te āta tāpiri noa iho i te mātauranga Māori ki ētahi o ngā kaupapa, ka tohu atu ki tōku hapori, ki aku tamariki, ko te mātāmua o te whakaaro kaua ko te mātauranga Māori. **And these written documents, and also the erasure of – and only**

to add the Māori knowledge to some of the kaupapa matters, and then instruct my community, my children that primary first and foremost is not Māori language.

Kei te hanga piropiro Manu Kōrero i tēnei wā tonu. **I'm just nervous like I'm at a Manu Kōrero speech competition.**

Heoi anō, ko tāku noa iho, e toru kē aku īnoi. Kei kīia he tohu, engari he īnoi: **But I just have three requests. They're not directions, but requests:**

- Kia taihoa a Te Mātaiaho e whai wāhi ai a Ngā Kura ā Iwi, ngā kura e whai ana i te kaupapa Māori, te whai wāhi atu ki roto i ngā tūnekenekehanga. **To halt Te Mātaiaho so Ngā Kura ā Iwi and schools that are adhering to Māori initiatives, so that they can –**
- Kia whai mana ōrite te mātauranga Māori ki roto i ngā tuhinga katoa. Ehara i te mea he tāpiritanga. **Have equal power, authority within all of the documents. Not added on.**
- Ka toru, te kaupapa mō Aotearoa Histories, whakahokia mai. Kia whai mana ngā kōrero o Aotearoa whānui tonu ki roto i ngā tuhinga katoa o ngā marau o ngā kura katoa. **Thirdly, in terms of Aotearoa Histories, bring it back so that the history of Aotearoa can be empowered in all of the curriculum into the schools.**

Hei whakakapi ake, te tauparapara nāku, te haka nāku i taki i tēnei ata nō roto mai i ngā kōrero o Pukehinahina. Ka kī mai ai, "Ka horo te pā?", ka kī atu ai au, "Kāhore!". Ka horo tēnei pā o Ngā Kura ā Iwi? Kāhore. Kei te tū i runga i te mana motuhake o Ngā Kura ā Iwi, ka mutu, i ngā tamariki Māori huri noa i te motu, kia whai wāhi ai ki te whai i te mātauranga Māori ki ngā kaupapa Māori. **In conclusion, the haka that I led this morning pertains to Pukehinahina, the Battle of Gate Pā. Will the pā fall? I say then, no. Will this pā of Ngā Kura ā Iwi fall? I say no. We stand on the mana motuhake of Ngā Kura ā Iwi and the Māori children throughout the country, for them to be involved and to pursue Māori knowledge and Māori initiatives.**

Ka whakairia ake āku kōrero ki te tāhū o te whare i tēnei wā tonu, tēnā koutou katoa. **And so, I suspend my kōrero to the ridge pole of this house. Thank you all.**

JUDGE MULLINS:

Kei aku rangatira, tēnā kōrua. I mua i ngā pātai o te Karauna me paku wā whakatā nā te mea he werawera te rae o te kaiwhakapākehā rā. **To my leaders, thank you both. Before Crown questions we will have a brief break because the interpreter's sweating the brow.**

(09:51) MR LACHLAN EWING: (MIHI)

Aroha mai. Tēnā koe e te Kaiwhakawā. Ki mua i te wā whakatā, ki ngā kaikōrero, ki ngā kaitautoko, tēnā koutou katoa. Ki ngā kaikōrero, nei rā te mihi nō te Karauna ki ngā kōrero mō tō kōrero me te taumata o te reo me te mātauranga ki roto i tērā kōrero. Kua āta whakarongo mātou ki te kōrero, ahakoa he tauira noa iho i te reo Māori. Heoi anō, e kore ngā pātai ki a kōrua mō te Karauna. Tēnā koutou. **Thank you, Judge. Apologies. Before the break, to the witnesses and the supporters, greetings to you. And the witnesses, I want to acknowledge you on behalf of the Crown and your kōrero and the knowledge and expertise in the language that you shared. We've carefully listened to what you said, and I'm only a student of the Māori language. Nonetheless, we have no questions for you both from the Crown. Thank you.**

QUESTIONS FROM CROWN COUNSEL – NIL

JUDGE MULLINS:

Tēnā koe, engari he pātai tā mātou. Nō reira, he wā paku whakatā tēnei. Kia ora. **Thank you, however we have questions. And so, we will have a short break. Thank you.**

HEARING ADJOURNS: 9.51 AM

HEARING RESUMES: 9.58 AM

MR POTAKA:

Tēnā anō tātou. **Greetings once again.**

E te Kaiwhakawā, kei te noho mai ki te taha a te tokorua nei, a Ms Sophie Tukukino. Kua whakaingoa tana ingoa hei kaikerēme i roto i tēnei take, engari kua tae mai ia ki te whakakī i te whārua a matua John Heremia i tēnei wā. Ki te tuku ētahi pātai kāore te tokorua nei e āhei ki te whakautu, māna e whakakī i te whārua. **Your Honour, sitting beside the two witnesses is Ms Sophie Tukukino. She is a named claimant in this matter, but she has come to fill the seat of elder John Heremia at this time. If these two are unable to reply to questions, she can fill the gap.**

(09:58) GERRARD ALBERT TO WATSON OHIA, HEYWOOD KUKA AND SOPHIE TUKUKINO:

Q. A kāti, tēnā koutou. Tēnā koutou i tō whakatakoto kōrero ki mua i te aroaro o tēnei pae. Heoti noa, kia rongo mai ai tātou ki tōna reka, ki te hua e whakaputa mai ai ki roto i ngā kōrero. Ngā kōrero kua tuhingia ki roto i te pukapuka a tō tātou kaumātua, tē taea nei te tū ki te hora āna kupu, engari kei konā koe te whakautu ngā pātai mōna, heoi, e mihi ana ki a koe, koutou e whakatinana ai ā tātou kura ā iwi, tēnā koutou. **Greetings and I thank you for presenting your evidence before this Tribunal panel. So that we can hear how wonderful and what you shared in your evidence, that was written in the document of the brief of evidence of our elder, who was unable to appear to evidence. But you are here to reply to questions on his behalf and I want to acknowledge you and all of you for working for our kura ā iwi.**

Tāku pātai tuatahi e hāngai ana ki te kupu a tō koutou rōia nānā i kī atu ai, o ngā kura ā iwi 53, 47 noa iho ngā mea i tāmokongia te petihana. He aha te take kāore – ka raruraru tāku kaute. Tokoono ngā kura kāore i tautoko i taua petihana. **My first question is in relation to what your lawyer said, of the kura ā iwi, 53, 47 of them sign the petition. What**

is the reason as to – I might be wrong in my counting. There were six schools that didn't support or sign that petition.

A. [Watson Ohia] Tēnā koe, e te rangatira. I tuku urupare a Kura ā Iwi ki te whakahē i te whakatau a te kāwanatanga. Ko ētahi o ngā kura i whakaaro ake, ko koutou, ko tātou. Nō reira, ehara i te mea i āta tohutohu mātou ki a rātou me pēnā rātou, me tuku whakaaro hei whakahē i te mahi a te kāwanatanga. Nō ngā kura kē te whakaaro nui kia pērā rātou, engari ko ētahi, whakaaro rātou kia noho ki raro i te taumarumarutanga o Ngā Kura ā Iwi. Ko mātou, ko tātou katoa. **Thank you, chief. Ngā kura ā iwi has sent a response, a reply to reject the decision of the government. Some of the kura thought, we are one in the same and so, we didn't really direct them for them to do that to send their views to reject the actions of the government. But the kura thought that they would do that, but others thought to stay under the mantle of ngā kura ā iwi and that's us, that's all of us.**

Q. Āe, kua whai i ngā tikanga o ngāi tāua, te Māori. Ki te tū tētehi, ka tū te katoa, āe. Ka whai noa au te ia o aku pātai ki ngā kaikōrero inanahi. I a koutou e mahi ai i ō koutou mahi, haere ake ai i te motu, kua rongo nei koutou i ngā kura e kōrero ana mō te taumahatanga o te kawenga o Te Tiriti o Waitangi me ō reira kōrero, me ō reira wānanga i roto i o rātou mahi? **Yes, those are the customs of we, the Māori people. If one stands, then all stand. Did you hear my questions to the witnesses yesterday. As you are undertaking your work throughout the country, have you heard comments about the burdens in terms of conveying around Te Tiriti o Waitangi and your forums and your discussions in your work?**

A. [Heywood Kuka] Tēnā koe e te rangatira. Me pēnei ai taku whakautu i tērā. Tōku ake kura, tau whitu ki te tau 13. Ehara i te mea ko Ngā Kura ā Iwi noa iho ka whāngai i tō mātou kura. Ka haramai kura aunoa, kura reo rua, i reira kite ake ai te taumahatanga ki runga ki ēnei tamariki kia kore rawa e whai wāhi atu ki te ako Te Tiriti o Waitangi ki tō rātou kura nā ētahi o ngā whakataunga. Huri haere i ngā kura ā iwi, ahakoa te aha, ka mahia te mahi, engari he uaua mehemea ko te poari kua tohua kāre he whiringa – he whiringa ināianei. Koinā te

taumahatanga, kua tino wāhi rua te whakaaro me pēhea me pērā. Engari, mō ngā kura ā iwi, ka mahia te mahi i ngā wā katoa, ahakoa ngā whakataunga. Ko ngā tamariki ka kuhu mai ki ngā kura pēnei i tō mātou kura, ki reira kite ai te taumaha, ā rātou mahi mō te whakakorenga. **Thank you, chief. Me pēnei ai tāku whakautu i tērā. My own kura, from year seven to year 13. It's not just tribal kura that help our school. Mainstream schools and bilingual schools come and that's where we see the burdens that are upon the children. Where they are unable to learn about Te Tiriti o Waitangi in their kura due to some of the decisions that were made and to all of the kura ā iwi, tribal kura, no matter what we still do our work. But it's difficult if the board has been instructed – that's optional, and that's what's so difficult. We have divided into how we can do, but for ngā kura ā iwi, we will just carry on doing our work in spite of the decisions and all of the schools that come to our schools, like our kura, and that's where you see how difficult it is due to that erasian.**

[Watson Ohia] Ka tautoko i ērā kōrero. Ko te māharahara nui, he mana tō te poari nē, poari kura i mua rā. I te mea, i āta tohua rātou, i whakamana rātou i Te Tiriti o Waitangi. Ki roto i tērā ā-kura ā iwi nei, ko te mana o tērā momo whakaaro, ka tohutohu ngā poari, ka āki ngā poari ki te Karauna. Kei te kawe mātou i tō koutou kawenga anō hoki. Tukuna mai a ringa āwhina, tukuna mai ngā rauemi, ngā aha atu rānei, e tōwai ai ngā tūmanako, e ea ai ngā mātāpono o te Tiriti o Waitangi. Nō reira, ko te māharahara ko te anamata i te korenga o tērā. I te korenga o tērā herenga ā-ture nei, ki te ture, engari i te korenga o te herenga o te herenga o te Karauna ki te poari, āna tamariki, tōna iwi, kei reira te māharahara nui. **I support what was said there. The great concern is that the board has authority, the school boards had authority before because they were directed to empower Te Tiriti o Waitangi. Within the tribal kura, the role and the mana behind that thought is that – but the school boards are urged and directed by the Crown that we are being responsible for – and resource us and assist us so that the aspirations are able to be fulfilled, and to fulfil the principles of Te Tiriti o Waitangi. So, the concern is what's the**

future, due to the erasure of that legislative connection to the – and there is no obligation of the Crown, upon the school, on the child, and its people and that's our main, primary concern.

Q. Ka pai, kua rongo, tēnā koutou. **I've heard, thank you.**

(10:05) DEREK FOX TO WATSON OHIA, HEYWOOD KUKA AND SOPHIE TUKUKINO:

Q. Tēnā koutou. Kāore aku pātai, ehara i te mea kāore au e whakapono ana ki ō kōrero, engari te mārama o ō kōrero, nāhou i whakatakoto ngā nawe o ō koutou kura me ngā tangata e whakahaere ana i ngā kura. Nō reira, kei te mihi au ki a koutou mō tēnā. Hāngai ngā kōrero, kia mārama ai mātou o te Taraipiunara he aha te pūtake o tērā kaupapa, nō reira, tēnā koutou mō tērā. Engari, Watson, he pātai tino hōhonu tōku ki a koe, he whanaunga koe ki a Ringo? **Greetings. I have no questions, but it's not as if I don't believe in what you have said. But how clear your kōrero was as you laid out the grievances on behalf of your school and those who are managing your kura, so I want to thank you for that. What you said was directly relevant so that we would clearly understand as to what is the basis of your kaupapa, you matter, so I want to thank you for that. However, Watson, I have a complex question for you. Are you a relative to Ringo?**

A. [Watson Ohia] Ko Ringo te tuakana o tōku pāpā, ko tōku pāpā ko Monty, ā, ko Ringo tōna tuakana. **Ringo is the older brother of my father, my father was Monty, and Ringo was his older brother.**

Q. I haere tahi māua ki Te Whare Wānanga o Tāmaki i te wā e tamariki ana māua. **We went to Auckland University when we were young.**

A. Ka aroha. **I feel sorry for you.**

Q. Nō reira, kia ora tātou. **So, thank you.**

A. Tēnā koe. **Thank you.**

(10:06) DR PAUL HAMER TO WATSON OHIA, HEYWOOD KUKA AND SOPHIE TUKUKINO:

Q. Tēnā koutou katoa. Ehara tēnei i te tangata matatau ki te reo Māori, nō reira, ka pātai au kei roto i te reo Pākehā pea. **Greetings all. I am not**

fluent in Māori language, so I will ask in English. I don't know if we have a copy of Te Kawa Whakapūmau, we do? Ka pai, I was going to ask for a copy if we didn't. I wanted to ask how, ngā kura ā iwi are particularly effected by the removal of section 127(1)(d). I think, in John Heremia's evidence, he said that, I think, at paragraph 55, I know he's not here so maybe you can answer on his behalf.

WITNESS REFERRED TO BRIEF OF EVIDENCE #A028, PARA 55

He refers to kura ā iwi being the community most effected by the obligation to give effect to the treaty being discontinued. I wanted you to explain to me why it is that kura ā iwi are the most effected?

A. [Watson Ohia] So, he mentions kura kaupapa Māori and kura ā iwi, and when I think of why tuakana has put down here, is that these kura firmly believe in the power and magic of mātauranga Māori. The heart, the head, and the spirit of our language and culture, which is different to our general stream, mainstream schools. So, with the decisions of the government, of the Crown, recently, for us, it's the dilution of those things that we hold to our hearts, the magic of our kaupapa.

You also see in Rangiteremauri John Bhana Heremia, known by most as Bhana Heremia's evidence that the worry is that we are going back to how it was when he was at school, that we are going backwards. That assimilationist view in regards to education, driven by western ideologies. The dilution and like we mention in the evidence, that we become a decoration rather than the cloth for what is woven.

Q. So, in other words, the risk of the current trajectory is greatest for ngā kura ā iwi because they have the most to lose from because the kaupapa is so based upon the Treaty, et cetera.

A. Yes, definitely.

Q. Okay.

A. Yes.

Q. Also, sorry to ask again, about something Mr Heremia said, but he said paragraph 62 that kura kaupapa Māori depend on that legislative protection in section 127(1)(d). I don't have his brief in front of me, I wrote down kura kaupapa Māori –

A. Yes, he mentions that too, he mentions kura kaupapa Māori in there.

Q. But kura kaupapa Māori and kura ā iwi existed before this section 127(1)(d) was introduced in 2020. So, what was the difference that the enactment there made, because they hadn't depended on it for their existence before that, so I'm just trying to work out why it was such an important thing when it was introduced.

A. So, I think, the 2020, and you see a lot of progress happened from 2020, the funding, for example, increased and that's – time, 2020, 2021, 22, 23. So, from our perspective, there was major advancement for a number of reasons, but this is one of those reasons that the boards were empowered more to challenge government agencies, ERO, the ministry. But also, we think that the agencies also, their hearts are more open.

Q. Okay, kia ora. Kua mutu ōku pātai.

(10:11) JUDGE MULLINS TO WATSON OHIA, HEYWOOD KUKA AND SOPHIE TUKUKINO:

Q. Tēnā koutou. **Greetings to you all.** You have said in your evidence, Mr Ohia, that because, especially in your wharekura, the NZC is used quite a lot and that you weren't involved in the more recent refresh of that. Have you been actively involved in refresh of Te Marautanga?

A. [Sophie Tukukino] To a certain extent, to a certain extent. So, a lot of what I'm going to share is actually, I'm still under the NDA of working with the ministry in regard to the work that we are doing with Te Marautanga o Aotearoa –

Q. Okay, so, I don't want to put you in a difficult position. We have heard a little bit about NDAs over the past day or so, so I don't want to put you in a difficult position. But I guess, the short answer is, you are at the table in that?

A. Yes.

Q. Okay.

A. Yes.

[Watson Ohia] I can add something.

Q. You are not under an NDA, so you can add more?

A. Yes, I can speak free. So, I am just going to – so, the consultation in regard to Te Marautanga o Aotearoa hasn't been very good. Some of the

examples in regard to – so, a genuine consultation, we don't want to go to a hui where – you want to go to a hui where your view is heard, one, has some impact, two. You don't want to go to a hui where it's a briefing. So, to be honest, our people have felt, they have gone to those hui and it's been more of a briefing.

Now, I'm not targeting any individual people in MOE, but as a general culture evolving, and general behaviours that are happening and know that you have heard those kinds of things through yesterday and today. So, you know, and we do have some issues, late receipt of material, repeated changes for meeting dates, limited opportunities to influence. Those are major things to us, and they are also major indicators to us, of the effort to ensure that the most is gained from the opportunities to meet and to a degree, the respect.

Q. Ka pai. We have heard a lot yesterday and obviously, Mr Ohia, you will recall our kura kaupapa inquiry, which we heard about the Tomorrow Schools review and a refresh of the curriculums at that point. It was from out of that set of work, as I understand it, Dr Ngata's Te Mātaiaho, sort of came into being. By all accounts, the evidence that we heard yesterday was, there was a significant amount of consultation around the Te Mātaiaho and Ngā Marautanga at that time. Is it your evidence that it's a very different process that's happening now in terms of your involvement and the engagement that's happening?

A. So, in regards to the New Zealand curriculum reset, Te Mātaiaho, we haven't been involved in any consultation. We have been excluded from consultation. I think that's largely because –

Q. Was that the case back when Te Mātaiaho was developed and Dr Ngata gave that ingoa to that back in, I think it was –

A. In the early 2020s?

Q. Yes.

A. Twenty one, 22 – we were involved at that time.

Q. At that point.

A. But if we think about current drivers that are driving the reform and –

Q. So, i ēnei rā, he rerekē te huarahi? **Now, there is a different pathway?**

A. Rerekē rawa atu, rerekē rawa atu, **very different, extremely different**, and you know, they are still – so the Crown, the mistake that they think that we don't do NZC and as I mentioned, we do, and so, we do need to be involved in the consultation but haven't.

Q. You are probably the best witnesses to ask about this. He aha te hononga e Te Mātaiaho me Te Marautanga o Aotearoa? **What is the connection between Te Mātaiaho and Te Marautanga o Aotearoa?** The picture that I'm developing in my head is that they can't really stand alone, there is certainly a hononga **connection** between them. That's not to say that Te Marautanga should be a direct translation of NZC, but certainly, there is a relationship in the connect. Can we deal with one without the other?

A. [Sophie Tukukino] Our fear is that it is and that, actually one is taking precedence over the other. For example, with what's happening at the moment, I understand that the drivers of NZC will become the drivers of Te Marautanga o Aotearoa. So, the basis with Te Marautanga o Aotearoa will be changing. Now, I can't say more than that, but I do think that that's a real fear for us, and non-engagement with what's happening in NZC, and you know, disempowers us, absolutely disempowers us.

Q. Ka pai, and you just reminded me then, back in the early 2020s, when you were going through that process, were you required to sign NDAs at that point?

A. [Sophie Tukukino] Kāo.

Q. If I can just take you to Te Kawa Whakapūmau. I see it sets out the guiding principles for that relationship between the kura ā iwi and the Crown. What an effective partnership could look like, as well as some of the foundational things for becoming a kura ā iwi and the cultural and intellectual property of the iwi. Just wondering, in relation to the issues around section 127(1)(d) and the curriculum matters, have you sought to speak to the Crown kei raro i te mana o tēnei Kawa Whakapūmau? Like, have you sort to have a hohou i te rongo, or anything under the mana of the Kawa Whakapūmau?

A. [Watson Ohia] Aroha mai, I just want to make sure I'm accurate in my response.

Q. Waiho mā te wahine e whakautu. **Leave it for the woman to reply.**

A. Tika koe. **Right**. So, we have sent our urupare ki te kāwanatanga, e whakahē ana i tēnei. Kua tuku pānui, we have sent our pānui to all of our kura and then we committed to this kaupapa. That's been our main response.

Q. In terms of the Kawa Whakapūmau, has there been cause or time since its signing for there to be hui under its mana? Has there been any raru that needed to be dealt with between ngā kura – prior to this. Between ngā kura ā iwi and Te Tāhuhu o te Mātauranga, which caused for you to call for hui under this, ki te hohou i te rongo. Has it been operationalised previously? Or pai te hononga?

A. I think, you know, we go into these agreements with a cup half full mentality. We try to do our best. We are dealing with the ministry, and I'd say, the vast majority of them come with that same attitude. But there are moments where we disagree and then we are going to have to agree to disagree. But most of the time we can find a way through. In regard to what we have talked about this morning though, there is a different attitude and it's not coming – my perspective, the officials in there are finding the instructions of their bosses. And so, we have come to this kind of place for this kaupapa, and you know, I just reiterate, we have had our disagreements, but this is major for us.

Q. Ka pai, kia ora. Kua mutu aku pātai i te ata nei, nō reira, e ngā kaitohu i te ara ki ngā wai nui o te reo, o te mātauranga, e mihi ana, e mihi ana ki a koutou. Tēnā koutou. **Thank you. Those are my questions this morning, and so, to those upholding the language and the Māori knowledge, I want to thank you.**

WAIATA TAUTOKO

HOUSEKEEPING – TIMING (10:25:09)

HEARING ADJOURNS: 10.27 AM

HEARING RESUMES: 10.53 AM

JUDGE MULLINS:

Tēnā anō tātou. Ko te manako kua caffeinated koutou. Āe, nō reira kei a koe te wā, Tauranga Moana. **Welcome back. Hopefully you are well caffeinated. And so, I pass it over to you Tauranga Moana.**

(10:53) MR HARRY CLATWORTHY: (INTRODUCTION)

Tēnā koe e te Kaiwhakawā, tēnā tātou. Tuatahi, ahakoa kare rātou kei te whare i tēnei wā, tēnei te mihi ki ngā rangatira o Ngā Kura a Iwi kua kōrero i tēnei ata. Te whanaunga nō Pirirakau, tēnā koe te rangatira. **Thank you your Honour, greetings. Firstly, even though they are not in the room at this time, I want to acknowledge the leaders of Ngā Kura a Iwi who have evidence this morning. To my relative of Pirirakau, greetings to you.**

Te Kaiwhakawā, it's my honour to introduce our second and final witness for Wai 3504, Whaea Jane Jarman nō Ngāti Wales ia. Ko #A007 the nama o tana tuhinga. Kua taea ia mai Kerikeri, kia ora. **She's from Wales. #A007 is the appellation number for her brief. She's come from Kerikeri.**

(10:54) JANE JARMAN: (#A027)

Kia ora e te whānau. Ko Alan tōku awa, ko Moel Famau tōku maunga, ko **(inaudible 10:54:23)** ahau. Ko Clem tōku pāpā, ko Maggie tōku māmā, ko Gaz tōku tāne, ko Lauren me Freddie aku tamariki. Ko tāngata Tiriti ahau. Ko Jane Jarman tōku ingoa. Tēnā koutou, tēnā koutou, tēnā koutou katoa. **Greetings whānau. Alan is my river, (inaudible 10:54:22) is my mountain, I'm (inaudible 10:54:25). Clem is my father, Maggie is my mother and Gaz is my husband. Lauren and Freddie are my children, and I am a tangata Tiriti. My name is Jane Jarman. Greetings, greetings, greetings all.**

Mōrena e te whānau **Good morning whānau**. My name is Jane Jarman, and I am a passionate educator of rangatahi Māori me rangatahi Pākehā and I have taught history for 25 years, 20 of them in an Aotearoa, New Zealand context. I teach at Kerikeri High School in the Bay of Islands which is a co-educational

state school serving a diverse demographic with a percentage of 32.5 per cent Māori as of this morning.

I hold a First Class Honours degree in History from Lancaster University in the UK, and I am currently awaiting the result of my History Masters which centres of New Zealand History, specially Auckland. My History programme at Kerikeri High School – I've been the Head of History at Kerikeri High School for 11-12 years and it runs as an option course in years 9 and 10 which means that students can choose options because we are a year 7 to 13 school. So I have been constructing programmes for junior students in year 9 and 10 which incorporate our nation's histories along side global history in meaningful ways, I hope, for two decades and long before the introduction of the Aotearoa, New Zealand Histories curriculum was created.

I was appointed as Heads of Social Studies at Kerikeri High School due to my knowledge of the Aotearoa, New Zealand Histories curriculum. I've created successful programmes for students in years 7 to 10 incorporating mātauranga Māori which were constructed in partnership with hapū and I run profession development on curriculum for the whole staff of my school and the for the two largest primary schools in our rohe. My students both Māori and Pākehā achieve extensive success both in internal and external assessment and my students have a strong track record of success in the history scholarship exam.

I mentor teachers. I've been mentoring teachers for over 10 years, both working towards full registration and those needing additional support. In addition to that, I've worked with a Waitangi educational trust on a Ministry of Education contract in 2021 and '22 creating resourced inquiry units for the Aotearoa, New Zealand Histories Curriculum in its first iteration and second draft. I was also the 2022 recipient of the National Education in Teaching NEiTA Award for secondary education and I've been a judge for NEiTA since 2023 in the primary, secondary, and tumuaki categories.

History education comes with a particular burden especially in a context where the effects of colonialism are still being felt. And so, I've been fortunate enough

to work alongside our local hapū Ngāti Rēhia for the past three years producing teacher guidance, units of work, professional development centred around mātauranga ki Ngāti Rēhia. Matua Kipa Munro and I presented our work as keynote speakers at NZHTA conference in Heretaunga, Hastings and this has given me a greater understanding of pūrākau and mātauranga as taonga tuku iho and how to work in partnership with hapū in a way that honours Te Tiriti o Waitangi.

I have been the NZHTA representative for the Te Tai Tokerau, Northland since 2022 and I represent NZHTA today. NZHTA, the New Zealand History Teachers Association is a national association and one of the largest subject associations in Aotearoa, New Zealand. Our remit is to support history teachers in a secondary setting throughout the motu. We develop resources to support kaiako and it has expanded significantly since receiving networks of expertise funding or NEX funding in 2021. This required the executive, our Kaiārahi and NZHTA contractors to work in a space where they collaborate with mana whenua and the Ministry of Education on the development of resource and professional learning to support the NCEA change package on the one hand, but also the Aotearoa, New Zealand Histories Curriculum. Despite the focus of NZHTA being more commonly associated with secondary education, we do also work with the primary sector.

NZHTA has made a commitment to continually evaluate our practice to ensure that we honour Te Tiriti o Waitangi in our work. This is particularly important because it's impossible to consider the history of our nation without grappling with the ongoing impacts of colonisation. Our executive consists of highly skilled, experienced professionals, many who have masters in Educational History or PhDs in Education and we work – and we're actually part of the original subject expert group in the drafting of the Aotearoa, New Zealand Histories Curriculum.

However despite the extensive credentials in our rōpū and the fact that four names were put forward to review the draft proposed curriculum, the original request from the ministry was for three of us to be on that panel, only one person

was chosen. Our tohunga experts were available, but their expertise was largely overlooked.

Furthermore, as stated in my evidence, the first time that NZHTA as an association saw the proposed Social Sciences Curriculum was upon its release at the end of 2025 and we believe that the Social Sciences Curriculum represents a real, immediate education prejudice. As stated in my evidence, this is because Māori histories are minimised or distorted, echoing the kupu of my esteemed colleague earlier, 97 per cent of our rangatahi Māori are within a state school setting. Māori epistemologies are structurally excluded, and western epistemologies are framed as superior. For example, in my evidence I note that the draft curriculum states that history focuses on interpreting the past through significant events, cultures, and changes over time and teaches students to use evidence, narratives and chronological tools, all hallmarks of European historiography.

This clearly breaches a Crown obligation for partnership and active protection under Te Tiriti o Waitangi. No equivalent Māori interpreted concepts are present, including whakapapa based sequencing, relational knowledge, maramataka, hapū and iwi tikanga evaluating evidence. This means that students who have extensive prior knowledge, for example, through understanding history through the mōteatea of their hapū and iwi, tauparapara, waiata et cetera, et cetera will have their knowledge systems devalued and disregarded as these are specifically referenced in the curriculum, the curriculum which is so heavily packed with its knowledge rich content, it is hard to imagine that teachers will have the time to venture outside of what has been prescribed.

Furthermore, if this curriculum is allowed to stand, Māori studies who study at state schools will receive a Euro-centric education that invalidates their lived histories, including their status as mana whenua. You know, this is echoed in the opening line of the curriculum of year 1 and I quote where it tells us in what I can only describe as a highly politically charged statement: “New Zealand has

not had always had people living here, everyone's ancestors came from somewhere."

Māori knowledge appears in the curriculum superficially rather than being a west, an integral west of foundational aspect of the tapestry of the curriculum. It was established as foundational knowledge in the Aotearoa, New Zealand histories, here it does not appear as such. This includes a lack of meaningful engagement with mātauranga Māori concepts and the need to engage with Māori primary sources as well as any acknowledgement of Māori ways of understanding time and place. History is both constructed and contested as a discipline. This curriculum is one of omission and obfuscation and I think it's just timely for me to remind everybody, ki a tātou, that the impetus for this curriculum came from two students from Otorohanga College, who in 2015 went on a hikoi to the Waikato Battle Fields, Leah Bell and Waimarama Anderson. They gathered 13,000 signatories in a petition due to the shock and dismay that the events of the War for the Waikato had not been covered in their school curriculum. This is not the curriculum that they asked for, it is not politically neutral, it is not balanced, and it certainly not world leading.

In Aotearoa, curriculum cannot be separated from Te Tiriti o Waitangi. Education, under the kawanatanga sphere, carries the obligation to actively protect te reo Māori me mātauranga Māori to ensure equitable outcomes, ōritetanga for all. Māori also have to be an active partner in decision-making. I do not believe that Māori were involved in any meaningful way, in the writing of such a poorly written and inaccurate curriculum. Ngā mihi ki a tātou.

JUDGE MULLINS:

Tēnā koe Ms Jarman. Kei a koe. **Thank you Ms Jarman. Over to you.**

(11:05) MR WATSON TO JANE JARMAN:

Q. Thank you very much for your evidence, Ms Jarman. I just wanted to acknowledge you at the start, and I think you come here in your – I think it's the school holidays, isn't it – to take part **(inaudible 11:05:09)**

A. Āe.

Q. And perhaps your son's done the same. I thought that we might have had quite a few topics to talk about but I tried to narrow it a bit so it will be quite brief.

A. Okay.

Q. That's with various reasons, it's no disrespect to the wide variety of content that you have presented. First thing I would like to discuss. You mentioned the New Zealand History Teachers Association and I just wanted to know how many teachers affiliate to that? How many, roughly? Have you have that to hand?

A. How many teachers are represented by the –

Q. Yes, yes.

A. I wish I had that information for you, I apologise, but I'm our membership runs from Southland through to Northland and there are hundreds of members. We're one of the biggest so I would say we're five to 600 members. Our conference was just a small of our membership last week and they were 150 schools at that conference alone. It was at Heretaunga, so it was a little bit expensive to get there. Typical at conference – our last one in Whanganui-a-Tara, we had 400 people at that conference. So, we do represent and wide and diverse membership.

Q. Thank you, that's a very full answer for not having facts to hand, that's very helpful. You mentioned the – a statement of position, I think around paragraph 6, around Te Tiriti. I think you set out the key aspects of that statement. Just give you the chance –

A. Yes.

Q. I don't have any detailed questions on it. That – the NZHTA and its members discontinues to be their position statement.

A. Yes, so we've actually just drafted rewritten constitution has been presented to membership. Our members will – they voted on the position statement, so the conference in 2024 in Whanganui-a-Tara, our membership unequivocally endorsed and as I said, there was about 400 people at that conference, the position statement which then gave us the mandate as an executive to rewrite our constitution to ensure, particularly because when we're writing resource often we're dealing with mamae that doesn't belong to us. We are hearing stories, pūrākau that are

taonga tuku iho and we have to make sure that we honour the mana motuhake of hapū in the writing of resource and to make sure that we go forward in partnership, a meaningful partnership with hapū when we develop resource. It's just a way of ensuring cultural safety and ensuring that we promote culturally sustaining pedagogies as a way of delivering history throughout the motu.

Q. I think you are saying this is still your position.

A. Absolutely. Sorry, I didn't mean to shout.

Q. I just wanted to make sure.

A. Yes, 100 per cent our position.

Q. And this will continue to guide the approach of the members of the NZHTA –

A. That's correct.

Q. – to their teaching and practice. Is that fair?

A. Yes. Yes, which is why when the ministry offered the renewal of the – and I think this is important to note in case it hasn't been mentioned, but the network of expertise funding, when that was presented to us by the Ministry of Education, we were asked, we were told that we could only receive the money if we agreed to support the intent of the curriculum. Now, there is a wider union now of subject associations, He Rau Aroha, and we collectively, we spoke to our membership and there was widespread shock and dismay amongst kaiako throughout the motu. We rejected that offer unless that clause was removed because we felt that that was a particularly poignant and political statement to have included within a guarantee of funding if we supported the intent. Hearing what I have heard about, you know, the way the ministry has operated, it seems to be fair to say that in terms of NDAs and all these other things that have been put on us, that we are expected to sign up to say that we would toe the party line, whether or not we agreed with the intent of the curriculum.

Q. Based on what you've heard?

A. And based on that particular document which included the clause about intent. I mean, we've been receiving NEXT funding for years, for six to eight years and that has never been included before. The ministry

subsequently removed that clause because, largely, Subjects Associations refused to sign if it was included.

Q. Tere question, final topic as well about your paragraph 14. This is – your evidence is that the new draft curriculum does not explain the Māori signed Te Tiriti o Waitangi document, Te Reo Māori and not the English version, the Treaty of Waitangi –

A. Yes.

Q. – That's your evidence.

A. It is.

Q. And I just had one question, and I am not trying to trick you or contradict you, just to understanding your perspective.

A. Yes.

Q. So, I think you've got in front of you – just because I think it's the easiest way to do it – a document Wai 3553, #A044(a) –

A. Yes.

Q. – which is an appendix to Ms Cleaver's evidence, which sets out certain content from the draft Social Sciences curriculum in the right hand column and in the left column it has the Aotearoa History curriculum content.

JUDGE MULLINS:

Taihoa for a second while the members get their copy.

MR WATSON:

I don't want to – I am going to read out one particular bit, so I don't want to – if that's –

JUDGE MULLINS:

I like to scribble on this Mr Watson.

MR WATSON:

Just while – will wait till her Honour is with us.

JUDGE MULLINS:

Yes, it does take some time. So, what was the reference number and the page number again?

JUDGE MULLINS:

Okay, well, they are going to do one better, we're going to bring it up on the screen. The page number Mr Watson.

MR WATSON:

So, I want to go to page 20 of that document and the numbering is in the top right hand corner.

MR WATSON TO JANE JARMAN: (CONTINUES)

Q. It's quite small. The particular paragraph I was going to read out but now we might all be able to see, if we go down a bit towards the bottom of the page, the last sort of full bolded bullet point.

A. Yes. I'm there with you.

Q. We will just wait. I am not sure if – there's various magnifying and et cetera going on behind us. So, this is content from the Year 10 Social Sciences curriculum, and it says – and it's covering – describing what will be within a learning area. It says: "Te Tiriti o Waitangi/Te Treaty of Waitangi and constitutional significance (as part of Civics and Society strand). There are three key articles (In English and the separate te reo Māori texts)…" it goes on. " …… "Differences between texts have led to ongoing contentious debate over interpretation;…" and it goes on. So, I guess my question to you is – as I read this, the draft curriculum does recognise that there are two text. That's fair isn't?

A. It does, although it doesn't actually explicitly make that clear. It talks about two documents. There's no distinction made in the entire document that Te Tiriti was read and signed and debated by the rangatira in te reo Māori which, as I stated in my evidence, is a crucial distinction. Indeed, year 7 history, it is referred to as – now, I am not just looking at year 10, I am looking at the mentions of Te Tiriti o Waitangi in year 4 and year 7. So, if I can refer – I can't actually because I've got the actual curriculum

here. The other point I wanted to make, apart from it being in year 4 and year 7, where it is referred to merely as a separate Māori translation, which is problematic in itself, that this section that you've read is actually in year 10 Civics, it's not in History. It is referred to as separate as te reo Māori text but with no elaboration and practice notes pertaining to the significance of that. Whereas, everywhere else in the document there are practices and during year 10 students will do, that's missing. No mention of the rangatira being signatories to Te Tiriti o Waitangi in te reo Māori, as I said, is included. The other problematic part that you have just read out, as it says, "Differences between texts have led to ongoing contentious debate over interpretation." Now that is completely historically inaccurate. The vital fact that the Te Paparahi o Te Raki Stage 1 Inquiry has established, I quote the Tribunal: "Inescapable, the fact that Māori rangatira never ceded sovereignty in 1840." Now, I may be labouring this point, and you may think that it is an academic distinction in my evidence, it isn't. It is a historical fact that these two text are vitally different and they haven't been treated – for most of the part in this curriculum they are lumped together, the Treaty of Waitangi/Te Tiriti o Waitangi and the only – it's obfuscation and omission to lump them together and refer to them as two documents without saying a separate text was debated, signed, negotiated – also, the other thing is, you did mention that Article 1, 2 and 3 are in there, what about the preamble? You know, the preamble is vital to understanding Te Tiriti o Waitangi, but before I even start about Hobson's all guarantee to the rangatira, to protect wairuatanga, that isn't there either, so sorry, I am annoyed. Framing these differences as part of and I quote: "Ongoing contentious debate over interpretation risks significant harm", particularly because at year 10, just as in year 4 and 7, this content will not be taught by history teachers, historians like myself, it will be in the hands of unskilled, you know – lots of people teaching social studies – as I said in my evidence originally, the pick up a line of social studies, they are not historians, they are not – lots of them are, I don't mean to – it's not any disrespect to social studies teachers, there's some awesome teachers out there, but they haven't also got the time to be up with the latest

discourse around how to handle Te Tiriti o Waitangi in a tika way. Look, I am still on this path – I am conscious of the fact that I am Welsh sitting here, by the way, you know, however it's also suggests by that phrase that there is ongoing contentious debate which suggests that there is contention where the Tribunal has clearly shown there is none. Curriculum statements such as these are not politically neutral, they distort historical truth, they may be inconvenient and uncomfortable, but they are absolutely inescapable in the words of the Tribunal. They dimmish important Tribunal findings. As I said, the preamble is missing, the year 4 to 7 content, our primary colleagues are already overwhelmed due to the scope and the size of the knowledge rich curriculum. This content will be unwieldy, unfamiliar, such as the French Revolution and the Enlightenment. I mean, when have we ever studied that. We're asking teachers to go back and learn that and then teach Te Tiriti o Waitangi in a way that is tika. This is – I am not sure if anyone who wrote this curriculum has been in a classroom in 2026, but this does not reflect the reality that teachers are under. There is no time to upskill, no time to engage with professional development to ensure that discussions with Te Tiriti o Waitangi do not reinforce the eminent Moana Jackson called, Colonial mythtakes, and they are woven throughout this whole document. There is massive potential for harm, rangatahi face being confronted with inaccurate sanitised euro-centric depictions of their history and that's because, as I stand by my evidence, it does not make it sufficiently clear in this document that there are two separate texts. Furthermore, there are many whānau, and I mean, you know – like, I've taught it at Kerikeri High School 20 years, I'm a part of that community, I know how whānau feel when Hītori Māori is misrepresented in the classroom. We not only risk intergenerational harm for rangatahi Māori through this curriculum but we also put kaiako in a very, very difficult and contentious position in having to deliver narratives that are made sufficiently clear, where they are teaching narratives which are essentially racist, and I do not think reflect the Tribunal's historic findings or historical truth. Ngā mihi ki a tātou.

Q. Thank you, I was just going to say you made yourself very clear and that's been a helpful but very brief kōrero so I will stop there and hand over to the panel.

A. Thank you.

JUDGE MULLINS:

Tēnā koe. **Thank you.**

(11:21) KEVIN PRIME TO JANE JARMAN:

Q. Tēnā koe.

A. Kia ora.

Q. I just have one question. Given your evidence, I assume that your board would be one that – one of the boards that have left Te Tiriti in their constitutions.

A. Of my kura, e matua? Yes, we've committed to Te Tiriti o Waitangi as a board.

Q. Kia ora. Koirā noa iho.

(11:21) GERRARD ALBERT TO JANE JARMAN:

Q. Kia ora Jane.

A. Kia ora.

Q. Thank you for your – giving us your views. The New Zealand History Teacher's Association is it typically involved in – historically been asked to provide input into curriculum development and construction.

A. Well, we're usually consulted on how to, you know, like – to look at things, the ministry contacted us to ask us whether we would review the draft curriculum, as I said, and they asked for three people to be apart of that review team and as I also stated in my evidence, only one person was selected. I was one of those people that was put forward, it wasn't me that was selected. However, historically there are several members of our group who are on the SEG, which is the Subject Expert Group, that rewrote Level 1 Standards back – earlier, five to 10 years ago as part of the big NCEA refresh. There were several of us who were part of the writing of the Aotearoa, New Zealand Histories curriculum. We are

generally viewed as a safe pair of hands because of the extensive expertise, the knowledge within our rōpū and our membership changes, you know, different people get elected to represented regions at different times but there is a fairly consistent high level of skill and expertise that is represented by our rōpū.

Q. Thank you. That's very useful. Because as a discipline, I suppose History is – it requires a certain amount of analysis and interpretation.

A. It does.

Q. Yes, so it needs to be presented, I suppose, the difference between a school level history curriculum and university which is a little bit more researched based, you are trying to present a balance analysis narrative that covers all of the basis and it's obviously your feeling that the current curriculum doesn't provide for that, it provides a very narrowed view that comes from one part of, I suppose, the argument around where Te Tiriti sits and where the local history and New Zealand history is valued as part of a New Zealand curriculum base.

A. Yes, although there is a continuity in skill and in the original Aotearoa, New Zealand History curriculum skills, including source analysis perspectives, were present right from Year 1, obviously at low levels, you know, for the commensurate with the curriculum that was being delivered, those would increase, that complexity of understanding and analysis increases over time and the skills are the same. I mean, like I said, I've just finished my masters, I'm still looking broadly at perspectives. Those things are missing, you know, there's a lack of – I mean there's some stuff in there I noted about interpretation of historical views but none of that is actually laid out. Yes.

Q. And so, if the curriculum is changed and the point your making is that there needs to be requisite training, so that those delivering the curriculum –

A. One hundred percent.

Q. – have the ability to actually provide a balanced, 360 degree view of what they are being asked to teach to children in our kura.

A. Yes.

Q. Thank you.

A. Ngā mihi.

(11:25) DR PAUL HAMER TO JANE JARMAN:

Q. Tēnā koe.

A. Kia ora.

Q. Before I start, I thought I should quickly just indulge in a little bit of whakawhanaungatanga because I was born in Lancaster where my father was teaching History at the university there before we returned to New Zealand. So, ngā mihi ki a koe.

A. Kia ora. Who was your dad?

Q. He was David Hammer.

A. Okay.

Q. Anyway, but he would have been just a memory by the time you studied there. Your evidence promoted me to go and have a look at the draft Social Sciences curriculum online and I was quite interested in what it actually said about Te Tiriti. And I see that at year 4 there is a reference to two document.

A. Mhm.

Q. The Treaty of Waitangi and Te Tiriti o Waitangi, but then it says that Hone Heke signed the Treaty of Waitangi.

A. Mhm.

Q. Is that sloppiness or is it deliberate?

A. I feel that is deliberate and the other thing I noted the last night when I was up in the middle of the night, 1.30, reading the curriculum, preparing for today, was that they managed to mention Hone Heke in that section without mentioning Mana, which as we know would have been central to everything that – you know, the way that the chiefs operated, so no, I don't think that – and thank you for noticing that because I missed it. But that, I feel like so much that has been constructed in this curriculum is deliberate I'm afraid.

Q. And there's more nuance and detail at year 7 but I see, for example, that a post-musket war and stability in the Māori quest for peace is cited as a reason for the Treaty and this notion that Māori willing accepted British

Sovereignty as a way out of their years of musket conflict, it's a favourite amongst Treaty contrarians, isn't it?

A. Āe, yes.

Q. So, what did the Aotearoa – did the Aotearoa, New Zealand Histories curriculum say anything similar about musket warfare.

A. The musket wars are included. We're not trying to pretend that these incidents in our history didn't happen.

Q. But as a prompt for the Treaty?

A. Not – certainly not as a prompt for the Treaty. I mean the other thing that I noticed, not just in that part, but in the section about imperial expansion generally, is that missionary activity which is positioned as philanthropic and beneficial to indigenous societies is also used as a prompt. If you go through this curriculum you will see that there is a continuous alignment between the notion of progressivism, enlightenment, euro-centrism, benevolence as beneficial, for example, Wakefield and Vogel are positioned uncritically, Governor Grey, I mean, as Michael Belgrave said at the NZHTA conference last week, you would think that Governor Grey's activity in New Zealand ended in 1846, if you read this curriculum. He, James Balloch, Vincent O'Malley, Claudia Orangewood all agree that Governor George Grey is the most influential Pākehā to live in New Zealand in the 19th Century and yet his involvement finishes at 1846. So, when I said it's full of distortion, obfuscation, omission, you know, those are the kinds of examples that I mean. You know, there's no mention of the New Zealand Settlement's Act. There's no mention of raupatu in this curriculum, there's no mention of the Māori Prison's Act which was used the imprison Tohukakahi, Te Whiti o Rongomai without trial and, you know, subsequent legislation, Māori Prisoners and Settlement Act used to extend those terms. No mention of raupatu, one and a half million acres confiscated in the Waikato – like, nobody is trying to make anybody feel bad about what happened in the past, but we can't pretend that these things, you know, aren't the historical reality. The way that the New Zealand wars are framed, I mean, Tītokowaru is missing, Rua Kēnana is missing, and you know, I could carry on with my listings of all the things that are strategically missing.

Q. Parihaka?

A. Parihaka is completely missing from the curriculum.

Q. So, Parihaka was obviously in the Aotearoa New Zealand Histories curriculum.

A. Yes.

Q. With an emphasis on the passivism of Te Whiti and Tohu at Parihaka.

A. Āe.

Q. And now the example of passivism is Te Iwi Moriori.

A. Āe.

Q. And the face of invasion by Māori.

A. By Māori. Yes. And –

Q. So, is that a restoration of balance?

A. It absolutely does not constitution a restoration of balance. I just wanted to say something, if that's all right, about the inclusion of Moriori.

Q. Yes, please.

A. I think it's really important to note, because I was kind of anticipating that the Crown might pull me up on, you know, the fact that I mentioned the Moriori story. It's not inaccurate what has been written about Moriori, but the important thing to note is that a recent survey revealed that 30 per cent of New Zealand still believe the Moriori myth, that Moriori were present in New Zealand before Māori and Māori wiped them out which, as we know, is a sustained racist narrative which has been used to justify marginalisation and colonisation throughout this motu. And so, including Moriori when – so, if we take 30 per cent of New Zealanders believe, does that mean that there are 30 per cent – amongst that 30 per cent some of them are teachers. And so, there might be some inadvertent or deliberate transmission of this kōrero, and you are right to say that because I totally tautoko that. It comes from that Māori are colonisers in opposition to Moriori who are non-violent, without mentioning King Tāwhiao and his long standing commitment to peace, Te Puea, you know, who was a champion – she's not even mentioned in this curriculum, one of the most significant wāhine toa in New Zealand History and no mention of Parihaka which is a beautiful example of pan tribalism and, you know, that's before I even say that John Bryce is not mentioned in this curriculum. I mean…

Q. There was one other, I mean there are lots of things to touch on, I don't want to trigger you by going –

A. Please trigger away.

Q. I mean it's hard not to mention the reverence to the stone age, as a time before people could write down stories and facts. And again, I mean my question to you was going to be was this carelessness in the writing of this draft curriculum or is this something more deliberate and I think you are going to tell me it is more deliberate.

A. I believe it's deliberate. I know, I'm predictable, I'm sorry. But yes, Harry and I have already talked about this, and we talked about the fact that, you know, that may well stand up as like an anthropological dictionary definition of what prehistoric means. But within the contexts of a curriculum which is already highly charged, contains significant omissions, it unequivocally equates indigenous societies with strong oral traditions as similar, comparable to stone age societies and that erases the sophisticated knowledge, transfer systems that existed in Māori's traditional society. I also think it carries like a risk of playground nastiness and then it might lead to a feeling of whakamā amongst – I am just thinking about our little tamariki across the road at the primary school, who are so proud of their tikanga Māori and their – and we are encouraging them to achieve success as Māori and then they are potentially facing in year 2, being told that societies without an oral language tradition are prehistoric they say. And again, you know like we were saying earlier, it's the question of nuance and training. So, in delicate hands, you know, in the right hands this may be transmitted to students in a way that minimises risks. But in the hands of less capable professionals or those without the proper knowledge and expertise, this could be extremely harmful. I feel like it's a pretty deliberate – a pretty deliberate statement, and again, just echoing my earlier sentiment about the fact that some of this curriculum content places teachers at risk. I think this is another one, I think this carries substantial risk. You know, if – you know, I can think of lots of my friends, if their kids came home and said, "Oh Mum, did you know that Māori were the same as stone age societies and we're actual prehistoric?" I mean, the shock and you know,

you're going to have hundreds of whānau at the door of school and not very happy. In the Te Taitokerau, I can speak for, many of our whānau are completely cognisant of historical injustice and Te Tiriti obligations and so, you know, if the ministry thinks that this is the best way to redress systemic Māori disadvantage, as I read in a colleagues evidence in Education, they obviously don't spend a lot of time with real students. By disparaging traditional Māori oral histories and the sophistication that existed in pre-European Māori society, I can tell you, with all my years of experience, that that logical is seriously flawed.

Q. Well, thank you very much for your evidence and I will leave it there.

A. Thank you.

Q. Thank you a lot.

A. Thank you.

JUDGE MULLINS:

Tēnā koe Ms Jarman. I just had a – I will hand it over to you Papa Derek because it's always a surprise.

(11:37) DEREK FOX TO JANE JARMAN:

Q. Kia ora, and thanks very much for your kōrero today. It was pretty forthright and that's a Ngāti Porou expression too, pretty forthright. But I wanted to prompt you on a couple of terms that have come up. One of them is – well, both of them you talked about, one was you raise your concern when you first looked at the opening. What was the term there? Again, Ngāti Porou, we didn't right it down, we just memorised it and then forgot it.

A. Do you mean the opening statement of the curriculum, 'New Zealand hasn't always had people living here and everyone's ancestors came from somewhere.'

Q. Yes. That comments like that and restoring the balance which has appeared in documents, what do you – I mean, for me I thought that's going to be, 'we're not going to have the worst prison statistics, we're not going to have the worse houses, we're not going to be the least benefit from school and all of that sort of stuff, but clearly it isn't, is it? What does

restoring the balance mean do you think and the other statement that you came up with, 'everybody's ancestors came from somewhere else.'

A. Yes. I mean, for me restoring the balance – I mean, there is some support other there, the global examples would be included in the curriculum, lots of history teachers don't see any particular issue with there being some global history included in the curriculum document as long as it's relatable and, you know, it kind of makes sense unlike these kind of best bits of the – I mean, I taught history in Britian 25 years ago and this could be the national curriculum from the UK that I thought as a trainee teacher 25 years ago, the international content. So, perhaps they felt that by including global history it meant balance, but what it has done is it has minimised the involvement of controversial Europeans because, obviously, maybe that cut a little bit to close to the bone, I don't know, but – and it has also minimised the involvement of really significant tupuna and restoring the balance means I think in the view of whoever created this curriculum, which I just don't understand who did it, but whoever created it, restoring the balance has meant sanitising our nation's history. I think, you know, perhaps restoring the balance could have meant reducing the content and like I said, including some further global examples. But what has actually happened here is this sanitisation and it's not – you know, it doesn't contain historicity, as we would say in History. You know, it's not historically accurate. Restoring the balance, I don't think meant telling lies. You know, one of the most significant ways that historical narrative can be constructed is as much by what you don't say as what you do include and for me, that's partly how the narrative is being constructed. I mean, there's a whole page of this curriculum, I'll tell you. This is another thing that had me up in the middle of the night. You've triggered me, sorry Matua. But there is a whole entire page of this curriculum, which is devoted to the liberal regime, the liberal government in New Zealand history and it's supposed to be taught at year 8. So, I am not sure if people have been in a year 8 classroom, but quote honestly, I just can't see that going down terribly well. But again, when we're storing balance, are we restoring balance by reassuring everybody that it is okay, Pākehā did lots of really good things and we're going to miss out lots of

the bad things that they did. Just to give you some context for that. The section on the New Zealand Wars is seven lines. The section on the Liberal era is a whole entire page. That's not balance, that's disproportionate.

Q. Well, it's also missing out things. If you say that John Bryce isn't included, I mean, Bryce was a murderer, murdered kids. Ran them down on horse back, cut them.

A. Yes.

Q. And you know, in terms of global stuff, when I was at school which was quite a long time ago, I was taught about some fella called Harold who was shot in the eye with an arrow at a place called Hastings and it kept me away from Hawke's Bay for years (inaudible 11:43:28). No, thank you very much for your comments.

A. Thank you.

(11:43) JUDGE MULLINS TO JANE JARMAN:

Q. Atu i tērā tirohanga Ngāti Porou **And from that Ngāti Porou perspective,** I've just got a couple of clarifying questions which I don't think will trigger you. I just want to understand again, what was the name of that funding that you –

A. The NEXT, the Network of Expertise Funding. I think that's been – yes, it's been out there about the conditions that were placed on – not just us, on Subjects Association more broadly.

Q. Right. And so, when there was a refusal and that refusal was across subjects to sign with that particular clause.

A. Yes, yes, as far as I am aware, yes, and it's He Rau Ringa is the sort of – I don't want to say it's a union because it's not, it's just a –

Q. An umbrella.

A. – it's an umbrella of Subject Associations working together which is unprecedented actually.

Q. Yes, and so when there was that refusal to have that clause in there, was the funding still forthcoming?

A. We – yes, we received the funding.

Q. Okay.

A. Once we refused the – one, we refused it which we felt was the *tika* thing to do. It would not have been pono to accept that funding with that clause. We were fully expecting not to receive the money and that was the decision that we made.

Q. Yes, okay. And I just want to change the topic slightly. You spoke about the relationship with Ngāti Rēhia –

A. Āe.

Q. – and your community and you recently presented with Papa Kēpa.

A. Āe.

Q. Can you tell us a little bit about that relationship and what it looks like on the ground?

A. So, Ngāti Rēhia and many of you will know my dear friend, Aunty Bloss, Puawaitanga Silich, and our previous tumuaki, Elizabeth **(inaudible 11:45:51)**, that relationship, that whanaungatanga was cultivated between our two kura for a really long time. And that relationship that exists – you know, we're just so privilege to have that relationship. Ngāti Rēhia have a position on every board of trustees in our Te Riu o Ngāti Rēhia which is, again, really amazing. When the Aotearoa New Zealand Histories Curriculum came out, Matua Kēpa, he was receiving lots of the quest and he decided to, you know, cease the initiative, if you like, and then we created a rōpū which today, and it's, you know, the programme that we have constructed is called Te Pū Herenga, which is Ngāti Rēhia working alongside all of the kura and Te Riu o Ngāti Rēhia. We are producing resources, units of work, biographies of all of the elements of the pepeha of Ngāti Rēhia alongside hapū in a way that has engaged with whānau about their self-determined desperations for their mokopuna and their tamariki and to make sure that what we are developing honours to Te Tiriti o Waitangi. That project has being going for three years but this year we're just about to launch, so Matua Kēpa and I, we shared our work and got lots of exciting resources to share but it is a way of working in a way that meaningfully integrates pūrākau, waiata, pepeha, without diminishing mana, you know, and creates it in a way that will be culturally sustaining for our tamariki.

Q. So, is that relationship, it sounds to me given the detail, it's multilayered, and that it is embedded through the teaching of the New Zealand Aotearoa's History curriculum, but it also seems as though it's with a board member on every kura board, that it also feeds in on that governance level.

A. Yes.

Q. Akene pea, koirā te hua o te section 127(d) pea. **Perhaps that is the benefit of section 127(d)**.

A. Yes.

Q. That that is what it could look like across the motu.

A. Āe, it's pretty powerful stuff.

Q. And that continues, assuming despite the amendments to section 127(d).

A. Yes, yes. And that relationship, those principals have been committed to that alongside Ngāti Rēhia for many years and it's that ground work that that collective has done, you know, it's for the kids at the end of the day, you know, it's for their kids, yes.

Q. Koirā aku pātai. Nō reira, tēnei au ka mihi ki a koe i tō whakaaro rangatira, i whakawhārikihia i mua i a mātou, nō reira e mihi ana. **Those are my questions. So, I want to thank you for noble thoughts that you laid out before us, thank you.**

MR CLATWORTHY:

Aroha mai, Ma'am, I understand we are slightly kei tōmuri i te hōtaka, but I do have one brief question of re-examination based on the question from my learned friends from the Crown for Whaea Jarman. Kei te pai tērā? **Is that okay?**

JUDGE MULLINS:

Kōtahi noa iho. **Just one.**

(11:49) MR CLATWORTHY TO JANE JARMAN: (RE-EXAMINATION)

Q. Whaea, so I noted in your brief, you noted at paragraph 15 that the Aotearoa New Zealand Histories curriculum in year 4 to 6 explained that two different versions of the Treaty were signed and the quote from my

learned friends from the Crown, from the draft Social Sciences curriculum, the explanation regarding there being two separate texts is not made until year 9 to 10 curriculum. Can you tell us more about your position regarding that?

A. Yes. In the old, original curriculum, that distinction was made really early and it was made consistently, that there were two separate documents. It does say versions, whereas here it only appears in year 9 and 10 for the first time, and as I said, you know, it frames it more as there are contentions over the differences and then it goes on to talk about particular kupu Māori that there are contentions about and that, as I said, is problematic because Te Paparahi o Te Raki Inquiry has already put those contentions to bed, if you like. But also I think, if you are not learning about it until year 9 and 10, you know, that's kind of a vital thing to understand earlier in the curriculum. Te Tiriti o Waitangi in the Aotearoa New Zealand Histories curriculum, it kind of keeps coming back to it. So, it starts in the beginning, I think in year 1 they learn that there were different people at the signings and then it builds on that knowledge gradually until by the time you get to year 7 and 8, when you, by the way, have spent some time learning about the significance of He Whakaputanga, which in itself is notably missing from this curriculum draft, which is an important declaration of indigenous sovereignty in New Zealand and it seems to be missing. You know, when you get to year 9 and 10 you suddenly find out that there's contention about the different findings, but it's almost like 'too little, too late', it needs to be done and made clear earlier on, I think. I hope that answers that.

Q. E mihi ana, Whaea. Aroha mai mō te trigger anō. **Thank you ma'am. Sorry for triggering you again.**

MR CLATWORTHY:

That' concludes, e te Kaiwhakawā, the evidence in chief for Wai 3504.

WAIATA TAUTOKO (EHARA I TE MEA)

JUDGE MULLINS:

Tēnā koutou. Okay. Perhaps we will have our paku wā whakatā. **Brief microbreak.**

HEARING ADJOURNS: 11.53 AM

HEARING RESUMES: 12.01 PM

(12:01) MR WATSON: (#3.3.010)

Tēnā koe, your Honour. Tēnā koutou, panel. **Thank you, your Honour and greetings panel.**

Your Honour and the panel will have the Crown's written opening, and I don't really propose to speak to it, other than paragraph 1, which I did want to reiterate. Which is an acknowledgement of all of the effort, and I think it's a huge amount of effort put in by the claimants and their witnesses, and those who are here and those who haven't given their evidence orally. And the work of the Tribunal, and its staff, and getting everything together, urgently. I think, in the same breath, I want to mention the work of some of the staff back at the Crown Law office who have been helping us as matters have arisen.

In terms of how we have engaged in this hearing and the timetable, et cetera, I have tried to be quite careful because I think some of the most useful, or – I think the Crown's witnesses will be very useful to the Tribunal's processes and I wanted to do my best or do my part to make sure that they started on time. I think we have pretty well, got there, so I say that because, that's part of the reason I don't want to take too much time right now, is to give them the opportunity to say what they have to say and to engage with the Tribunal and claimant counsel. For those reasons, I wasn't proposing to develop any detail, any themes or observations the Crown might have at this point. That's also in the knowledge that we do have the opportunity to do that tomorrow.

Your Honour, the Crown has three witnesses, and they have been here throughout the hearing. Ellen MacGregor-Reid, the secretary for education and

chief executive at Te Tāhūhū o te Mātauranga, the Ministry of Education. Andy Jackson, the deputy secretary of policy at the Ministry of Education, and Pauline Cleaver, acting deputy secretary at the curriculum centre at the Ministry of Education.

The witnesses have all prepared oral presentations, they won't read out their briefs, which I think, comes in accordance with your Honour's direction. Our proposed approach is that all three oral presentations are given before we open up to questions, if your Honour is amenable to that. The other point I wanted to note is that Ms Cleaver has prepared a written note to accompany her oral submissions, and I do hope that has been provided to the panel. You are nodding, thank you, and I understand it's gone electronically, as well. Two minutes I'm told, so that's an administrative matter on that point.

Claimant counsel had been very clear that they wish to be able to put specific questions to specific witnesses and that's obviously very fair. However, if another one of our witnesses has information on the same point that would assist the Tribunal, then our proposed approach is that they do speak up at that point, because ultimately, that's why we are here and why our witnesses are here. With those relatively brief remarks I was proposing to hand over to the Crown's witnesses, starting with the secretary for education.

JUDGE MULLINS ADDRESSES MR WATSON – ADJUST LECTERN (12:04:55)

HOUSEKEEPING – TIMETABLING (12:05:46)

MIHI (KAUMĀTUA)

KARAKIA

(12:11) ELLEN MACGREGOR-REID: (#A042)

E te Kaiwhakarite, tēnā koe. Ki te Kaiwhakawā, Judge Mullins. Ko ngā mema o te pae, tēnā koutou. Ki ngā kaikerēme, tēnā koutou katoa. Ko

Ellen MacGregor-Reid tōku ingoa, ko au te tumu whakarae mō te mātauranga. Tēnā tātou katoa. **To our spiritual elder, thank you. To Judge Mullins, and the members of the panel, greetings. To the claimants, greetings to you all. My name is Ellen McGregor-Reid, and I am the chief executive of the Ministry of Education. Greetings.**

WITNESS REFERS TO BRIEF OF EVIDENCE #A042

I am Ellen MacGregor-Reid, I am the secretary for education and chief executive for the ministry.

The purpose of my introductory comments is to outline, in brief, some of the key themes in my evidential brief and address some of the questions raised yesterday. I am here alongside two other members of my ministry leadership team. Andy Jackson who is the Hautū, te Pou Kaupapahere, our policy group, and Pauline Cleaver, who is the Hautū, Te Poutāhū, our curriculum centre. We attended yesterday to hear from the claimants, which was important to us. We are here today to respond to any questions and provide information to assist the Tribunal in its inquiry.

I started in the role of secretary for education in October 2024 in an acting capacity and was appointed in the permanent role in December 2025. Immediately before that, I was in the role that Pauline is now in, as Hautū for Te Poutāhū.

I have worked for the Ministry of Education for over a decade across various Hautū roles and over my career as a public servant, I have worked in a number of different agencies, and I have served across a number of different governments. You will note that my brief of evidence sits across both of the avenues of this inquiry, which Andy and Pauline's briefs of evidence each speak to in more detail.

The Ministry's role

To briefly introduce the ministry's role, Te Tāhūhū o te Mātauranga, the Ministry of Education is your overall steward and regulator of the education

system from early childhood through schooling to tertiary education. We provide to minister's, we fund, resource, and deliver services, and we monitor system performance.

My brief of evidence provides a short overview of the education system, including what we do in each sector.

I won't repeat that here, but I am, of course, happy to answer any questions about, or elaborate on our role where this is helpful to the Tribunal.

In performing our role, the Ministry of Education is clear. The Crown has Treaty duties in education. These are significant and they are enduring. While the way those obligations are expressed in legislation may change from time to time, we consider that a respective of their precise expression. The Crown remains subject to obligations to Māori, in relation to education arising from te Tiriti.

I have described in my brief, some of the ways in which we give effect to the Treaty principles of partnership, active protection, and redress through our work as a ministry. These principles inform how the ministry approaches its advice, engagement, and implementation responsibilities in the context of decisions that ultimately rest with ministers.

I have also outlined in my brief, how the relationship between ministers and the public service works. The public service supports constitutional and democratic government and enables governments to develop and implement their policies. As a constitutional principle, we do not act independently of ministers, except where legislation specifically enables this.

Our role includes providing free and frank advice to ministers and acting in a politically neutral manner. In discharging our roles, we need to maintain the confidence of the democratically elected government of the day, while maintaining the trust of future governments.

When officials provide advice on policy issues to ministers, this process is generally iterative. The advice we provide is an important input into ministerial decision-making, but policy decisions ultimately rest with the minister or with Cabinet.

I understand the interest in the Treaty Principle Review and its relevance to this kaupapa. Mr Watson has already spoken to this, and it sounds like there has been some further discussion between counsel. But just to reiterate, the ministry is able to answer questions about any input we have had to that work, and factual matters about changes proposed in relation to education legislation and we will, of course, do our best.

Yesterday, I heard claimants raising that consultation on the removal of section 127 did not occur. This has been acknowledged by the Crown. Andy Jackson's brief provides more details about the section 127 changes and the process that led to them, including how the ministry considered the importance of te Tiriti through the provision of our advice.

We welcome the commitment by school boards to continue to give effect to Te Tiriti o Waitangi. Claimants raised concern yesterday, about Māori achievement becoming invisible. That would be unacceptable. I want to reassure the Tribunal, school boards are still required to report on a number of key components of Māori student achievement in their annual reports, in relation to the progress of their strategic plan. School boards are also specifically required to seek to achieve equitable outcomes for Māori students. My colleague, Mr Jackson will provide more detail about these requirements.

I would also note, in relation to achievement data, that the government has a focus on better information being provided to parents and whānau about the progress that their tamariki are making from their early years of schooling onwards. A significant gap in our system has been the lack of consistent information about student progress until they reach their senior secondary qualifications.

We will shortly be releasing, Ngā Haeata o Aotearoa, a Māori education indicators report. Framed against datasets that are aligned to the outcome domains and measures of our Māori education strategies, kahikatea ka hāpaitia and tau mai te reo. Ngā Haeata includes data trends relating to school achievement, both primary and secondary.

To the panel members point yesterday, we do acknowledge that akonga Māori and kaupapa Māori, in Māori median immersion settings achieve better, as evidenced in their NCEA results. Where they experience a culturally sustaining education with whānau highly engaged and invested.

I have set out in my brief how the curriculum is regulated in New Zealand. curriculum statements are made by ministers of education under section 90 of the Education and Training Act. Different governments over time have chosen to emphasise different aspects of curriculum design. Some have focussed on flexibility and high levels of autonomy for schools and teachers with the intention of enabling responsiveness to students and local communities.

Others have promoted curriculum statements that are more detailed to support greater consistency of what is being taught and how. The Ministry's role is to use its curriculum expertise to support ministers and schools and teachers, regardless of the overall design approach chosen.

Broadly speaking, the intention of these reforms, the curriculum reset and the changes to section 127 is to emphasise that educational achievement is the paramount focus of schools and to provide a greater level of discretion to inform direction to inform teaching and learning. The are intended to set clear expectations and leave less to chance. In the context of concerns, backed up by data that the system has not been consistently delivering outcomes that the community would reasonably expect.

Kia ora.

HOUSEKEEPING – TIMING (12:20:03)

HEARING ADJOURNS: 12.20 PM

HEARING RESUMES: 12.53 PM

HOUSEKEEPING – TIMETABLING UPDATES (12:53:35)

JUDGE MULLINS ADDRESSES COUNSEL – PROCEDURAL MATTERS (12:55:03)

(12:57) ANDY JACKSON: (#A043)

E mihi ana ki ngā whakaritenga mō tēnei kaupapa. Ki a koutou te Taraipiunara o Waitangi, tēnā koutou. Ki ngā kaikerēme, tēnā koutou katoa. **I want to acknowledge this kaupapa. To the Waitangi Tribunal, greetings. To the claimants, greetings as well.**

Ko Andy Jackson tōku ingoa, nō Ingarangi tūturu ahau, engari kua roa tāku nohonga, tāku oranga ki tēnei kāinga, ko Aotearoa. **My name is Andy Jackson. I am from England, however, I have lived for a long time at this home, New Zealand.**

Ko au te Hautū mō Te Pou Kaupapa Here nō Te Tāhuhu o te Mātauranga. Tēnā koutou katoa. **I am deputy secretary at the Ministry of Education.**

WITNESS REFERS TO BRIEF OF EVIDENCE #A043

My name is Andy Jackson and I'm the deputy secretary at Te Tāhuhu o te Mātauranga. Responsible for policy, which includes our advice to ministers on policy formation and implementation through various government processes, including through legislation.

I have worked as a public servant in Aotearoa for over 20 years, 15 years of that in education policy, and I have extensive experience of Treaty issues in public policy. Including collaboration and engagement with education Treaty partners. Including working towards resolution of contemporary claims in the education space, in particular, with ngā whare wānanga. I led the ministry's

advice to ministers on the changes to Tiriti clauses in the Education and Training Act.

I welcome the Tribunal's questions on the evidence presented in my brief. To help focus those questions, my evidence focusses on the first part of the Tribunal's inquiry, which is the changes to section 127(1)(d) of the Education and Training Act 2020.

My brief of evidence sets out the process for advice to ministers and the interactions of the changes to the Education and Training with the Treaty references review. I am aware that the Tribunal has a number of questions about the substance of the changes and related issues in legislation, as well as about the process for legislative change. I'd be happy to respond to those questions directly from Tribunal members.

It may also help if I advise the Tribunal on the precise evidence, I will be able to give in relation to these matters. In relation to the Treaty references review, as Ellen has already said, I am able to give evidence about the text of the proposed changes to the Education and Training Act. But I cannot comment on the review itself, or its policy intent, and with justice officials appearing tomorrow, may be better to save all of your questions on that review for them.

It is important to note that while I can answer questions of fact about the policy process and the legislation, and I can explain the ministry's policy advice, I cannot speak for government ministers in my evidence to the Tribunal. I will also be referring to a number of documents where references have been provided as footnotes to my brief of evidence. In particular, the ministry's policy advice and relevant current decisions, so counsel and the Tribunal may wish to have some of those documents in front of them.

Listening to claimant evidence, there were a number of specific points raised in that evidence where I expect that the Tribunal will want some factual clarification.

Mr Jepsen raised the issue of the removal of the national education and learning priorities in section 5 of the Education and Training Act, and the impact of this on planning and reporting, and specifically, school boards planning and reporting in relation to ākonga Māori.

During the period 2020 to 2025, schools were not required to give effect to the national education and learning priorities. Rather, they were required to have particular regard to those priorities when preparing those strategic plans, in essence, they were optional. Removal of the national education and learning priorities does mean that if schools originally chose to include any of those objectives in their strategic plans, they are no longer required to report on those elements they originally chose to include. And to that extent, the Crown agrees with Mr Jepsen's positioning.

However, there are a number of significant reporting requirements that remain in law and regulation, therefore, relevant to ākonga Māori. These include:

a) The requirement that the board reports on how its strategic goals deliver on Ka Hikitia.
b) The requirement that the board reports on its strategies for ensuring that the school is physically and emotionally safe.
c) Gives effect to student's human rights, and known strategies for eliminating racism stigma, bullying, and discrimination.
d) The requirement for the board to report on how to ensure that the school is inclusive of students with differing needs and that is generally taken specifically to be a reference to students with learning support needs, such as neurodiversity.
e) The requirement for the board to report on how it seeks to achieve equitable outcomes for Māori students.
f) The requirement for the board to report on strategies for goals that are based on the identities of the school community.
g) The requirement for boards to report on teaching and learning that addresses the needs of specified student groups, which, in the regulations, includes a specification that that is to include ākonga Māori.

I'm happy to take further questions on that matter if there are any.

The second of the comments from evidence that I would like to just highlight is that NZEI witnesses raise the issue of the changes to curriculum statements that are currently before the House in the Education Reform Bill 1. In particular, they commented that the minister was creating a power to change the curriculum at will.

The minister has had the power to make, amend, and revoke curriculum related statements in the Education Act since 1989 and the changes in the Bill do not create additional powers. There are three elements to the changes in the Bill. They combined two types of curriculum statements into a single curriculum statement. They introduce constraints on the minister's powers by requiring the minister of the day to consider relevant evidence and international practice when making a curriculum statement, and they provide for a regular cadence of reviews of curriculum learning areas.

The third point I would like to raise is the matter whether schools are part of the Crown. I know this is a matter of interest to the Tribunal and I noted that Ms Mills, in her brief of evidence, at paragraph 10, states that it "cannot be true" that schools are not part of the Crown. The ministry's evidence in this regard rests on section 124 of the Education and Training Act. Which says that a school board is a legal entity separate for the Crown.

I'm keen to help the Tribunal in its consideration of any of these issues and I will be very pleased to answer your questions during cross examination.

Kia ora.

(13:04) PAULINE CLEAVER: (#A044)

Tēnā koe e te Kaiwhakawā, koutou ko te pae. Ki ngā kaikerēme, tēnā koutou katoa. **Greetings, Judge, and the panel. To the claimants, greetings to you all.**

Ko Pauline Cleaver tāku ingoa. Nō Ingarangi, nō Kotimana, nō konei ōku matua tīpuna. **My name is Pauline Cleaver. I am from England and Scotland, and that's my ancestry.**

Ko au te Hautū mō Te Poutāhū, tēnā koutou katoa. **I'm the acting deputy secretary of the Curriculum Centre. Thank you.**

WITNESS REFERS TO BRIEF OF EVIDENCE #A044

I am Pauline Cleaver, I am the Hautū, deputy secretary, Te Poutāhū, the Curriculum Centre. It is a role I have been acting in since October 2024. I have been with the Ministry of Education since 2004 and before this I spent just short of 20 years as a teacher and school leader. I have held a leadership role in the curriculum reforms from the time of the curriculum progress and achievement ministerial advisory group of 2018 through to 2019 and I hold it through to the current day.

My brief of evidence covers the work over this period. The curriculum design approaches that underpin different iterations of the curriculum and what this means to the teaching of te reo Māori, tikanga Māori, mātauranga Māori, and Aotearoa New Zealand histories. It also provides an overview of the engagement that has occurred and continues to occur on the most recent changes to the New Zealand curriculum and the process for finalising the draft content that is currently being consulted on.

I will take my brief of evidence as read, and I won't try and summarise that for you now. I welcome questions on this in due course, but for now, I would like to talk to a few questions and themes that have already come up over the last day.

First of all, Te Mātaiaho and Te Marautanga o Aotearoa. The question about Te Mātaiaho and its relationship to Te Marautanga o Aotearoa. Te Mātaiaho is the framework for the New Zealand curriculum owning, not for both pathways of the national curriculum. Te Marautanga o Aotearoa sits alongside

Te Mātaiaho, not within it, and is designed for teaching and learning delivered through te reo Māori.

Both curriculum pathways are being updated as knowledge rich and based on science of learning. But they are not the same and the draft knowledge rich content for Te Marautanga o Aotearoa is not just a translation of the draft content for Te Mātaiaho, the New Zealand Curriculum.

There has been a shift in approach from co-design of drafts to consultation on ministry developed drafts. As acknowledged in my brief of evidence, it is true that there has been no co-design with Māori or other externals as the ministry has prepared draft knowledge rich curriculum for consultation.

It is also true that this is different from the way we have worked previously. Over time, governments have asked the ministry to take a different approaches to engagement. The current Minister of Education noted, as of October 2023, across Te Mātaiaho, the New Zealand Curriculum and Te Marautanga o Aotearoa, there had been heavy engagement and co-design with multiple stakeholders since 2019. There was also a significant amount of refreshed national curriculum content that was in draft and not yet consulted on, and that there was other content for which drafts, which had not yet been fully developed.

When the minister reset the approach to the updates to the national curriculum, which required us to revise the prior work as well as continuing to progress, that which was still in development. She asked us to take a consultive approach, rather than to continue with co-design. She wanted wide input into the draft curriculum, but did not want to leave children and young people waiting any longer for a new, final curriculum.

This means that the draft, knowledge rich, year 0 to 10 curriculum content for consultation was written by ministry staff, with additional expertise contracted in. Dr Julia Novak led the writing team for the draft content of the New Zealand curriculum, with team members. Including a variety of different expertise, such

as the expertise from different areas of the curriculum, Māori education, knowledge rich curriculum design and effective pedagogy. As informed by New Zealand evidence, as well as international evidence, the New Zealand Coherence Group, which was chaired by Dr Novak, supported her in this work.

Kiritina Johnstone led the writing of the draft content for Te Marautanga o Aotearoa. Again, with team members, including a variety of expertise. There was no equivalent coherence group for the TMOA, because all of the people that had been on it, including those who were on the former Aho Whāiti were contracted into the writing teams. Tony Trinick took a coordinating role across those writing teams.

There has been discussion about the use of NDAs with people working with us during this period. NDAs are something that we do use from time to time and have used in the past as well as not just in this current period. But it is true, we have made significantly more use of them and withheld names under the OIA process. This has been to protect those people. This came about because there was so much being discussed and made public in the media, that we had examples of people being verbally attacked when going about their lives. Including when picking up their children from the school gates or being involved in the development of the draft curriculum.

The draft curriculum, out for consultation, is still reflective of the work and input of many, and the prior work that has been built on and carried forward into the draft knowledge rich curriculum, including Aotearoa New Zealand Histories Curriculum. We did not engage extensively to update Aotearoa New Zealand Histories content, because we were not intending on writing brand new content, we were reframing pre-existing content into the new knowledge rich approach.

The minister agreed to a slightly slower pace for the development of the year 11 to 13 curriculum content. Given the longer implementation times, this has enabled us to adjust the development approach for the draft curriculum content for these year levels. And we currently have over 200 teachers from schools

and kura across the country working with us following an open expression of interest process held at the end of last year.

The approach to consultation on the draft content does not simply consist of an online survey. As set out in para 103, there are a variety of opportunities for consultation. We have done in class trialling for years 0-10 learning areas in wāhanga ako during term 1, 2026.

A series of sector webinars and hui have been held since 2025, to unpack the curriculum and support understanding, and familiarisation of the draft content. This is included in national road show for primary school leaders in October 2025 and will include a national road show for secondary school leaders, which is planned for this year.

A series of hui have been held with Subject Associations, Peak Bodies, and National Organisations since 2025 to discuss the draft content. Feedback received through emails, other channels, meetings, will also be analysed. People have asked to meet with me, my staff, to provide feedback, ask questions, and engage in discussions, and that has happened. We have pulled together groups of people to discuss issues where needed, such as the challenges raised by schools with multiple year levels in one classroom and we continue to do so. Sector insight groups are also being established to work with us as we respond to the feedback we receive through the consultation process.

In designing our approach, we have been mindful that the quality of engagement is what matters most. In relation to Te Marautanga o Aotearoa content, which was noted in my brief, and I am happy to explain the rational if the panel is interested again, has assured a consultation period. This has included regional face to face workshops, and large scale online webinars. Over 500 participants have participated and provided feedback through those opportunities, to date. While consultation on all of the draft 0-10 curriculum content closes on 24 April 2026, and Pumanawa Tangata wāhanga ako will remain open for feedback until 5 June 2026, in recognition of its later release.

I want to address the influence of the MAG and others. The panel heard concerns about the influence of the curriculum ministerial advisory group set up by Minister Stanford and that they were writing curriculum content.

It is true that some MAG members had a perception that they would be writing curriculum content, as Mr Holloway, the evidence has shown, we took action to correct these misunderstandings, such as the email sent on the 13th of February 2024. The MAG provided its report to the minister on the 19th of March 2024. This included example curriculum content, which was proactively released on the ministry's website on the 15th of July 2024, and with the June 2024 Cabinet paper, which has the government's decisions on the response to the MAGs report. This is referenced and linked in the footnotes to para 19 and 20 of my brief of evidence.

If this example curriculum content provided by the MAG with its report is compared to the draft prepared by the ministry for consultation, and the finalised content prepared by the ministry. Which was agreed and formally issued by the minister, you will see they look very different. The MAGs term ended on the 30th of June 2024 following the submission of its report, the minister requested the MAG work with the ministry to plan an approach for updating the curriculum content in line with its recommendations. The last brief meeting of the MAG occurred on the 17th of June 2024 and with minister thanking them for their work.

Michael Johnson has had ongoing involvement as a member of the ministry led NZC coherence group. While this built on his experience chair of the ministers MAG until June 2024. I would note that it was not usual for the ministry to involve Michael Johnson. He was, for example, a member of the 2018, 2019 curriculum progress and achievement reference group. We established to support the work of curriculum progress achievement ministerial advisory group that was established by Hon Chris Hipkins.

Some people who have been a member of the MAG were also separately contracted by the ministry to support preparation of draft curriculum content.

The ministry worked within the perimeters of the New Zealand governments procurement guidelines and roles in procuring services for these groups. This included all required probity checks for individuals, wherever necessary, and none of these groups required exemption from the procurement process.

There has been particular focus on Elizabeth Rata's continued involvement beyond the MAG. Elizabeth Rata was a member of the early writing group for English in years 7-13. She was contracted by the ministry from the 29th of April 2024, until 31 July 2024.

Work by the ministry on the draft English 7-13 learning area continued beyond the end of Elizabeth Rata's contract and was not released until the 31st of March 2025. I will, however, just note that the final year 0-10 curriculum includes requirements for students to study texts representative of New Zealand's rich bicultural, both Māori and Pākehā, and multi-cultural literacy heritage.

I also want to note that the updated draft curriculum content in years 11-13 English subjects are still being prepared and will be released for consultation in May 2026.

In relation to Aotearoa New Zealand histories, there have been some references, comments made by the minister at the time the ERO report was released. These comments were not entirely what guided the ministry's work. What guided our work was the agreed Cabinet paper on December 2024. This paper was proactively released on our website on the 14th of February 2025, and I have copies for the panel, and I would refer the panel to para 27, which sets out the direction the minister provided for the ministry. I won't read it now, in the interest of time, and I apologise for not referring to this document in my original brief.

There have been questions about Dr Moon's involvement. His only involvement with the ministry's work was an online meeting with Dr Julia Novak on October 2025. He was not provided with a version of the draft, but he was

shown it online. He suggested some minor corrections, he was not involved in the drafting of the learning area.

The draft of the local curriculum, the draft of Te Mātaiaho makes clear learning about place and knowledge must still happen. Even where draft teaching sequences don't specifically point teachers to the use of local contents. They may decide that the most meaningful way to contextualise learning and teaching for their students. There are also opportunities, as people have suggested, there are not opportunities in the – sorry, I'll start that again.

There have been some comments that have suggested the draft content is a list of isolated facts to be taught, and that, integrated teaching and learning can no longer happen. This is simply not accurate, the draft curriculum specifies the knowledges and practices to be taught. Teachers still need to decide how to integrate those knowledges and practices into meaningful and engaging teaching and learning programmes. Including integrated knowledge from different learning areas across different contexts and determining the sequence of knowledge with learning areas. We have been deliberate in making choices – choices we have made, in order to make it easier for teachers to integrate content, and there will be supporting resources to help them.

In regard to the science of learning, a responsiveness to learners, there has been suggestions that the draft curriculum does not reflect evidence base around cultural responsiveness and importance of language, culture and identity, and that this could prevent teachers from responding to students needs. This is not accurate, I have touched on the requirements and the need to contextualise learning, to draw on local relationships. Many other parts of the curriculum make this clear too.

This curriculum reinforces that relationships are key to successful learning. It does not diminish the importance of this, this is reinforced in the draft content for Te Mātaiaho. Further, the draft curriculum again in Mātaiaho requires teachers to create responsive learning environments and make sure teaching and learning is non-racist, non-sexist, non-discriminatory. The draft curriculum

also makes it clear that it is not promoting a one size fits all teaching approach and has strong statements on inclusion and responsiveness in the need for multiple learning pathways.

The use of te reo, I want to bring to the focus of the inquiry. I need to be clear that the 2007 New Zealand curriculum does not require the teaching of te reo, nor would the 2023 version, refreshed New Zealand curriculum have done so. If schools use Te Marautanga o Aotearoa, then it is a requirement that the curriculum is designed for delivery through te reo. It is considerate of te ao Māori and tikanga Māori an dis central to the language revitalisation, this has not changed.

What we are changing is to make sure tamariki Māori have access to the same body of knowledge regardless of which curriculum they are using. This is most apparent in the senior secondary, where, as part of the NCEA qualifications there have been significantly more NZC subjects than those for TMOA. As part of the 11-13 curriculum, almost all secondary subjects will now be available and supported for delivery in both te reo and English.

Up to 40 subjects are being developed to ensure rangatahi Māori can access future focussed learning through te reo that supports their pathway into future study and the workforce. It is true that the 2023 draft refresh curriculum, Te Mātaiaho use a lot of te reo in the document to give direction to teachers on their practice. There was little explicit direction on what te reo Māori students were to be taught. Whether as part of learning areas or when the school was offering te reo language learning opportunities.

The draft, currently being consulted on, uses less te reo in the document to provide direction to teachers on their practice. But it does set out a clear minimum expectation for the level of te reo to be taught to all students within different learning areas. And that they all need to be able to decode Māori kupu as part of reading New Zealand texts. Yes, this is a minimum level, and many schools will already be doing more or want to go further.

However, crucially, this is a first time that there has been a specified level of mandatory te reo for all students in the state system. To support schools and students go beyond this, detailed teaching sequences included in the draft learning languages learning area to make sure schools that are offering it. Students will receive a well structured sequent programme that supports them to make meaningful progress and grow their confidence in te reo.

Thank you.

HOUSEKEEPING – TIMETABLING (13:25:37)

(13:26) MS TEREI-TIPENE TO ELLEN MACGREGOR-REID, ANDY JACKSON, AND PALINE CLEAVER:

Q. Tēnā koutou. We have divvied the briefs up, as you are aware and I'm starting out this afternoon, with your brief of evidence, Ms MacGregor-Reid. So, my questions will be aimed towards you but there will definitely be overflow into Mr Jackson's brief, so if you would like to share responses, that's completely fine with me.

My name is Ms Terei-Tipene. We represent two hapū groups up in the Bay of Islands and we have really – the approach that we have taken to the inquiry is really just wanting to understand a little bit more about the rational behind decisions that were made. My questions today are that our clients are here because they have Treaty rights and as you have said in your presentation earlier, that the ministry is clear, the Crown owes Treaty duties in the education space. So, that's kind of going to be where my questions are focussed on today. Can I get you to go to your paragraph 20.

WITNESS REFERRED TO BRIEF OF EVIDENCE #A042

Now, here you say – you are in the Treaty section, which is, the title is: "How the Ministry understands and supports the Crown to meet its Treaty obligations". At paragraph 20, you say that Treaty principles are reflected – I'm on the fourth line. You are talking about Treaty principles, and you say: "They are reflected not only in the content of the Ministry's advice and operational work, but also in our organisational design, including

dedicated functional leadership through the Hautū, Te Pou Tuarongo | Deputy Secretary, Māori Education". Is this a new or longstanding role at the ministry?

A. [Ellen MacGregor-Reid] The role has been in place for I think, at least six years. It was introduced first when Dr Daryn Bean joined the ministry, and then it has continued on.

Q. Thank you, and this was my quick look on the ministry's website. It's correct isn't it, that Ms Simcock-Reweti currently holds that role for the ministry?

A. That's correct.

Q. So, she took over that role in March, so she's relatively new to the role, is that correct?

A. Mere-Heni joined the ministry in December 2023. I undertook a restructure of the ministry's leadership team at the end of last year. In that restructure I was clear that I wanted to expand the scope of the role so that we were providing stronger advice and support through issues of Māori education. As that effected the size of the role, Mere-Heni was occupying it, it was readvertised, and it was fantastic that Mere-Heni was reappointed into the role.

Q. So, the fact that the role has been active, or was established for the last six years, is it correct that she was in the role before it was restructured into what it currently is now?

A. For one year, yes.

Q. So, would she have had involvement in the amendments to the Act and the proposed changes to the curriculum?

A. She did not have input into the amendments to the Act. Those discussions were highly confidential between officials and ministers. Myself and Mr Jackson were involved. However, Mere-Heni has worked in close partnership with Ms Cleaver on aspects of both curriculum. New Zealand Curriculum, Te Marautanga o Aotearoa, which Ms Cleaver can speak to.

Q. Thank you. So, I understand, just kind of focussing on the section 127 component of that being highly confidential. Was there any Māori leadership, Māori advisor, or a person that held a Māori leadership role in

the discussion of what was happening in relation to 127. Was there any person that was in the room?

A. Were there any senior Māori in the room when Mr Jackson and I were discussing with the minister and in preparing our advice to the minister?

Q. Yes.

A. Not to my knowledge, but Mr Jackson, you may have another view on the development of our paper.

[Andy Jackson] No, I have nothing to add.

Q. Thank you. So, to the extent on the other component of that, where in relation to the curriculum, is it the case that if we have questions in relation to the Māori perspective within the ministry on the proposed curriculum changes, we are to put those to Ms Cleaver?

A. [Ellen MacGregor-Reid] That's correct.

Q. Okay. Is there a reason, or rational behind why we are not able to hear from the Māori leadership in relation to the curriculum?

A. No, there is no reason.

Q. Thank you for that. Just coming down into the next paragraph, paragraph 21. You are talking about how the ministry works to assist the Crown to discharge its Treaty obligations and you list a number of things there. The first point, at paragraph 21.1 is providing free and frank advice to ministers on Treaty considerations relevant to education policy and system decisions. How does the ministry inform, or develop its understandings in respect of its Treaty obligations and Treaty considerations, to be able to give that free and frank advice?

A. Myself and Mr Jackson, along with other members of the team have been through extensive training on Te Tiriti o Waitangi, on cultural capability. We have spent the last six years as a ministry, developing our understandings and knowledge, and that is the basis on which the paper that you have in evidence was written around section 127. The minister also has access to her Māori advisory group and in broader matters, beyond section 127, we do bring Māori staff in to work where it intersects with Māori issues, which of course, are the majority of education issues.

Q. So, in terms of the training that yourself and Mr Jackson have received, who are the people that give you that training? Are they Treaty experts?

A. Yes.

Q. Are they outside of the ministry?

A. Yes.

Q. And in terms of how you determine the level of that expertise, what is the measure of that?

A. My understanding was that it was selected from Te Poutuarongo group. I'm happy to provide the background information that we can bring forth from our archives around how those are selected, but I don't have that with me today.

Q. That would be helpful. I'm just trying to kind of get a grasp of how the ministry informs itself of its Treaty obligations and who feeds into that process.

A. Mr Jackson has just said he would like to comment.

[Andy Jackson] I think, as well as formal training, it's also important to think about how advice such as the paper that you have before you is created, it's not created in a vacuum. So, the policy group in the ministry has a number of Māori staff and has access to a considerable amount of expertise in Treaty frameworks and issues across government. All of our staff have a grounding at some level in Tiriti policy advice and thinking about the principles and articles, and how they are relevant in an education context.

We have some staff who were part of leading the contribution to the cross government policy capability framework and specifically to the part of that that related to that te Tiriti analysis a couple of years ago. And so, the paper that you have before you represents a longstanding, in-depth view of the way in which the education system as a whole and the issues within and across it are framed in a Tiriti context. It also reflects extensive experience of development of Treaty relevant legislation, including the advice of our legal team, who also have considerable experience in this area. We draw on Te Arawhiti and Te Puni Kōkiri as required, as well as the advice of the Treaty Principles oversight group, which is run from Te Puni Kōkiri. So, I'm confident that there is a longstanding and robust Treaty framework that sits behind the advice that we gave.

Q. Thank you, and so, when you said that you get your extensive training in cultural capability building. Is that an ongoing process, or is that something that you had at the beginning of kind of, taking on those roles six years ago?

A. [Ellen MacGregor-Reid] It's been ongoing. I have been through at least twice in the last six years. So, it's ongoing, it's still provided for within the ministry for our staff. But as I said, I'm happy if it is helpful for the hearing to get the team to provide, you know, documentation around what that looks like, if that would be helpful.

Q. Thank you, that would be helpful and if your counsel could liaise to file that, that would be great. Kind of on a similar vein in relation to Treaty understandings and Treaty obligations, have the ministry read, or are they aware of the most recent Tribunal reports from urgent inquiries in relation to the coalition agreements and subsequent law reforms?

A. [Andy Jackson] Yes, I have read those reports.

Q. So, were those taken into account when giving your advice in relation to the proposed amendments to the Act?

A. Could you remind me when the Tribunals report in relation to the Treaty principles review was published?

Q. There was three of them and the first was filed, potentially, last year and then there were iterations up until a couple of months ago.

A. So, obviously with our advice having been produced in August, September last year, my recollection is that I read the first of those reports prior to producing that advice. I actually can't remember. But I mean, I think there's a considerable consistency, which in, the Tribunal's understanding of the relevance of the articles and principles in law and the advice that we have produced. Which references, in some cases, you know, elements of Tribunal jurisprudence over the years.

Q. Yes, I was thinking about the Treaty Principles Bill, but there has also been a number of other inquiries in relation to the coalition agreements and the proposed reform after that, the Oranga Tamariki inquiry, the te reo inquiry, the MACA inquiry –

A. The report I'm primarily thinking of is the one that was produced, and sorry, I have a copy at home, not here, in relation to the

Treaty Principles Bill. But yes, we do keep up to date with the Tribunal's judgments, particularly, as they are relevant to education policy.

Q. Thank you. Can I please get you to flip over a few pages and arrive at your paragraph 40. I think his might be questions for both of you, because it goes into the document attached to Mr Jacksons brief, but we will deal with that when we get there. So, this is the section where you are talking specifically about section 127 amendments and at paragraph 40, you say: "As a result of the Government's Treaty references review, the Government questioned whether it is appropriate for school boards to be held accountable for meeting the Crown's obligation to uphold the Treaty."

Then, at paragraph 41, you have there, kind of, at the end of the second line: "The Government does not believe that it is reasonable for these parents and volunteers to hold and discharge the Crown's general responsibilities in respect of the Treaty." I'm interested to understand a little bit more about the rational of the government and what was kind of contributing to the decisions that were happening at the time. So, that's kind of, going to be where my next coming questions are going to be focussed on.

Now, at the end of that paragraph 41, there's a footnote and it's a footnote to the 25th of October Cab paper. Can I just get you to go to that. So, it says there at paragraph 1, this paper seeks agreement to remove consideration of amendments to Treaty references in section 127(1)(d) of the Education and Training Act 2020. From the Treaty references review and progressed these through the Education and Training Amendment Bill. So, just to clarify that I have this right, and my own understanding is right. Is it intended that section 127(1)(d) is no longer under the Ministry of Justice, and the Treaty references review, and it is now under MOE and the amendment bill?

A. [Ellen MacGregor-Reid] That is correct.

Q. And so, this paper goes on to give a bit of a background to the Treaty references review and flicking over to the page at paragraph 18, it says here that the MAG questioned whether, as Crown entities the standard of

commitment provided for school boards is appropriate. But the review did not reach a clear position on this question, did it?

A. [Andy Jackson] That's correct.

Q. So, whatever came of this question was really a Ministry of Education decision, a decision by the minister. Is that correct?

A. [Ellen MacGregor-Reid] It was a decision by the Cabinet taken through a paper from the Minister of Education, that is correct.

Q. So, just to get clear, they raise the issue about whether, as Crown entities, the standard of commitment provided for school boards is appropriate, that was the Treaty references review. Then any decision after that was within the paper that the minister provided to Cabinet to make decisions on?

A. That's correct.

Q. And at paragraph 19, the minister proposes that the duty for school boards to give effect to te Tiriti be removed in recognition that schools are not part of the core Crown, and school boards are elected by communities. She does not think it's reasonable for parents and volunteers who make up boards to hold and discharge legal responsibilities in respect of the Treaty. I'm interested to understand where that rational came from. We go from, the question is about whether the standard of commitment for school boards is appropriate. To boards are not part of the core Crown, and not a core Crown entity. How do we land there?

A. So, just referencing Mr Jackson's brief, it arose due to the statements in the Education Act about boards not being part of the Crown, but Mr Jackson will be able to expand on the sequence of events that led to that point.

Q. That would be very helpful, thank you.

A. [Andy Jackson] I will refer to the documents, which we were provided to the Tribunal last night. So, this is the memorandum from Crown counsel called additional documents of the Crown, 16 April 2026. This contains a copy of the Treaty references review, and if you refer to page 36 of that document, that steps through a range of sections of the Education and Training Act. Which, as you are probably aware from the

previous Crown submissions, were referred to the Treaty references review Following Cabinet decisions in around May 2025. That includes section 127(d).

The discussion of that, on page 37, consistent with the theme of this report overall, says: "It is unclear why there is such significant variation, duties, languages, and reference to the Treaty and Treaty principles. It is unclear to us why a school board is required to ensure a school gives effect to the Treaty, but a dispute resolution scheme operator has the more onerous duty" et cetera, et cetera. It then recommends that, and this is later in the document on page 69, recommends that as well as the broader policy considerations and suggestions set out in the report amend to standardise the reference to the Treaty. So, that is a reference back to page 37, where the Treaty references review is questioning the suitability of a stand alone duty for school boards.

The Minister of Justice then referred that matter to the Minister of Education in a letter that you also have in the original submissions. That was the basis for us then, to start giving advice to the Minister of Education in September 2025.

JUDGE MULLINS ADDRESSES MR JACKSON – CLARIFICATION OF EVIDENCE REFERRED TO (13:48:14)

MS TEREI-TIPENE TO ELLEN MACGREGOR-REID, ANDY JACKSON, AND PALINE CLEAVER: (CONTINUES)

A. [Andy Jackson] So, page 69 is the formal recommendation of the Treaty references advisory group as they relate to the Education and Training Act. Page 84, at the top, sorry, it turns out I do have both numbers, my apologies. Recommendation number 17 is the recommendation of the Treaty references advisory group, and that refers to broader policy considerations, which is a reference back to page 37 where it questions the duty, specifically for school boards and whether that is appropriate.

Now, I believe that there is other discussion earlier in the report, not specifically about school boards, but more generally about the relationship and this is getting a little technical, but we have plenty of

lawyers in the room. The relationship between descriptive and operative clauses in legislation, and the general theme of the report is that descriptive clauses such as a general duty to give effect to something, are of question value. As with other advisors on the reference to the Treaty and legislation, the preference is for there to be clarity in operative clauses, you know, say, for example, the subclauses in the original section 127(1)(d) are regarded as operative clauses. So, that's what the Treaty References Advisory Group is essentially saying through this report.

Q. So, there is a discussion about whether it is appropriate for school boards to have that duty or obligation. There is a wider, kind of, discussion happening about what the, as you were just saying, around descriptive and operative, as well, at play. What happens after that in terms of the process that was followed was that you find the rational to implement the changes that are being recommended?

A. [Ellen MacGregor-Reid] I believe we have submitted the advice that we provided to the government on section 127(d). So, we provided free and frank advice, and the way policy works, I'm sure you know, is officials provide that advice. Ministers seek advice potentially from a range of places, they consult with colleagues. There is quite a process before they decide what they ultimately want to take to Cabinet. Once the minister has decided what they wish to take to Cabinet, the ministry drafts a Cabinet paper reflecting the decision they are seeking, and that is submitted to Cabinet.

Q. Thank you, that is helpful, and I will come back to some of the points that you are making there, around the advice that was given and who was contributing to what at different times. I'll just get you to flick over the page to paragraph 28.

A. Sorry, can I just confirm, on my brief or the Cabinet paper?

Q. Sorry, in the Cab paper. So, the minister says there, that there is no regulatory impact statement and her reasons for this is due to time frames and she mentions time constraints a little bit further down under consultation. What's the rush here? Why was there the need to push on this particular provision and expedite it through the amendment Act?

A. The government wished to make the amendment, and the legislative vehicle was available. That legislative vehicle was on a particular timeline and given when the decision was made, it meant that this process was followed.

Q. So, if there's a goal in mind and you have to jump on the train to reach the goal, that means that other components that might feature in other proposed legislation and other Cab papers that are leading to legislation don't get done, like a regulatory impact statement. Is that correct?

A. [Andy Jackson] Yes, that is absolutely the case, that a normal process would have a regulatory impact statement. I think you may wish to refer to the departmental disclosure statement that was provided with the legislation. As you can see that disclosure statement strongly echoes the advice that we gave in our paper of the 17th of September 2025. I think it's important to focus on the analysis advice provided there. Had we produced a regulatory impact statement it would have said, largely, the same things.

Q. Yes, I'm going to come to that, I think I have, kind of, two more questions in this Cab paper and then we will go back to that prior one. But at paragraph 30, it says, the changes prioritise attainment of equitable education outcomes for Māori. Over the page at note three, it says, the minister intends to provide a schooling system – I think there's a bit of a sentence error there. But that provides for an elevated Māori – elevates Māori student success. With words like prioritise and elevates, is there any further guidance provided on how that is going to be achieved?

A. [Ellen MacGregor-Reid] The government's position is that having a focus on high quality curriculum, teaching, learning alongside safe, inclusive environments supported by good information about progress for parents and whānau so that help can get where it's needed, when it's needed. It is the way to achieve that.

Q. So, in terms of achieving that and perhaps maybe it might be in what you were mentioning in your presentation around a Māori education strategy. Are those things going to be built in? Are we going to see those come to fruition after this decision has been made, essentially?

A. Correct. We have the Māori education action plan with us, which I'm happy to go through what is in there now, or I'm happy to provide it to the Tribunal in the interests of time. And the ministry, at the direction of the government, is continuing to progress work on understanding Māori progress and achievement. How best to support that. We are continuing to value te reo Māori and I can provide you with examples of that. The government has every intention of continuing to give life to Ka Hikitia through an iterative Māori education action plan, which is guided by the ministers Māori advisory group.

Q. So, in terms of what's happening here, around the removal of the decision to remove the Treaty, is it seen that the Treaty is an impediment to that safe learning environment that you are talking of?

A. No, the Crown's position, the government's position is that duty sits with the Crown, rather than with school boards, and the government is clear that the obligations for te Tiriti remain and are important for education.

Q. Thank you. Can I just get you to go back, in the same Cab paper, go back over the page to paragraph 32. It says there, a contractor has been engaged for the last three months to substantively support the development of the proposals in this paper. Is it standard practice to get a contractor in? Is that kind of, specifically something for the – like the nature of the removal of a Treaty clause from legislation?

A. [Andy Jackson] It is standard practice to use contractors who have experience in public policy development for short term, fast moving priorities that are on top of the other work programmes that we have. In this particular context, I believe, at this time, there were four, or potentially five pieces of education legislation being worked on by the ministry. So, yes, we needed to take additional resource on in order to do this work.

Q. All right, thank you. So, this Cab paper, would agree that this Cab paper is kind of where we see the decision to remove te Tiriti from section 127(1)(d), that's where we see the advice written up in a document and this is going to be considered for confirmation?

A. [Ellen MacGregor-Reid] This document is where you see the advice the minister is taking to Cabinet for Cabinet to make the decision. If you are

referring to the advice given by the ministry, that is in our separate briefing.

Q. Yes, sorry – yes, the first one. This is the minister's paper that is going to be decided at Cabinet.

A. Correct, and this is where the substantive decision is taken, so I believe it would first have gone to a Cabinet committee. Yes, it did, to social outcomes committee, to consider, from there it progresses to Cabinet, who make the final decision.

Q. Thank you. You have actually helped me move into the next document which is the earlier paper that, Mr Jackson, you have already referred to and that's the 17th of September paper. This is the advice that the ministry is giving to the minister at the time.

A. That's correct.

HOUSEKEEPING – TIMING (14:01:09)

HEARING ADJOURNS: 2.01 PM

HEARING RESUMES: 2.09 PM

JUDGE MULLINS:

Kia ora, Ms Tipene.

MR POTAKA ADDRESSES JUDGE MULLINS – PERMISSION FOR HIM AND MR MANLY TO LEAVE EARLY (14:09:28)

(14:09) MS TIPENE TO ELLEN MACGREGOR-REID, PAULINE CLEAVER AND ANDY JACKSON:

Q. Kia ora anō. Actually, this is my last kind of few questions. It won't take very long. And then I am going to hand over to Dr Downs to ask a couple of questions of you, Mrs Cleaver.

So, this paper is a month-ish before the Cab paper that the Minister took to Cabinet, is that correct?

A. That's correct.

Q. And can I get you to go to paragraph 10? I am skipping over a little bit of – of the content in here, because it is giving kind of a bit of a background of – of what is happening in this process, who is being engaged with. So, if we come to paragraph 10, it says, "We do not recommend changes to the following provisions in the Education and Training Act in respect of te Tiriti without further engagement and design with Māori", and then at 10.1, section 127(1)(d) is identified as one of those that you have recommended they do not make changes to. That is correct, isn't it?

A. That's correct.

Q. So it is fair to say, then, isn't it, that despite ministerial advice, your advice not to make changes unless engagement with Māori happened first, that the Minister decided to proceed with the removal anyway, which I understand she is entitled to do; she makes the decisions, but you gave advice and she didn't take that advice; is that correct?

A. Cabinet took the decision, and yes, this is not unusual. Ministers didn't take our advice, and that occurs across multiple governments.

Q. Yes, but despite its, you know, somewhat not unusualness, in this particular instance, in relation to a Treaty clause in the Act, ministerial preference prevailed over your advice, in this instance?

A. As I've said, Ministers can and do seek advice from multiple points. They have discussions amongst colleagues informing their decisions, and it is ultimately Ministers' decisions about what policy to take forward. They are not obliged to take our advice.

Q. Ka pai. Thank you. I think I will leave it there. I am quite tight on the time on my end. But I will pass it over to my colleague, who has a question, or a couple of questions, for you, Mrs Cleaver. Sorry, before I do, I just wanted to thank you for your time and your evidence today.

(14:13) MS DOWNS TO PAULINE CLEAVER:

Q. Tēnā koe, Mrs Cleaver. My name is Dr Downs, and I just have a couple of questions. My first question is actually a question of clarification, and it is in relation to your oral opening, and in your oral opening, you were making a number of statements about direction from the Minister, and I don't recall as many references in your original brief as to ministerial

direction, and the question is if we are able to locate those in documentation.

A. I think the – the advice around Aotearoa New Zealand Histories, yes, there is a Cabinet paper, and I have extended my apologies for that. There are – I would have to check. I would have to check and provide you a – a bit of a – a cheat sheet on these were – these were written advices and these were in conversations and here's the – here's where the advice was in – in writing, so that you can have those papers.

Q. So, fair to say across these changes, ministerial direction comes both in written form and in oral form?

A. Correct. You'll – you'll appreciate that writing a curriculum is quite an iterative process and working that through with the Minister happens in writing and through conversations.

Q. I guess it touches on the principle of transparency and trying to locate and make visible where particular decisions are made, so it might be a matter of ourselves going back through your oral statement and having a look at which directives are of particular interest to the issues before the inquiry, and perhaps a follow-up question so that we can ascertain whether that was an oral or a written direction.

A. If it's helpful, there will, no doubt, have been written briefings along with the ERO report, which I – I know's been discussed in claimants' evidence informing the Minister's views, and as I said around how policy is formed and decisions are made, while there are conversations with us about decisions, if they're not written down, and they may well be for Aotearoa New Zealand Histories, we will not have a record of all conversations the Minister has had with a full range of advisors and colleagues.

Q. Sure, but I'm – notwithstanding that, I'm sure the exercise of noting which ones in the oral statements are in writing and not in writing would be helpful. Kia ora.

A. Ka pai.

Q. My only other question before handing over to Ms Sykes is that at paragraph 63 of your brief of evidence, if I can just have that and if I can take you to that –

WITNESS REFERRED TO #A044, PARA 63

Q. – at paragraph 63, you are talking about Māori inequity being a key driver for the changes to the curriculum and educational outcomes for Māori students, and what I am particularly interested in in relation to that paragraph is how the Ministry understands the persistent inequities in educational outcomes for Māori students.

You would be aware that I have filed a report just today that came to my attention, and hopefully your counsel has put that before you. It is titled *Equity? Where Is It? Māori Leaders' Experiences and Perspectives of Equity*. Just checking the Tribunal has that also.

MR WATSON:

I'm so sorry, I haven't – I haven't provided that –

DR DOWNS:

Sorry.

MR WATSON:

– so my witness can't comment on that.

DR DOWNS:

Okay. Well, it is a general question. It is just whether the witness is aware of this report. I did file it. Sorry it was late today, but that is the nature of this inquiry.

(14:17) MS DOWNS TO PAULINE CLEAVER: (CONTINUES)

Q. Are you aware of this report, Ms Cleaver?

A. I have seen the report before, but no, I am not intimately able to talk to the detail inside this report.

Q. Are any of the other witnesses able to?

ELLEN MACGREGOR-REID:

I have read the report, but I am not confident today to provide answers across it. I'd be asking for time to re-review it. And my apologies, it was not brought to our attention.

DR DOWNS:

Possibly I just put the questions, and if you can or can't answer them, that's fine. Is that acceptable? The question was whether this is a Ministry-commissioned report.

MR WATSON:

I'm so sorry, I think the witnesses cannot comment on – on any matters of detail. This is just what I am taking from it. Even a question like that, they would need the opportunity to refresh their memory before –

JUDGE MULLINS:

Really, Mr Watson? They cannot comment whether that was a Ministry –

MR WATSON:

That is what they have just indicated to me, your Honour.

JUDGE MULLINS:

That is a very general question, and I would have thought that the answer would not be too difficult.

ELLEN MACGREGOR-REID:

The Ministry pays for and commissions many reports, your Honour, and my apologies. I just cannot recall of the reports we have commissioned and paid for, but we are happy to – to go and check.

DR DOWNS:

Maybe I can leave it with the witness for the next 30 minutes and come back at the end of Ms Sykes' cross-examination or after the afternoon break.

JUDGE MULLINS:

Yes. This is the one referred to by Mr Jepson?

DR DOWNS:

That's right.

JUDGE MULLINS:

And it was referred to, from my reflection, in his written evidence as well –

DR DOWNS:

That's right.

JUDGE MULLINS:

– or one of – yes, so it has been on the record, the reference to this, for some time?

DR DOWNS:

Possibly the reference but perhaps not the actual report, but definitely –

JUDGE MULLINS:

But definitely a reference to a Ministry-commissioned report?

Yes, Mr Watson, perhaps, Dr Downs, if you can come back to it at the break. It has been on the record in terms of the evidence of Mr Jepson for some time now.

MR WATSON:

Can I just clarify what – is there expectation that witnesses look at the report in the break? Is that the – is that what is being suggested?

DR DOWNS:

I am not going to ask questions for the detail of the report. I am wanting to understand what the Ministry's position is in relation to the report, given that it was a Ministry-commissioned report, initially, at least.

MR WATSON:

I think in summary, where we've got to is that they would need to at least peruse the report, if only briefly, to be able to engage in any level of detail with that, and again, I apologise if – if it is on me for not bringing them – this report to their attention, but that level of engagement might be happening in real time but would be required before engaging with your question **(inaudible 14:20:47)**

DR DOWNS:

Well, that is sufficient for me, if it is all right with your Honour. Okay, ka tuku atu i te wā ki a whaea Annette. **I will pass it over to Annette.**

(14:20) MS SYKES TO ELLEN MACGREGOR-REID, PAULINE CLEAVER AND ANDY JACKSON:

Q. Tēnā koutou i whakatakoto ai i ngā kōrero, kaupapa kōrero mō te Karauna. Kei te nui a mihi ki a koutou. Ka huri atu au ki tērā o ngā reo kia whakamārama mai te whakanekeneke o tēnei whakahaere. **Greetings. For you who presented evidence on behalf of the Crown, I want to thank you very much. I will turn to speak in English to explain the movements of these affairs.**

It is a pleasure to have you here this afternoon. I thank you for the time and effort that you have made to make – be available. I have principal questions for – for one of your witnesses, but I would like to follow up, if I could, with yourself, Ms MacGregor-Reid. I represent Ngā Kura ā Iwi. They consider a significant document, almost like a Treaty settlement, between the Ministry of Education and yourself, and just to refresh your memory, that document can be found in #A029(a) at page 157 to 166, and it's entitled, for the record, Te Kawa Whakapūmau, MOE. Are you familiar with that document?

A. [Ellen MacGregor-Reid] Kawa Whakapūmau?

Q. Yes.

A. Yes, I am familiar with the document.

Q. And you actually make reference to it, don't you, at paragraph 19.1 of your principal evidence, when you say that the partnership requires the Crown and Māori to act in good faith and with mutual respect?

Would you accept the Kawa Whakapūmau sets out that same standard as an independent bilateral agreement between Ngā Kura ā Iwi and the Ministry of Education?

A. My apologies. Which paragraph in my brief of evidence were you referring to?

Q. 19.

A. 19, thank you.

Q. 19.1.

A. Thank you.

Q. And I am summarising your evidence there. You articulate there that the partnership between the Crown and Māori requires the Crown and Māori to act in good faith and with mutual respect. Would you agree?

A. "…reasonably and honourably, with mutual respect and … shared commitment…" Yes, I would agree.

Q. And the Kawa Whakapūmau document is a bilateral agreement akin to a Treaty settlement agreement in the eyes of Ngā Kura ā Iwi between the Ministry of Education and themselves. Would you accept that?

A. I would accept that.

Q. So as a Treaty settlement, it would be something that you would honour with mutual respect, and I am sorry, responsibility to ensure that it is followed through?

A. In every way I can, yes.

Q. So why was that document, that kawenata tapu **covenant**, not engaged with before the removal of section 127(1)(d)?

A. So as I have explained in my brief of evidence and my – my opening statements, it is a constitutional principle that as a Chief Executive of a Crown Ministry – and as a Ministry, we do not act independently of Ministers, except where legislation provides for it, and in this case, where policy was being developed, legislation did not provide for me to act independently of a Minister's policy and decision-making process, and I would needed to have had permission explicitly to – to engage otherwise.

Q. Did you seek that permission, given the significance of that document in setting out, as it does – it is a constitutional framework. It is an instrument that sets a relationship expectation both of MOE and Ngā Kura ā Iwi. Did

you think to – actually think, precondition of your participation in any advice, getting that permission with the Minister so that you could have those matters discussed?

A. We regularly discuss with the Minister having open and frank discussions with Ngā Kura ā Iwi, and as you will have seen from our evidence brief, we recommended consultation with Māori which would have included Ngā Kura ā Iwi.

Q. I understand the general obligation to Māori. I am talking about the specific kawenata tapu that we are talking about, the particular special status that Ngā Kura ā Iwi possess because they are one of the few of the witnesses that – or of the claimants that are here today that have a constitutional instrument like that with yourselves –

A. They –

Q. – there may have – I would just like to finish the question – that they have a constitutional expectation that you would engage with them quite separate to all Māori.

A. They have a memorandum of understanding with the Ministry and with the Secretary for Education, and my understanding of the agreement is that we act in accordance as we are able with this document, and I have done that.

Q. You would agree that that agreement is not something frozen in time, is that correct?

A. I'm sorry, I don't understand your question.

Q. You would agree that that agreement is not something frozen in time, entered into in 2020 and it just stays at 2020?

A. Well, I think, as any memorandum of understanding between two parties, it develops and grows as the relationship develops and grows.

Q. So it is like te Tiriti itself; it is a living instrument, it's a living document, given force to by those values that we have discussed?

A. I am not a lawyer. I am not going to try and purport how this relates to te Tiriti.

Q. I am not asking as a lawyer. I am asking you as the most senior person here that enters into bilateral agreements that that is a special document

and your duty to give particular acknowledgement and impact on it, would you agree?

A. I would agree.

Q. So that is not a legal argument, that is a practical expectation arising from the nature of the relationship. Would you agree?

A. I would agree.

Q. And you did not do that. Why not?

A. I have explained why not, and it is to do with my relationship with Ministers. I'm sorry, I'm – I'm not sure I can answer that further.

Q. So you took it, if I can précis what you have said to me, that because the Minister had said there would be no engagement with all Māori, you decided a third-party entity that you had a special relationship fell within the rubric of "all Māori" and would have been – would not be engaged with?

A. Under the conventions I operate in in the public service, that is correct.

Q. Can I go to paragraph 18 of your brief of evidence?

WITNESS REFERRED TO #A042 PARA 18

Q. You acknowledge there that Crown Treaty duties in education are "signficant and enduring" and persist "irrespective of their precise expression". See that there?

A. [Ellen MacGregor-Reid] Just give me one second. Sorry, someone else's brief got muddled with mine. Paragraph 18?

Q. Yes. And I will just repeat the question for you. You acknowledge that the Crown Treaty duties in education are "signficant and enduring" and persist "irrespective of their precise expression"?

A. Yes, that's what's written there.

Q. Are you familiar with any conceptual understandings of things with – between Māori and the Ministry of Education, based on Māori terms? Are you familiar with things like kawenata, kupu mana, sacred covenants?

A. I'm aware of kawenata. I know we have kawenata and I have regular meetings with those partners.

Q. Did you hear the evidence this morning from Mr Ohia about how he was so disappointed that that enduring expectation that he had of that relationship was ignored, effectively?

A. I heard Mr Ohia's –

Q. What did you think when he said that?

A. I also heard Mr Ohia noting the endeavours that both parties go to –

Q. That is not answering my question. What did you think of what he said when he felt that he had – that a relationship had been ignored?

A. Well, I thought that's a conversation Mr Ohia and I need to have so that I can better understand –

Q. So you didn't understand his feeling of disappointment that this idea of enduring relationship was not maintained during this critical period?

A. I understand his feeling. I understand his perspective. I would like to further understand from Mr Ohia what more he was looking for us to do to give honour to that relationship.

Q. So Mr Ohia said, because of that breakdown, that is why he initiated legal proceedings and became part of that. Are you aware of how often Ngā Kura ā Iwi have ever been engaged in legal proceedings to protect their status as one of the single groups that prepared or have emerged as significant leaders in advancing mātauranga Māori and ensuring te reo me ngā mātauranga Māori **language and Māori knowledge** are created as a framework for the future generations of this country?

A. I am not aware of them having entered legal proceedings.

Q. In tikanga? Do you accept that tikanga is a law?

MR WATSON:

That might be a question that's for the lawyers, your Honour, not for the witness.

MS SYKES:

Well, I am going to explore it further. I am just asking, does she accept that tikanga is law?

MR WATSON:

And again, I have to say the status of tikanga in law is for the lawyers, in my submission, and for the panel and the lawyers –

(14:31) MS SYKES TO ELLEN MACGREGOR-REID, PAULINE CLEAVER AND ANDY JACKSON: (CONTINUES)

Q. So I will rephrase the question. How does tikanga inform your work?

A. [Ellen MacGregor-Reid] We endeavour to have respectful, open relationships with Ngā Kura ā Iwi and with other Māori partners. We endeavour to be as transparent as we are able to be within both our codes of conduct and our constitutional bounds as a public service, and we look to give expression to that where we are able.

Q. Would you understand the public service requirement of stewardship to include an obligation to protect tikanga in the way you operate?

A. My understanding is that where we are able to express tikanga in the way that I have – I have expressed, that we should do so, but I'm also aware of the other obligations I have to the Crown to maintain confidentiality and respect the decision-making of Ministers of state.

Q. Can I go to paragraph 39.2 of the same document, which is #A032 [*sic*: #A042], for the record –

WITNESS REFERRED TO #A042 PARA 39.2

Q. – and in that paragraph, you attribute the Treaty references review to a coalition commitment to review legislation referencing the principles of the Treaty of Waitangi, but section 4 of the Education and Training Act references to Te Tiriti o Waitangi directly, not the principles, is that correct?

A. I think Mr Jackson has said he can answer that fully.

Q. I am asking you. It is in your brief –

A. No, that's absolutely fine –

Q. I will ask him a similar question, but if you are going to put things in your brief –

A. No, I'm – I'm –

Q. – it would be within your personal knowledge, I would expect.

A. I'm – I'm absolutely happy to answer –

Q. If I can finish my question, then you can answer.

A. Yes.

Q. So I would expect matters in your brief – no one else wrote your brief, you would have written your brief, that's correct, isn't it?

A. That is correct.

Q. So anything in your brief, you would have your own personal knowledge about that?

A. Yes, I do.

Q. So you said that at that paragraph, didn't you?

A. Yes, I did.

Q. And so I am saying that section 4 of the Education and Training Act references Te Tiriti o Waitangi directly, not the principles, doesn't it?

A. Yes, it does.

Q. And that is one of the current provisions that Mr – or your counsel, actually, dropped on this inquiry late last night with further information this morning, isn't it? Those provisions are under review.

A. I would need to check that, but I think they are, if I might reference the papers that were provided last night.

Q. So you haven't read those documents over?

A. I have read those documents. My apologies. Just keeping all of the numbers front and centre of my head. Just if you give me one moment, if that is okay. I just want to make sure I get it right.

MS SYKES:

And Ma'am, I am in a difficulty. I am using the unnumbered versions, but my – at page 69 and at pages 37, there were some discussions earlier about those provisions. 36 sets it out in much more detail.

(14:34) MS SYKES TO ELLEN MACGREGOR-REID, PAULINE CLEAVER AND ANDY JACKSON: (CONTINUES)

A. [Ellen MacGregor-Reid] Yes, it is included in this bundle.

Q. So I am struggling in – overnight, and this isn't a trick question – on what basis was the section 127(1)(d) brought within the scope of the Treaty references review?

A. Minister Stanford wrote to Minister Goldsmith, and I have a copy of the letter in my pack. I can give you the exact date. Okay. Minister Stanford wrote to Minister Goldsmith – in the interests of time, I won't find the exact letter and date – seeking his agreement to include consideration of

section 127(d) in the Treaty references bill. That's how it came into scope. Is that the correct letter?

Q. So it was initiated by your Minister. It was – wasn't something initiated by other members of Cabinet. Is that correct?

A. The Treaty references work was underway, and –

Q. But –

A. I'm just – I'm answering, sorry.

Q. Yes, but that letter – I just want a yes or no answer – was initiated by the Minister.

A. But she was seeking his confirmation that it was within scope. She was checking.

Q. So she was initiating that enquiry. He didn't ask that of her.

A. She was seeking his confirmation that section 127 was in scope of his Treaty clause review.

Q. Okay. Those are the only questions I have for you, because I am really going to focus on another witness, but Mr Jackson, I do have a couple of questions for you. Can we please start with a general question? Are you familiar with the Crown Entities Act?

A. [Andy Jackson] Yes.

Q. And are you familiar – familiar with the inter-relationship between the Crown Entities Act 2004 and the Education and Training Act 2020?

A. Yes.

Q. And school boards were under the 2004 Act **(inaudible 14:37:12)** a Crown entity, weren't they?

A. Yes, school boards are a Crown entity.

Q. So, in your evidence today, you suggested – well, it was ambiguous to me – I just want to be really clear that school boards are Crown entities, aren't they?

A. Yes, they are, and I have not suggested otherwise.

Q. And they have a particular responsibility, directed by virtue of the Education and Training Act, to undertake a range of functions, and those are set out in your earlier discussion that you had with my friend at pages 36, 37 and 69 of the documents you took me to.

A. School boards' duties under the Crown Entities Act or under their status as Crown entities are set out both in the Crown Entities Act and in the Education and Training Act, and I believe there is a schedule to the Crown Entities Act which explains precisely how that interaction occurs. There are many duties of school boards contained in the Education and Training Act. Not all of them are in section 127.

The document that I was referring to earlier, which is the report of the Treaty references advisory group, refers to a broad range of parts of the Education and Training Act. Not all of them relate to school boards. The specific duty of a school board under section 127(d) is discussed in the most detail on page 42 or 57 of that document.

Q. And while they might be standalone entities, they are controlled by virtue of the legislation for function and form, aren't they?

A. Largely, but you may wish to refer to section 131 of the Education and Training Act 2020, which also sets out that they have independence of decision-making where not otherwise specified in legislation.

Q. I think we are getting into legal terrain, but there is actually some law that suggests that the control of the development of those outputs also places responsibilities in the stewardship context relating to Crown responsibilities in terms of the implementation of policy and directions in that regard.

A. You would have to be much more specific. I think I'd need to refer that to Crown counsel.

Q. I'm not sure – that's a decision of the Supreme Court.

MR WATSON:

We might have taken that line as far as we can **(inaudible 14:39:35)**

MS SYKES:

I did – yes, he asked for further clarification.

MR WATSON:

Thank you **(inaudible 14:39:39)**

MR SYKES:

But that's a matter of legal submission, would you accept?

MR WATSON:

I think that is for me to answer, and that is – that is a matter of submission.

MS SYKES:

So he would accept that? Because he was making submissions, I think, or evidence earlier that suggested that he had quite a significant legal knowledge of these matters.

MR WATSON:

We might have taken this line as far as we can.

MS SYKES:

I just want to test the extent of his knowledge, because he seems to be able to comment in one stage that this Act says that it is a standalone position, and at other times he's resiling from what that might mean in practice. I am not talking in legal terms.

MR WATSON:

Grateful for that explanation, and I do not want to interrupt again, but I think when a case has been put to the witness, regardless of the preceding conversation, we – we have entered the realm of submission, and that the question, in my – in my submission, for that reason, can't be put to the witness.

(14:40) MS SYKES TO ELLEN MACGREGOR-REID, PAULINE CLEAVER AND ANDY JACKSON: (CONTINUES)

Q. I will move on. It is nothing that I am going to drop dead on. But I do want to look at some of the concessions you have made in your evidence. At paragraph 38 of your brief of evidence #A043 –

WITNESS REFERRED TO #A043 PARA 38

Q. – you concede that removal of section 127(1)(d) occurred late in the passage of the Bill, with no engagement with Māori prior to the amendment. Can you see that?

A. [Andy Jackson] Sorry, could you refer me to the document and paragraph number again, please?

Q. #A043. #A043 and paragraph 38, and I have précised that paragraph to say that you have conceded that removal occurred late in the passage of the Bill, with no engagement with Māori prior to the amendment. What do you mean by "Māori" in that context?

A. Yes, that is what that paragraph says, and by "Māori", I am referring broadly to Māori people, kaupapa Māori organisations, Treaty partners.

Q. The one million Māori in this country?

A. Is that a question?

Q. You are referring to the one million Māori who claim Māori descent in this country?

A. Ms Sykes, I think that paragraph speaks for itself.

Q. Okay. Can you point to any step the Crown took to notify Ngā Kura ā Iwi or any hapū or iwi before Cabinet agreed on the 15th of October 2025 of a – of the change that might be coming?

A. No, I can't.

Q. So you didn't – even though you didn't consult specifically on that removal, you did not actually talk to them about anything, of any changes that were likely as a result of the new government?

A. So this refers to the Crown's decision made at Cabinet, and no, as we have commented already on multiple occasions, there was no consultation or engagement prior to that decision being made.

Q. At – your officials specifically advised Ministers not to proceed without Māori engagement, though, isn't it? That was your full and frank advice?

A. That's one element of our full and frank advice, yes.

Q. What's the other one?

A. Well, I refer you to the paper of the 17th of September which contains a considerable breadth of advice, including but not limited to the statement you have just made.

Q. And you set out in that paper, didn't you, the consequences of that would be quite significant?

A. That's the case, yes.

Q. How did you inform yourself of that?

A. I think I refer you to the answer I gave to Mrs Tipene earlier. These papers are not produced in a vacuum. They are based on a considerable amount of knowledge and experience and established frameworks in relation to te Tiriti, and experience of previous Tribunal claims, and so I think it was clear to us what the consequences would be.

Q. So if I can go to paragraph 48, you note a post-implementation review was directed. You see that in the same document?

A. That's correct.

Q. But the Cabinet paper you cite confirms, at paragraph 28, not paragraph 19 as you state, that no RIS was prepared.

A. Yes, so a regulatory impact statement is traditionally prepared with any Cabinet paper that has regulatory implications. Where no such statement can be prepared in the time available, then the alternative is to produce a post-implementation review.

Q. But given the significant constitutional dimension of this, why was not a RIS prepared?

A. Ms MacGregor-Reid has already answered that question.

Q. I am asking you.

A. Because there was not time to produce such a document, given the expectation that we went to Cabinet on the 15th of October.

Q. Are you able to help me? While a draft RIS document – this is in our statement of claim – was prepared in April, it was not actually made – or revealed to people 'til November. Can you explain to that delay?

A. Could you direct me to the document you are referring to, please?

Q. The RIS document at – it is at paragraph 48 that you are talking to.

A. I'm sorry, that paragraph does not refer to a regulatory impact statement.

Q. So the Cabinet paper – sorry, the Cabinet paper you cite confirms at paragraph 28, so that is the Cabinet paper we got yesterday.

A. Sorry, so, could you repeat the specific question? Because you referred to paragraph 48 and paragraph 28, and I think we may be talking about two different documents.

Q. So, it is your paragraph 48.

A. Yes.

Q. It mentions that it was paragraph 19, not paragraph 28, of the Cabinet paper. I am just getting it clarified right.

A. Paragraph 48 of my brief of evidence reads as follows:

> Cabinet directed officials to undertake a Post-Implementation Review of the section 127 changes, with agreement on the nature and timing of this to be jointly agreed by the Minister of Education, the Minister for Māori Development, and the Minister for Regulation. Education officials have had initial discussions with Ministry for Regulation officials, but the review has not yet commenced, as it is too early, after just one term of the school year to date.

So I'm not sure quite what question you're asking me about that paragraph.

Q. Okay, I will move on from that.

My last question for you is that the amendment paper, 428, was tabled just 19 days at a Committee of the Whole. Is that correct? And that I am relying on is evidence that was given yesterday from an oral testimony, and it is also mentioned in several of the NZEI briefs.

A. Yes. The amendment paper was introduced into the House as per standing orders. I believe it was published and distributed to members of Parliament approximately 24 hours beforehand, as is customary.

Q. So the mechanism that was used to introduce it, though, is Committee of the Whole, which forecloses public submissions. Is that correct?

A. I think you're aware of how Parliamentary process works, yes, that's correct.

Q. But I – it is such a significant issue. It was actually a foreclosure to any submission because it was used through that process rather than other processes that were available to the Crown.

A. I am happy to confirm that the issue was introduced into the legislation at the Committee of the Whole House.

Q. In the last of that series, that – what I am exploring here – I actually – if you are going to talk to each other – I am not too sure if I want you sharing information.

A. [Ellen MacGregor-Reid] Apologies. I said that I don't think he meant that he was happy about it.

Q. So if you are going to respond to a question, rather than talking to each other, because I wonder sometimes what you are whispering about, giving each other answers, so I am not suggesting that, that you actually do what you have just done rather than collaborate between yourselves as to what might be an appropriate answer.

So the Cabinet paper says that the purpose of Amendment Paper 428 was to reduce duplication of process. Can you help me what that was – duplication of process that was **(inaudible 14:49:03)**?

A. [Andy Jackson] Sorry, can you refer me to the document and paragraph, please?

Q. So we are at the evidence of Mills, Moss and Walsh, which is NZEI Wai 3503.

A. Yes.

Q. Have you got that document? And you would have heard in testimony yesterday – you were here yesterday?

A. Yes, and yes.

Q. And they mentioned this yesterday. Do you – do you remember that?

A. Yes.

Q. So I am trying to understand, why did it happen that way, and can you help me?

A. So –

Q. You say it was to reduce duplication of process.

A. Can you refer me to the paragraph of this brief – the brief of evidence, please?

Q. Hang on. There is so much paper here. So, it is document #A045, and there were speaking notes, Ma'am, that were put on the record, which we have not got numbers to, that refer specifically to this. They have not

been distributed to you. We are relying on, because of the speed of the process, the oral testimony yesterday and that general brief, and if you heard that yesterday, I am sure you did – well, first of all, did you hear that?

A. Yes, but I think it might help for me to answer your question, maybe, if it's not contained in any of the documentation, if you could just ask me the question directly.

Q. It is not contained in that document, but it is contained in the speaking notes that they gave yesterday, it was part of the oral testimony yesterday, and it is also referenced in their reply, so there are three places of that.

A. I'm sorry, Ms Sykes. I no longer know what question I'm expected to answer.

Q. So you are asking –

A. Could you repeat the question to me, please?

Q. So what I was asking is: the Cabinet paper states the purpose of the amendment was to reduce duplication of process, and the question is: Can you identify what specific consultation process on the wholesale removal of te Tiriti objectives would have been duplicated? I shortened that question earlier.

A. Thank you, that's very clear. It would help if you could refer me to the specific paragraph of the Cabinet paper that you just cited that uses that expression.

Q. I am referring to the evidence from my clients to justify that **(inaudible 14:51:30)**

A. Okay. So –

Q. If you want that in writing, I can do that later.

A. No, no, it's okay. I'm quite happy to deal with this verbally. You've stated to me that the Cabinet paper says the purpose is to reduce duplication of process, and I am looking for that in the Cabinet paper.

You're referring, I assume, to paragraph 4.

Q. Yes.

A. Is that correct? Yes.

Q. Yes. Yes.

A. So the question is…?

Q. What – so what is the process that you are trying to avoid from being duplicated in that – in the way that that paper 428 was introduced? So there is a suggestion we are duplicating process, so what is being duplicated? What is the fear of something to be duplicate? And I am struggling, because there has been no engagement, there was never any engagement designed to occur, there was never any opportunity or forewarning, particularly to Ngā Kura ā Iwi, about these matters, so what was the actual duplication of process that was being of concern?

A. Right, I can – I can answer that question. I'm sorry that took me a minute. I was quite confused by the various questions I had been asked.

The process that the Minister is referring to in this paper is the fact that the Education and Training Amendment Bill No. 2, which had been introduced earlier that year, had a number of changes to section 127 already contained within it. Sorry, is that – yes?

Q. Yes.

A. And therefore that the process that would be duplicated would be then introducing a further bill to further amend section 127.

Q. And my last question on – just to tidy up: Why was the speed so necessary, given that you had had a 2020 Amendment, you had had significant engagement, you had a trade – a change in government, with clearly, parameters of policy in their hundred days policy that was contemplated. What was the urgency at that time to introduce that – that particular paper?

A. As we've already said, Ministers considered that it was urgent to complete the work of changing the Treaty references in the Education and Training Act.

Q. And the Ministers you are referring to was Ms Stanford and whom?

A. I'm referring to the Cabinet.

Q. Thank you. Now, I want to go to the main witness that I want to ask questions of, and if I could ask you to please go to your principal brief of evidence that was made available, and that is document #A044, and I am asking you to look at three paragraphs, 7, 8, and 14, but I want to start at paragraph 64. Refresh your memory of 7, 8 and 14 –

HOUSEKEEPING – TIMETABLING (14:55:05)

HEARING ADJOURNS: 2.55 PM

HEARING RESUMES: 3.16 PM

(15:16) MS SYKES TO ELLEN MACGREGOR-REID, PAULINE CLEAVER AND ANDY JACKSON: (CONTINUES)

Q. Before the afternoon adjournment, we were at paragraph 64, but I had asked you to refresh your memory about paragraphs 7, 18 and 14. You accept at paragraph 64 that students learn best where their identity and knowledge are valued. You also acknowledge at paragraphs 7, 8 and 14 that Māori students are disproportionately affected by achievement gaps. How does reducing culturally responsive content in the curriculum address that acknowledged causal link?

A. [Pauline Cleaver] So, in the framework, Te Mātaiaho, we have taken care to make sure that we haven't removed the requirement for teachers to use culturally responsive practices or culturally sustaining practices.

We are clear that students do need to feel that sense of belonging. They need to be engaged in learning that is – that comes from a place in – of the community, the whānau, the area that they come from, and that that contextualisation is a way of ensuring Māori and other students stay engaged in the learning process.

You cannot look at the individual learning areas in Mātaiaho in isolation. You need to see them in relation to the requirements of Mātaioho, that is, the teaching practices, those evidence-based practices that ensure our young people – our teachers are using the techniques that will help young people on their learning journey and in Mātaiahikā, and that is about ensuring that the contextualisation and those educationally powerful connections and relationships with whānau, communities, iwi and hapū are able to take place.

Q. So if I go to your appendix C, and it's a bit tiny, it's at page 14 of appendix C, you show that in year 4, te Tiriti is taught from four Pākehā perspectives and one rangatira perspective. Who determined that

weighting, and does the Crown consider a four-to-one ratio of Pākehā to Māori voices a balance for a te Tiriti-consistent approach to teaching its founding constitutional document?

You have got appendix C to your brief? It is at page 14 of that, year 4, in appendix – we are using – a lot of questions – I am not – I am cherry-picking questions around the table, but they are really exploring the earlier points.

So it shows that in year 4, te Tiriti is taught from four Pākehā perspectives and one rangatira perspective. Who determined that weighting, and does the Crown consider a four-to-one ratio of Pākehā to Māori voices a balance for a te Tiriti-consistent approach to teaching its founding constitutional document?

A. So, this content was pulled through – through from previous iterations of Aotearoa New Zealand Histories. We had internal writers and review with history and social science experts from the sector. We have produced this draft for consultation so that people can talk to us about the things that you are raising, whether or not we have represented the important learning in – in the right proportions.

Q. But if we go back to 1840, the dominant population numbers were Māori. There would have been five-to-one Māori, so why aren't we having a weighting of five to one in terms of the rangatira perspectives to one Pākehā? If we are going back to 1840 as to when the knowledge base and the understandings affected there would be given some weight in the transmission of knowledge, so I am wanting to know what – how did you form this four to one, opposite to Māori, in that context?

HOUSEKEEPING – DOCUMENT VISIBILITY (15:20:50)

(15:21) MS SYKES TO ELLEN MACGREGOR-REID, PAULINE CLEAVER AND ANDY JACKSON: (CONTINUES)

Q. I am just wondering, how did you come to that weighting?

A. I don't think there was a deliberate intent to look at the weighting. I think that is – would be fair to say. I think we were trying to articulate the specific knowledge and practices that we thought young – we wanted to

be clear about what we thought students should know and be able to do in the curriculum.

Q. Another matter that jumped out at me from appendix C is that the draft history curriculum does not introduce te Tiriti until year 3. On what evidence base or Treaty principle base was the decision made not to introduce it until year 3?

A. Educationally, we made the decision that introducing formal learning about te Tiriti at year 3 was about right. We – we know that young people start learning about historical events, about place and events, when it is localised and indirectly about them and their immediate surroundings and the immediate people that they work with, so introducing te Tiriti as a topic – and I think we heard some of this yesterday – was brought in later and reflects the developmental stages of young people.

Q. When you say "we", who was "we"? You have used it a couple of times in your answers.

A. Sorry, as I said, we had internal writing groups in the Ministry who were writing the content. They were assisted with sector – people from the sector, either as contributors or having inputs into the framing of – of the content.

Q. Who were they, though? Who were they? Were – Treaty experts? I mean, this is really important in terms of the context –

A. Yes. Yes.

Q. – so who were they? Were they people knowledgeable on the Treaty? I mean, we have had several witnesses. Some got very passionate about it, and two of mine did. I don't want to go down that track. We can't ignore that passion. They wanted to know who determined these decisions.

A. Well, ultimately, the decisions of what's inside the draft for consultation was decided with the Minister that it – that this is the draft we would put out for consultation. To get to that point, we – we were pulling on a range of input we had had over a long period of time, with historians, Treaty experts, sector leaders, and then, more recently, those historians and practitioners who were able to help us pull through, because we had had this content from 2023 and from 2019 –

Q. So can I pause there? You had people telling you in 2019 and 2020 to do things quite a different way than people were telling you in 2023, so you had a continuum, yes, but you had a quite clear reverse track. If we heard the evidence, I don't want to go through it, but you heard it, there were several that passionate about this. So who made that decision to rebalance it that way?

A. So, in the 2023 iteration of Aotearoa New Zealand Histories, when it was brought into the social sciences learning area, you will note in that appendix and in the table that we had quite a high-level curriculum requirement around what was taught in Aotearoa New Zealand Histories. It was supplemented with a lot of examples of topics that teachers could choose to work from. In this version, being a knowledge-rich curriculum, part of the design is trying to pull through things that shouldn't be left to chance, so not in guidance and not in examples, into – into the required taught curriculum.

Now, that means we have to work with people to make choices to make that curriculum still manageable and teachable, and one of the important reasons we are consulting so broadly now on the draft curriculum, Aotearoa Histories and its place within social sciences learning area, is so that we can be sure we have identified the content that people agree is most significant nationally.

Q. But – but if you go to paragraph 55, because my question is really simple, "Who did it?", you say – you confirm at paragraph 55 that final content decisions are made by the Ministry, so you had all this advice –

A. Yes.

Q. – so the weighting would have been made by you, wouldn't it?

A. Ultimately by me as a recommendation to the Minister.

Q. Can you identify by name the individuals who authored the sixth draft knowledge-rich curricula, social sciences, science, health and PE, technology, languages and arts?

A. (inaudible 15:26:42)

Q. Was it all just you?

A. Kia ora. I don't mean to make light of that comment. The thought that I could write all of that and get through it does seem a massive endeavour.

However, I had general managers who were responsible for the writing of curriculum, and they have Ministry teams of writers. Those writers are practitioners who come straight out of classrooms and have subject matter expertise for the learning area they're working in, so, in social sciences or technology or science, and the general manager is responsible for working with them and getting input from the stakeholders that we are working with in terms of either drafting or reviewing the content that comes through for recommendation.

Q. Can – can I move to another question which is relevant to this knowledge-rich curriculum? At paragraph – it's 85, but you have got to look at 17 and 42, your brief is kind of – justifies certain conclusory outcomes by earlier references, so if we go to paragraph 85, you will confirm you are saying local mātauranga is optional, is that correct? But you say at 17 and 42, the knowledge-rich curriculum provides clarity. So this is my question: How is a curriculum that leaves Māori knowledge to individual school discretion clearer than one that required it?

A. My apologies, Ms Sykes, can you please repeat the question?

Q. Certainly. So, at 85, you say local mātauranga is optional. It is the last three lines. "There is still content…", it starts, but, "…may choose to include local mātauranga in their teaching and learning programmes as part of [that]", so that is optional, would you accept that?

But at 17 at 42, you describe the knowledge-rich curriculum as providing clarity, and my question is this: How is a curriculum that leaves Māori knowledge to individual school discretion clearer than one that required it?

A. I think it's taking – it's not an either-or, what the – the design of the curriculum is endeavouring to do is to make sure that the national curriculum is specific and clear about the knowledge we would expect all tamariki Māori and others to learn irrespective of the school and the classroom that they are in and the progression of that learning is clear and specific as well, but it doesn't take away from the fact, as I said earlier, that we want to create and leave space in the curriculum so that local mātauranga and histories, those things that are important to local

communities, hapū and iwi, have space in the local learning and teaching programmes.

Q. And you heard that Ngā Kura ā Iwi saw that as really a response of a decorative kind. It was an appendage, not centring. In the language of one of the witnesses, "We are weaving the fabric, not using the threads." Would you like to comment about that criticism of that approach?

A. I think it's a matter of – a matter of a school community and – and the character of the school to be able to still make some of those choices, which is why the design of the curriculum in this knowledge-based framing tries to be clear and specific about the knowledge and practices, so the things we would expect all young people to be able to know, understand and do as a progress through the curriculum, irrespective of where they attend school or kura, will be having that opportunity to learn through and from.

Q. But you would have heard the criticism went further than what I have just said. They said that the rebalancing of the curriculum does not sit in isolation. We have got the added factors now of the removal of section 127(1)(d), the downgrading of te reo Māori to an encouraged learning area, and reduced Treaty reporting obligations, so – and I think this morning, Mr Ohia said a number of other things around – that he was concerned about that were moving backwards from centring mātauranga Māori, and – and you would agree Ngā Kura ā Iwi, successful outcomes, one of the highest success rates, his kura's got 98 per cent success rate – you would accept that that is what they are aiming for?

A. I accept that, and I think Ms MacGregor-Reid commented in her opening statement that we acknowledge and celebrate the success Ngā Kura ā Iwi's kura and tamariki experience in those settings.

Q. So would you accept, then, that the criticism that a number of witnesses – I have used Mr Ohia, because he is a bit the opposite of like me, ngāwari **easy-going**, calm, wairua, speaks with an intellectual resonance that goes through the **(inaudible 15:32:19)** –

A. I'm finding you that way.

Q. – whereas I tend to be a bit more energetic and kind of waving things around – but you would accept that when these changes are reviewed

together, the cumulative effect is a systemic reduction, isn't it, in the visibility and priority of Māori perspectives in the education systems? And in your answer, I would like you to think about the weighting of four perspectives to a rangatira perspective and all those other cumulative aspects that are being reduced as we speak.

A. Thank you for – for that reflection. I – I don't think it's my perspective entirely to agree with – with that view. We have worked hard, and as I said, if we look at Te Mātaiaho and we be clear about the fact that we are, for the first time, requiring that full framework to be something that schools need to deliver on, being clear about those practices, those culturally sustainable practices, the use and contextualisation of learning that is relevant for the young people in that school or kura, and 'ahikā, where we are clear about the importance of place and people and connection to the learning process, then we are as – in – in that framework, making it clear to principals, boards and teachers how teaching works best for its young people and how to incorporate those practices to bring the knowledge, the understanding, and those capabilities inside different learning areas together in really rich learning experiences for all our young people, particularly Māori.

Q. Can't resist going to Mātaiaho, because you talk about Dr Wayne Ngata a lot in that. Why did he leave that group?

A. Which group are you referring to? My apologies. Dr Wayne Ngata has been on several groups working in – in the space. I just –

Q. You state at paragraph 60 that Dr Wayne Ngata expressed a view that the framework was flexible and could be adjusted, but he left the group. Why – why did he leave the group after you saying he said that?

A. The group had wound up and was not being currently used as part of the codesign process in the curriculum refresh – refresh, and we kept in contact with Dr Wayne Ngata as we progressed our thinking and evolution of Te Mātaiaho as an enduring framework for the New Zealand Curriculum. We wanted to do that, even though some of the design principles around moving to – into a more knowledge-rich framework for teaching and learning – because we wanted to make sure we stayed clear with ourselves and for teachers and communities the importance of those

practices and ways, the "how" of teaching and learning, that Mātaiaho sets out so clearly.

DR PAUL HAMER:

Could I just – just interrupt again, sorry, for a second? This is different to the question I put earlier to Ripeka Lessels about Mr Ngata's resignation – is it Dr Ngata? – his – Dr Ngata's resignation –

PAULINE CLEAVER:

From the MAG.

DR PAUL HAMER:

– from the Māori education ministerial advisory group.

PAULINE CLEAVER:

Yes, and I cannot speak to that reason, because I wasn't part of that process.

(15:36) MS SYKES TO ELLEN MACGREGOR-REID, PAULINE CLEAVER AND ANDY JACKSON: (CONTINUES)

Q. So that is what I am trying to clarify. What – so he is – he is there, certainly, in the 2020 period and the 2023. Was he shown any of the changes to Mātaiaho that we are talking about today?

A. Yes –

Q. When?

A. – Dr Julia Novak talked to him and showed him changes iteratively as we were finalising the draft of Te Mātaiaho. It would be fair to say that Dr Ngata was clear with us that he had gifted this framework and he expected us in that gifting to take ownership of that framework, to take care of that framework, and he – he did not provide any feedback to say that he didn't think we were keeping with the intent of the framework as – as we came through to the conclusion for – for this draft to – to be out for consultation.

Q. So he was contacted post- the decision to remove te Tiriti clause? Because I think you are actually conflating things. He was actually

involved from ’20 to ’24. He wasn’t actually involved in the significant changes that I have taken you to at all. If I need to, I will get a reply affidavit from him. People have contacted him about this.

A. Sorry, I’m just looking –

Q. He confirmed he was not contacted post-2024.

A. I have – okay, well, my understanding and the fact – what I know is that the general manager at the time, Dr Julia Novak, did make contact with him on – on at least two occasions.

Q. And what year are we talking about of those two occasions?

A. That would be last year; 2025 was the latest contact made.

Q. So in what period – the first quarter, or the end quarter…?

A. The last time contact was made was at the – was towards the end of 2025, before we put the consultation out for consultation – sorry, the draft out for consultation.

Q. Is he subject to an NDA? Because I am going to move to secrecy and NDAs. Is he subject to an NDA that would prevent him from giving evidence here?

A. Not to my knowledge.

Q. So can I go to top of the page 3 of today’s presentation, not that document?

WITNESS REFERRED TO #A044(C), PAGE 3

And, “There has been discussion about the use of NDAs with people working with [you] during this period. NDAs are something we use from time to time, and have used in the past as well not just in the recent period. But it is true we have made significantly more use of them, and withheld names under the OIA.” This is the alarming thing for me, and I would just like some clarification. “This has been to protect these people. This came about because so much has been discussed and made public in the media that we had examples of people being verbally attacked when going about their lives...” Do we actually have evidence of that? Was that just hearsay?

A. That was one of my staff members who reported that to her – her manager at the time.

Q. So because of one staff member, all Māori are now asked for NDAs?

A. No, that's not correct. I don't want to give that implication. We had a number of instances where once – when we first published names, and we did, to start with – that those people were subject to a lot of online criticism and abuse. We then were struggling to find people that would want to engage in the process if they were named, because they were nervous about how – how others would respond to them. Just recently, for – for example, we are about to consult on the first of the phase 5 subjects, so that is our senior secondary subjects, and we – we were meeting with the PPTA the other day to talk about the importance of the fact that these teachers who have been working on the curriculum are quite nervous about how people will respond to them, once the content is released. So it wasn't on the basis of one staff member, and it was a real and – and quite traumatising experience for the people involved.

Q. Did you – did you make complaints to NetSafe? Did you actually make criminal complaints to follow through? Because that is what happens in a number of committees I have had, because in the Māori world, it is volatile, but did you actually take that step?

A. I do not wish to imply here that it was Māori who were –

Q. No, no, I am not saying –

A. – undertaking it. I just want to clarify for myself that no one here thinks I was saying this was an issue with Māori abusing others or that Māori were being targeted. This was just a general experience of others.

I have to say, Ms Sykes, no, at the time, no complaint was taken – taken through the processes that you've asked about.

Q. And you would have heard the evidence of Associate Professor yesterday, Bevan Holloway, and again today, that this is quite a departure from the – the other kinds of engagement sharing of information that have occurred. You know, the writing team that drafted the Aotearoa New Zealand Histories curriculum were named on the website, so there was open, transparent understanding of who was participating. Quite different now, isn't it?

A. Yes, as I've said, it is quite a different process that we have undertook. We did start by publishing names, as I said. It – it resulted in the kinds of experience that people had, and we chose to use the NDA route. We are

trying not to use that going forward. We understand the importance of transparency and the ability to stand behind the work, so we – we are learning from that experience. It was a reaction at a time. It made people who were involved in the process feel a sense of security, but it is not an enduring and – enduring way for us to practice, going forward.

Q. I wish we had known that, because of course, one of our witnesses admitted today that she could not participate in these proceedings because she felt bound by the NDA. Did you hear her give evidence this morning?

A. I did, and it – it – I noted how she felt about that. I've had lots of discussions with this – with sector leaders about the importance of transparency and the importance of people being able to talk to other members, other colleagues about the work they're doing when they're engaged in these writing processes, and we are – we are and have endeavoured to improve the way we're applying the NDA so that people –

Q. Did you –

A. – can have those important conversations.

Q. Of course, choice seems to me an important part of the current framework. Did you consider you could have a choice to need an NDA or not? You could actually have the choice, individually, to decide whether you needed the protection of an NDA to avoid what you are saying is the likelihood of attack.

A. Hindsight is a – is a good – a good thing, but what I would say, and – and you did hear this yesterday – most people were happy to sign, as they articulated it to us, however, when they were in the process, they found it frustrating not to be able to share and – and discuss some of the things that they were developing, and that feedback came through, which is what you were saying. However, we also didn't decline any member, just as we didn't with the witness we heard yesterday, we didn't turn anyone down because they wouldn't sign, and we – I don't think we would have. We would have had to work through the basis of – of them being involved, though.

Q. And I – I just – is there a difference between consultation, seeking advice, acting as a paid advisor, in the way that these NDAs are being constructed?

A. It would be fair to say that originally, I think it was a more blanket use that – that applied across – across those various roles. It is one of the things that we – that's where they talk about – that we are seeking to improve and do differently, is to take some differentiation to that. Of course, you know, we also need to work and – and take into account the feelings of those people who are – are wanting to work in this space with us.

Q. One of the things you raised in your oral testimony which is I also think mentioned in your brief is "the science of learning". What is that?

A. The science of learning brings together a body of research and evidence about how learning happens in – it brings together different bodies of learning research and evidence. It includes the cognitive processes of learning, the social, the emotional and cultural aspects that are part of the learning process and are evidence on how young people learn best.

Q. So given that there is a duality of mātauranga, can there be sciences of learning?

A. I assume so, but we are – when we talk about the science of learning in this – in this curriculum context, we have been clear that we are talking about the body of evidence that refers to those learning approaches and evidences that I just outlined.

Q. So it is really a Western educational psychological perspective, isn't it, it is not one that is inclusive of mātauranga Māori about taiao **environment**, whakapapa, which is a significant aspect of the marautanga of Ngā Kura ā Iwi?

A. In working with the – the evidence related to the science of learning and considering the place of mātauranga Māori, te ao Māori, tikanga, it is evident that there are a lot of synergies, and one doesn't replace – that's not saying one doesn't replace the other, but it is important to note that those social and emotional and cultural aspects of the learning process, ako, as an example, are really – really important approaches that still are akin to what we describe as the science of learning.

Q. Have to take you to the 2025 framework which was introduced by Elizabeth Rata's Curriculum Design Coherence Model, without attribution. It was identified by one of our witnesses, Jessie Moss, as a structurally – as a structural matter. Can you confirm whether that was the model that is being used or is in the background as the foundational understanding of what – of this approach? And if so, why was it not disclosed, in any of the papers, to us?

A. My apologies, Ms Sykes, I am – I need you to call out the – the document that you are referring to again.

Q. It is – it is the framework '25, which was introduced by Elizabeth Rata, and I heard the evidence today of one of you that she was only engaged for four months, is that correct?

A. That is correct.

Q. Okay. And she – and it was identified by one of our witnesses, Jessie Moss, you might have heard her yesterday –

A. Yes.

Q. – she spoke about this –

A. Yes.

Q. – as being a – as structurally present in the 2025 NZC, but not acknowledged as Rata's work. Is it Rata's work?

A. No.

Q. Whose work is it?

A. It is the work of the Ministry's writing team for the English learning area.

Q. But it is that work that is going to be used as a significant central approach for both Western sources of knowledge and tikanga or mātauranga Māori sources of knowledge.

A. I think you will see between the example framework that Rata produced and what we have finalised as the English learning area, we have made sure to reflect te reo, te ao Māori and tikanga as it's appropriate, including learning of te reo sounds in very young people and ensuring students are exposed and have the opportunity to learn about texts from Māori and other New Zealand writers.

Q. And I just want to take us in a contextual understanding. I don't think we are being alarmist. We speak from experiential understanding. Are you

familiar with the 1842 Ordinance that prevented – or that actually promoted the dominance of the English language?

A. Unfortunately.

Q. And you are aware that by simple regulation, that led to the decimation of te reo Māori over a period of time, so that it was almost a dying language in 1960 and recognised so by the Hunn Report? Are you aware of that?

A. Yes.

Q. And that revitalisation and revival of that has only managed to be – occurred, and you heard Mr Ohia again this morning re-emphasizing that – because of the positive relationship gains of partnership, funding and resourcing that have really crystallised since 2020? Do you agree with that?

A. Yes.

Q. And do you think that this approach is mirroring the Ordinance approach of the 1840s and placing at risk again the changes, the gains, the positive success stories that Ngā Kura ā Iwi and other kura kaupapa schools are achieving?

A. No, I think we are clear in – in the draft curriculum and the finalised English and – and maths curriculum about the place of te reo Māori, the learning –

Q. Why are you reducing – why are you reducing resources – we have talked about reduction of resources – to maintain the current excellence, if that is the view?

A. I'm – I was not aware of the specific reductions that Mr Ohia was referring to today. What I can talk about is those resources that we are retaining and investing further in for te reo Māori and supporting resources and professional learning for kaiako and teachers in implementing and effectively teaching from the curriculum.

Q. I have to – I will try and rephrase the question, because a number of counsel have asked me to put questions. It seems to be a common theme. So I will put – someone else drafted this, so maybe we will get a better understanding. If the high achievement rates in kura kaupapa are at least partly attributable to culturally safe and supportive environments for tamariki Māori **Māori children**, does it not follow that curriculum

changes reducing the emphasis on te reo, mātauranga Māori **Māori knowledge**, tikanga and Māori history move away from rather than toward what the current evidence shows is working for Māori learners?

A. I think what I am outlining is that in – in looking at the draft curriculum currently out for consultation, there is an increase in te reo Māori in the learning areas. That is the knowledge of te reo that we expect young people to know and be able to use appropriately and correctly in their learning journey. We have taken care to make sure that we've provided a learning sequence of te reo so that young people's experience of learning te reo grows over time, rather than get stagnated at, you know, my experience in the school with my grandson the other day relearning his colours for the fourth year in a row, so we want that progression of te reo to be used.

Q. But that is anecdotal. Do you have evidence-based data to support your concern, and is it available on the record? Because I couldn't find any. So your assumption is that it is kei te pai, it is going to be better, where actually, so where is the data to show that? Because the data that is present for our people is we know that it was a significant struggle. It was not until court action, relationship arrangements and significant changes in the last six years that there is this trajectory of success occurring. So where is your data to say that is going to be maintained?

A. Well, my data is inside the draft curriculum, where we have clearly laid out as a requirement the te reo that young people should know and be able to use in the learning areas. I – I might be misunderstanding your question, Ms Sykes, because you seem to be coming back at me in different ways.

Q. No, I think so. I don't think there is data. There is no statistical analysis. There is no even odd exemplar of schools to show that if these changes are made that when local curriculum is optional, when funding is reduced, that this clarity that you have said will be maintained, and I am actually going to give you an article to help that was placed on the record. It is *A Lot to Learn from Kura Kaupapa Māori Education*, and it is a – this article, if that could be given to the witness. I have not got an appellation

number. It was filed this morning, and it was filed by Te Mata Law this morning electronically.

Are you familiar with that article? Have you seen it before?

A. A long time ago, yes.

Q. But it reinforces what I am saying, I think, that the structured learning has actually been a **(inaudible 15:56:07)** of the mana motuhake of different pedagogies implemented by kura kaupapa and Ngā Kura ā Iwi, and it is very clear that that has happened because of investment, $67 million. Is that investment still available?

A. The $67 million towards structured literacy? We have been chewing through progressing the initiatives of that original – or the initial $67 million that the government invested in as it came through its first hundred days, in both kaupapa Māori, Māori medium and English medium, and so that is about making sure the – these approaches, these structured approaches, are having an impact for all – all Māori, all students, irrespective of the school setting, and that investment is ongoing and will be ongoing. We have prioritised professional learning and development towards that learning. We continue to produce the reading resources, the maths resources, the pāngarau resources, the pānui resources that kura and kaiako need to be able to continue this approach, and through successive budget processes, we will continue to seek that ongoing investment.

Q. At the same time, though, there has been reductions in the same period of Resource Teachers, of kura kaupapa Kaiāwhina, of significant restructuring of those that were assisters in the classes, and are you able to say how much the cost of that reduction in Resource Teachers is?

A. My apologies, Ms Sykes, I don't have that exact number in front of – in front of me.

Q. What I am saying is it is not –

A. But it has been – what I can say is all of that money – so you are right, there has been some withdrawal of some resource, but that investment has gone back into the support for teaching and learning.

Q. And you will be glad to know this is my last answer – last question, sorry. Last – well, couple of questions. Ngā Kura ā Iwi have to do both the

marautanga, they have to set in place their framework in the kawenata, but they also have to use **(inaudible 15:58:46)** resources are from the national curriculum across – do they get twice the money to achieve that? It's double the work.

A. I think what – if I understand, what you are saying is, "Do – do kaiako and kura get the resources they need to teach both – both – from both curriculums?", and they are entitled to all the resources the Ministry produces, both for the NZC and for Te Marautanga o Aotearoa.

Q. But are you able to give me – you haven't answered my question.

A. Sorry.

Q. What was the – do they get a proportionate – what is the proportion of the funding they get from both streams? Are you able to tell me that?

A. No, I'm sorry, I can't – I can't give you that answer at the moment.

Q. Could you provide it after this hearing?

A. Sorry, my learned friend behind me tells me yes, we can provide it.

Q. And in – I can't put my finger on it, but in one of the papers provided last night, I think it was the Cabinet paper, there is talk of a bespoke process for kura. What is that? Is that part of this funding, bespoke processes? I am just trying **(inaudible 16:00:03)**

A. It will be relevant, and it isn't me that is working on that bespoke process, it is Andy Jackson.

[Andy Jackson] Kia ora. So at a very high level, because I don't want to breach –

Q. Same with me. It was in the paper. I am just asking –

A. – yes, yes, absolutely – talk in too much detail about the discussions that we're having directly with our Treaty partners following the Wai 178 hearings in the Tribunal we've entered into discussions with both Te Rūnanganui and Ngā Kura ā Iwi about the potential for policy change, including legislative change relating to their status as kura kaupapa Māori. That – indeed, with Ngā Kura ā Iwi, yes. So that's the process we're talking about. We are – we remain in discussions, and I don't want to go into too much further detail about that.

Q. And it includes both developing bespoke processes for the implementation of unique curricula and resourcing to facilitate that, or am I going down the wrong track?

A. It – it covers potential changes to the whole model for kura kaupapa Māori and its relationship with the Crown, including legislation, funding, employment of teachers, the status of those kura and **(inaudible 16:01:21)** –

JUDGE MULLINS:

Can I just clarify that, Mr Jackson? Obviously you and I know kura kaupapa Māori quite well, but you are referring to Ngā Kura ā Iwi there, aren't you?

ANDY JACKSON:

I'm referring to discussions which have been underway with both Te Rūnanganui and Ngā Kura ā Iwi –

JUDGE MULLINS:

Right.

ANDY JACKSON:

– separately, and it – it potentially covers curriculum and assessment changes as well. But we are very much in discussions with them and are not at the – in a position to talk in detail about the outcomes –

(16:01) MS SYKES TO ELLEN MACGREGOR-REID, PAULINE CLEAVER AND ANDY JACKSON: (CONTINUES)

Q. So it is another secrecy discussion, but I want to try and link it to –

A. [Andy Jackson] Well, I'm sorry, Ms Sykes. I don't agree with that characterisation.

Q. No, but – but I – yes, I am not trying to explore the secrecy aspects. Is there going to be a parallel implementation of that bespoke process with any contemplated changes that are mentioned in the same Cabinet report? That is my last question.

A. I think I refer you to the Cabinet paper, which I think makes the relationship between these two processes quite clear, and for the avoidance of doubt, we are working with our Treaty partners based on their preferences and we don't believe it's appropriate to discuss that in a public forum, so I think the expression "secrecy" is not appropriate.

Q. So – I am trying not to go into the secrecy. I am talking about the timing of the conclusion of those discussions. Are they contemplated to coincide with any changes that are now being promoted as a result of those Cabinet decisions?

A. We're not far enough down that track for me to answer that question with any certainty at this stage.

Q. Thank you.

JUDGE MULLINS:

Are we going back to you now, Dr Downs?

DR DOWNS:

I understand the Crown has a submission to make in relation to it, and I have indicated I would like to respond, and then we will consider where we get to.

JUDGE MULLINS:

Okay, ka pai.

MR WATSON:

Yes, had a brief conversation with my learned friend. The report – the 61-page report was, I think, emailed to us with all counsel at 11 am. No physical copies have been provided. I understand Ms Cleaver has been shown the front matter of the report on her phone and that her position is that she is not well placed or not in a position to speak to its provenance or its content at this point in time. How we go from there is a matter for discussion, I imagine, right now, but one option would obviously be questions in writing allowing the witness the time to read the report.

DR DOWNS:

Not surprising we don't accept that approach and have submissions in relation to it. From our point of view, equity is the key driver that we are here today, or the inequity that Māori children experience in the education system. It is noted across all Crown briefs. They all mention it to some extent, and I would like to put questions in relation to the Crown's understanding of Māori inequity in education. I think it is a fair subject matter for this hearing and essential to understanding the issues.

I also note that the filing at 11 am, you know, that is five hours now. That is sufficient time to have appraised it. There are three Crown lawyers here.

So our view is that we should be able to put the questions. If the witness cannot answer them because she does not have the knowledge or the answer to it, that is fine, she can decline to answer, but the opportunity to put the questions is important today.

MR WATSON:

Sorry, I was not intending to close off the opportunity to put the questions, simply to foreshadow what is likely the witness's position and the circumstances that have generated that position. Quite – I mean, just for myself, the fact that there are three Crown counsel that might have been able to read it, I do not know how that influences the witness's knowledge of the document, but I can't say much more than that.

JUDGE MULLINS:

Kia ora. Thank you both. I think as I mentioned when we talked about this before, whether the report in and of itself was filed in evidence, there has certainly been mention of it in the evidence of Dr Ford and Mr Jepson, and it was raised again yesterday, and I agree with Dr Downs in that equity is a big part of this inquiry and equity in education for Māori students has been an issue mai rā anō **for a long time**. So I am happy for Dr Downs to proceed to ask those questions.

(16:06) DR DOWNS TO PAULINE CLEAVER:

Q. Tēnā koe. If I can take you to page 5 of that report, and perhaps it can be brought up on the screen.

WITNESS REFERRED TO #A053 PAGE 5

And just at that first sentence there, it says – and I did put the question, but for clarification, this report was "commissioned by the Ministry of Education in March 2024". Can a witness from the Crown confirm that?

A. I am in contact with my team back in the office to get clarification about that aspect. We did have a contract with Te Akatea at that time, but whether or not part of that contract was the commissioning of this report I am seeking clarification of, and I will come back as soon as I do know that. They are working on it.

Q. So just to confirm, you do not know yourself? You need to confirm that?

A. I need to confirm that.

Q. I am wondering, in the process of confirming that, whether it is possible to ascertain also the value of that commission, how much it cost to commission the report.

A. You mean how much money was spent on the – yes, yes. Yes, I will be able to ascertain that as whether it was part of a – a broader contract output or whether it was a specific – or whether it was part, you know, it was self-initiated as part of the contract. I'm not trying to be difficult. I simply don't know at this point.

Q. I am going to put the question anyway, but do you understand whether the Ministry published this report?

A. We did not publish this report. I am informed by my team back at the office that Te Akatea did publish the report and presented at a conference of leaders, I believe. I haven't – I haven't seen the evidence of that, but that is my team's understanding.

Q. Okay, now, are you aware who made the decision not to publish the report?

A. Without knowing the answer to the first set of questions, I don't know if we made a decision to or not to, because I don't know if we actually commissioned it.

Q. But you know a decision was made not to publish it. That indicates the Ministry have some level of control over the commission.

A. No, I don't – no, I disagree. I didn't say that. I don't know if any decision was made, because it was released by Te Akatea. It could have been that we agreed that that was the way it would be published or socialised. I – I simply – I'm not trying to be difficult or hold anything back. I do not know the answer.

Q. So the decision of whether or not it was published by the Ministry and who made the decision to publish it or not can be confirmed?

A. Correct.

Q. Thank you. I am going to go back to paragraph 63 of your evidence, where you were talking about, again, persistent inequities in educational outcomes for Māori being a key driver of the curriculum changes, and is it fair to assume, then, that this report wasn't taken into account for the purposes of the curriculum review?

A. In – in looking at the report, I think it would be fair to say that when we review the curriculum, we don't just think about how – what – what's going into the curriculum, we also have to think about the resources and supports that are required for kaiako and teachers to use that curriculum and use that content, so things like making sure there are cultural – that we are allocating resources equitably, we are supporting leadership, that we are producing resource or professional learning on – on effective practices, are all part of the consideration of the implementation package of a – of a refreshed or reviewed curriculum, but as I said, you know, that was from me reading the only detail I have read today, which is the executive summary.

Q. So you are not sure whether this report was considered as part of understanding Māori inequity when determining that the curriculum needed to change because of Māori inequity?

A. When we – when I point to – in number 63, which you are talking about, I believe I was referring to the inequitable achievement outcomes that Māori have in the system. That was my intent, though I was referring directly to what we see in the data about the progress trends for Māori in reading, writing and maths.

Q. I am not sure that answers my question, but I will carry on, as I have one other question in relation to this paragraph, and it is at the end of paragraph 63, the last sentence, and it says that "Evidence suggests that this approach will be more powerful in contributing to equitable outcomes, as reflected in the Curriculum Ministerial Advisory Group advice to the Minister of Education and international…" advice. So is it right to presume that that is the evidence that that was relied upon when understanding what will be the driver for addressing inequity? There are two footnotes there at 46 and 47, and one is a Cabinet paper. It is titled *Establishing a Knowledge-Rich National Curriculum Grounded in the Science of Learning*, and 47, it is the Australian Education Research Organisation, and I am assuming you know the contents of both of those.

A. Thank you. Yes, we were – we were looking at what a difference a knowledge-rich curriculum – structured learning approaches – can make to accelerating that progress trend that we had – that I talked about. We were looking – we were looking to – for evidence of practice and curriculum design that was shown to work, and we see that in – we also saw this in New Zealand through the work, as was pointed out previously, in kura kaupapa Māori but also through our work with structured literacy approaches and the difference that made for Māori students in accelerating their progress through the Better Start literacy programme.

Q. I understand – I assume that – yes, like I said, I assume that you understand the contents of both of those, and we have done a word search ourself, and there is no reference to Māori inequity in those papers, so where can you pinpoint that Māori inequity is identified and understood, if not in those papers, that are informing the change in curriculum?

A. As I said, we – we were looking at evidence of practices that we had implemented, such as structured literacy approaches, and the impact that was having on the outcomes and the achievement of Māori as well as non-Māori.

Q. So Māori inequity, in these two documents, is swept up or considered as a part of a broader inequity? These are not dealing with Māori inequity.

They are dealing with inequity generally in Māori – in education, sorry, and I am trying to distinguish between the two –

A. Yes.

Q. – and where is the evidence that drives how Māori educational inequity – where is that? How is it addressed? Where is the evidence as to how that is understood and addressed, if it is not in these two documents and it is not the report that is being produced? Can – is it locatable in documentation?

A. I'm not – I'm – I am just trying to make sure I understand your question, because you have asked it a couple of times now, so are you asking me for above – above what is stipulated in here, what evidence base we use, such as the best evidence synthesis work that is now fairly old but still retains and is – and is considered best practice on – on supporting educationally powerful relationships, effective pedagogies and practices, and improving outcomes for Māori? **(inaudible 16:15:26)**

Q. And I wondered if Mrs MacGregor-Reid had an answer, because I saw her pass a paper to you.

A. [Ellen MacGregor-Reid] I was just mentioning the best evidence synthesis in the interests of a fuller answer for the Tribunal to assist.

Q. Sure, and what is that?

A. The best evidence synthesis – you can find it online. This is a synthesis of a wide range of evidence, including New Zealand-specific evidence, evidence around experiences of Māori, and Māori inequity, which has informed much of the work of the Ministry over many years, and there is certainly research within there specific to – to Māori inequity.

Q. Mrs Cleaver said that it was relatively old, so when was that produced?

A. It was produced in the 2000s, and I think much of the evidence still remains and is still very relevant. I look forward to reviewing the report that you are referencing to see if there are – are items that we are missing. We have also, of course, as a Ministry, and the team here today were part of the extensive conversations across New Zealand as part of the education kōrero which brought through a lot of evidence and voice of Māori around both experience of inequity, but views on – on ways to address that – that equity.

Q. Thanks. I would be particularly interested in comparing the older evidence with the new evidence and seeing where we land in terms of equity understanding, so if that could be produced, that would be helpful. That concludes my questions. I had better hand it over so we can get on with it. Thank you.

HOUSEKEEPING – TIMETABLING (16:17:37)

HEARING ADJOURNS: 4.17 PM

HEARING RESUMES: 4.27 PM

HOUSEKEEPING – TIMETABLING (16:27:01)

(16:29) MR FERGUSSON TO ELLEN MACGREGOR-REID, ANDY JACKSON, AND PAULINE CLEAVER:

Q. I'm going to try and cut back and think what can be dealt with purely by submission, on the papers, rather than cross examination and focus on critical matters. I'm not sure quite how long that will take, but I'm conscious that if we are losing a witness on a flight at some point, that at the very least, the Tribunal will want to put questions to that witness, so I will deal with this. I'm due to cross examine you, Mr Jackson, so, that's the focal point, but obviously, you have taken a vaguely panel approach to some matters, so I suspect that will occur as well. The first point I just wanted to deal with was, really, the, and it's inter-related to the amendments, that you would agree, and it's consistent throughout the papers. That the Crown accepts it has obligations under Te Tiriti o Waitangi and its principles, and that those obligations apply through the development and delivery of educational policies and the delivery of education at kura throughout the motu. You would accept that?

A. [Andy Jackson] Yes, I would.

Q. And that's, if I go back to the original paper, I think, or one of the early papers in March 2024, that I think you were responsible for, it's the paper

at page 1, when I refer to the numbers in the top right hand corner. I understand that if you click on the hyperlinks, you get different versions with no numbering and that's where part of the problem arises in your evidence. But that's the original report from, I think, one of the early reports, I think, 10 June, do I have it, I think, yes, 10 June 2024 to the minister and the associate minister, and you are the key contact and relevant Dep. Sec. for that. Sorry, page 11, I think is the footnote.

A. Yes, so, if you refer to the matters number, am I correct in assuming you are looking at number 1327914?

Q. Correct, thank you. So, when we look at paragraph 31 of that, that's a confirmation isn't it, of that Crown, Treaty obligation to actively protect Māori interest and taonga, and provide for equitable treatment under the laws. That is correct?

A. Yes, so, this paragraph concerns with the principle of active protection and the principle of partnership. So, broadly speaking, yes, I agree with what you said.

Q. And you wouldn't dispute, would you, that matters of tikanga Māori, te reo Māori, and education in a more generic sense, are all matters that would fit within the scope of Māori interests and in the case of tikanga and te reo, taonga?

A. Absolutely.

Q. Further down in that same paragraph, talking about, refers to the courts and then says, this means shaping education policies in ways that bolster Māori/Crown relationships. That's still a fundamental driver of the ministry in your view?

A. Yes, and that advice where informing ministers about the nature of the Crown's Treaty obligations more broadly.

Q. Thank you. Then if I move to April 2025, this is page 150 in the top right hand corner and I'm trying to find the relevant link if I can find it, but probably not. It is a Cabinet minute, 3 April, and then there is a ministerial paper to Cabinet that is attached to it. Have got that?

A. Yes, so I have the report of the Cabinet Legislation Committee to Cabinet relating to the committee decisions on the 4th of April and Cabinet decisions on the 7th of April at page 152. That's Cab 25 min 0106, and

then there's a Cabinet paper to the legislation committee that preceded that, which is at page 140 and then a minute of the legislation committee at 137. I think we are talking about the same.

Q. I think we are talking about the same document, yes.

A. Yes, cool.

Q. So, page 150 is an annex to that paper, which it says, further details on compliance requirements. That is correct?

A. Yes.

Q. And this relates to the recommendation that the bill be submitted into the programme and identifies the 10 key points that the bill is addressing in terms of amendments to the Education and Training Act. That is correct?

A. Yes, that's right.

Q. And in paragraph 1, it refers here, to compliance with the principles of Te Tiriti o Waitangi, so this is in this paper, just prior to introduction. The Crown is expected to act consistently with te Tiriti and its principles, including in the design, delivery, and monitoring of the education system. One of the purposes of the Act is outlined in section 4(d), is to establish and regulate an education system that honours Te Tiriti o Waitangi and supports Māori/Crown relationships. Then the statement, any decision-makers that are effected by the 10 proposals in this paper, which is effectively the 10 proposals that are to be effected through the bill. Are expected to act in compliance with section 4(d). That's correct, that's what that states?

A. Absolutely, yes.

Q. And that's the minister's advice to Cabinet, is that correct?

A. That's correct.

Q. Or in annexure to it.

A. Yes, that's correct, and the 10 proposals are those that are set out under paragraph 2 on page 148.

Q. Yes, and those are all the amendments that were proposed as at the date of introduction, including the original amended version, or proposed amendments to 127. That's correct?

A. Yes, that's correct.

Q. And as a matter principle, while the bill is now, well, that bill has been passed and we have some slightly modified amendments, which are obviously the subject of focus for this inquiry. Does it remain, to your knowledge, the minister's view, that the delivery of all of those matters by the ministry, and any other actors under the Education and Training Act, which does include boards of trustees, that are expected to act in compliance with section 4(d).

A. You asked me what the minister's view was and I don't want to put words in her mouth.

Q. Okay, well, I will put it another way. This was the ministers view, 3rd of April, that's correct.

A. Yes.

Q. To your knowledge, has the minister changed her view regarding compliance with section 4(d)?

A. Not to my knowledge.

Q. Then, if we move a little bit further on to, what I have is page 231 and 232.

A. This is the ministry's departmental disclosure statement.

Q. That's on, again, I think, forms part of the report to Cabinet for October, is that right?

A. No, that's not correct. So, when legislation is introduced to the house, and this relates to Ms Syke's questions earlier. A regulatory impact statement is produced alongside a Cabinet paper, except in situations where, for one reason or another, it hasn't been produced, and that is when a post implementation review is then required, which we haven't yet done. This document is a departmental disclosure statement, which goes alongside the introduction of legislation or additional amendment papers to the house. So, this was presented to the house with the Bill, alongside the amendment paper itself.

Q. Right, so, it doesn't form part of that previous minute on 224, it's a separate document.

A. That's correct.

Q. Thank you for that clarification. So, this document, two pages long, appendix, further information relating to the **(inaudible 16:39:25)**

legislative features. This is advice, or seem to be advice by the ministry, or by the minister, or by both?

A. Yes, this is a disclosure statement that I authorised, to go alongside the bill, so it is the ministry's document.

Q. So, this document will have been reviewed by the minister before its submission alongside the bill?

A. I'm afraid I don't know whether that is the case, it is prepared by the department alongside any legislation that is introduced into the house. I'm unaware as to whether the minister reviewed this document on this occasion.

Q. Was this drafted by you?

A. Drafted by my staff, but authorised by me, yes.

Q. Look if I could just look on the 231, again, we have reference down in terms of the specific **(inaudible 16:40:17)** – talking about the removal of the explicit obligation to give effect to Te Tiriti o Waitangi. So, this is the reframing within 127, in that respect, which is still, at this stage, where we have an alternative proposition included within the section 127. It's not the final version, that's correct, isn't it?

A. So, the Bill with the decisions from April 2024 had already been through the committee stage of the house and the report stage. At the committee of the whole, the amendments then proposed, amended the Bill before it was given royal ascent. So, I think, to the extent that what you are saying is what the house was debating was the amendment. Yes, there was a version without the amendment and an amended version before the House. Have I understood your question correctly?

Q. Yes, I was just trying to work out the timing of this, relative to that decision being made to amend at the committee of the whole House.

A. Yes, so, this document was prepared after the Cabinet meeting where the decisions and then the legislation was made. But before the amendment was given to the House to debate.

Q. Right. But this was written with the version of the Bill and section 127, that is now in force in mind?

A. That is correct.

Q. Thank you. So, here, we still see reinforcement of the Crown's positive duty to act in good faith, fairly reasonably and honourably, and the second to bottom paragraph on page 4. But then we do have the note here, that Māori education stake holders including whānau Māori and Māori members of the public have not engaged with prior policy decisions and consultation has not taken place as part of this legislative process. This is likely to have adverse effects on the Māori/Crown relationship. That's the view of the ministry, isn't it?

A. That is correct.

Q. And that's in the knowledge that, obviously, honouring te Tiriti and supporting Māori/Crown relationships in compliance with section 4(d) is still a paramount purpose of this legislation. That is correct?

A. Yes, section 4(d) remains in force.

Q. And you go on, in this paper, or the ministry goes on, at the top of 232 and the bottom of 231 and the top of 232, it's important to note that the Crown acknowledges and maintains its commitment to te Tiriti obligations in respect of the schooling system as set out in sections 4(d), 3(h), and 3(i) of the Act. These provisions, as purpose statements, will continue to aid in the interpretation of relevant statutory, powers and functions exercised under the Act, rather than being a discreet and free standing legal obligation to give effect to te Tiriti. The Crown may give effect to te Tiriti obligations relating to education through a range of measures. For example, the Minister of Education can issue curriculum statements, which boards must implement and obviously, referring to the current New Zealand curriculum and specific guidance in that respect. So, again, reference to the intent, in your view of the Crown and the commitment of the minister is that the delivery of these amendments has to be carried out in a manner that fulfils the purpose statements in section 4(d), 32(h) and 32(i). Is that correct?

A. Yes, that's correct, and as Ellen outlined earlier and I believe, it's also in our briefs of evidence, the government's view is that Treaty obligations sit with the core Crown. Sections 32(h) and (i) in particular, refer to the schooling system as a whole, and what we are pointing out here is those are obligations that sit at the level of the Crown at the level of the system

rather than the level of the individual school board. I think the other point being made in that paragraph is that it's not just section 127(1)(d) that discharges Treaty obligations in relation to schools. That the government also discharges those obligations through a rang of other functions such as curriculum statements. But also, I could add, through funding, occupational regulation and a range of other ways that the government intervenes in the school system.

Q. So, the proposed curriculum that is the subject of significant criticism by numerous witnesses before this Tribunal, as you have heard, is issued under section 90 of the Act. That's correct?

A. Yes, that's correct.

Q. And if we turn to those purpose of provisions that are mentioned in these papers of the Crown, section 4(d), the purpose of this Act is to establish and regulate in an education system that honours Te Tiriti o Waitangi and supports Māori/Crown relationships. That's correct?

A. Yes, that's correct.

Q. That's the purpose statement there. Then we have a further purpose statement in section 32, and this is a purpose statement that applies to all of Part 3 of the Act. That Part 3 includes section 90, doesn't it?

A. Yes, Part 3 relates to the school system as opposed to the early learning and tertiary systems, and yes, section 90 curriculum statements are included in there.

Q. So, decisions under section 90 by the minister and also, matters occurring under section 127 relating to boards of trustees are all subject to this more specific purpose. Correct?

A. Yes.

Q. And so, in this purpose statement, the purpose of this part is to establish a schooling system that supports all learners, akonga, to gain the skills and knowledge they need to be lifelong learners, akonga, and fully participate in the labour markets, society and their communities by, and if we go down to (h) honouring Te Tiriti o Waitangi and supporting Māori/Crown relationships that make a difference to learning and (i) reflecting and integrating te reo Māori, tikanga Māori, mātauranga Māori, and te ao Māori in this schooling system. That is correct?

A. Yes.

Q. So, that remains the purpose of the delivery of all of those mechanisms in Part 3. Correct?

A. Yes, that's correct.

Q. And so, is it the Crown's position, or the ministry's view that the curriculum issued by the minister under section 90, honours te Tiriti and supports Māori/Crown relationships, and will make a difference to learning and reflects and integrates te reo Māori, tikanga Māori, mātauranga Māori, and te ao Māori, in the schooling system. I ask because I haven't seen that analysis anywhere.

A. Those are the legislative provisions that relate to section 90 curriculum statements, yes, and I believe Ms Cleaver has given a number of points of evidence about those aspects of the redrafted curriculum. But I would refer you to her for further detail.

Q. Is there a document somewhere that asses that curriculum as produced by the minister under section 90, against these two purpose of statements, and also, the purpose of statement overarching in 4(d)?

A. May I just ask my colleague a brief question please.

Q. Thank you.

A. So, the formal assessment of that will take place when we provide the minister with advice about the release of a section 90 or more than one, under current legislation, curriculum statements. So, what we would do at that point is an analysis of compliance of the curriculum with the legislation more broadly. The effect and I don't want to go into statutory interpretation here, but my understanding is that the effect of the purpose provisions is on the exercise of statutory powers. Therefore, it is at the point when we issue a section 90 curriculum statement that a document of the type that you are referring to, would be produced.

Q. So, no work is being done proactively in view of this Tribunal's inquiry to do that assessment in relation to the proposed curriculum as it stands. That's correct?

A. That's not what I said.

Q. No, I said, none has been done.

A. You were asking whether we have a single documentary analysis of compliance of the curriculum with section 4(d), and I have said that that will be done at the time that the regulatory power is exercised.

Q. And section 32(h) and (i)?

A. Yes, and all of the other provisions, you know, that relate to the purpose of the schooling system, including the other parts of section 4 and the other parts –

Q. But it's correct that there's no evidence before this Tribunal of that assessment against, at the present time, against the proposed curriculum?

A. I don't think that that is the same statement.

Q. So, you are relying on what evidence to say that there has been an analysis against these purposes?

LEGAL DISCUSSION – CLARIFICATION OF QUESTIONING (16:40:21)

MR FERGUSSON TO ELLEN MACGREGOR-REID, ANDY JACKSON, AND PAULINE CLEAVER:

A. So, my understanding of the first question was about whether there is, you know, an analysis of the legal compliance of a section 90 curriculum statement. And I think we are clear on the answer to that, which is no because no such statement has been issued. You then said, it said there is no evidence that the curriculum that's been discussed there, complies with section 32. That's what I had understood your second question to be, so maybe I have misunderstood it?

Q. No, my question was whether, notwithstanding that a legal assessment hasn't been done for the purposes of the statement it says to be issued and that whether any analysis, with respect to those provisions has been done in the course of the preparation of evidence in the presentation of evidence before this Tribunal. That's the point I'm getting to.

A. Right, so, not specifically in relation to those provisions of the Act. I think that my colleagues involved in the curriculum have thought in some length about the broader issues that the purpose of the Act refers to. I didn't want to give you an answer that could be used to as a statement that the

ministry says it hasn't thought about the Treaty in relation to the curriculum, and that is what I am saying is not true.

Q. Okay, and I think you have accepted that compliance and consistency with those purpose statements is a relevant legal standard that any curriculum issued under section 90 should meet at that time.

A. Absolutely.

Q. I think the general indication has been made by counsel and I suspect you would agree, wouldn't you, on behalf of the ministry, that you would value any commentary that the Tribunal might be able to provide in relation to matters within its expertise in relation to honouring te Tiriti and related matters that might assist in that future decision.

A. Yes, and in Ms Stevens questions to me earlier, we talked about reports of the Tribunal, where you read them, considerable interest, and of course, we will be keen to receive any guidance from the Tribunal in relation to the New Zealand curriculum.

Q. Thank you. I just wanted to touch on one other issue. We seem to have, obviously, there's a series of changes occurring, both legislatively and in terms of curriculum development within the context of the Act and there has been a focus on those particular changes. For example, the change to section 127(1)(d), and then there has also been a reflection on, I think, at various points to, and I always get the acronym wrong, but is it NELP, is what it's referred to? The removal of the Treaty obligation on boards of trustees, but also, the amendment of the particular objectives, even absent te Tiriti, because they have changed as well, haven't they?

A. Yes, that's right. So, the three subclauses under what's now section 127(2)(e), reads differently from those that previously were contained under section 127(1)(d).

Q. And that's fair, isn't it, that in addition to trying to assess both the intent, the rational for, and the effect of each of those changes' individual, one also needs to consider the cumulative effect of those changes when viewed as a whole. That would be a relevant consideration when ones looking at compliance with te Tiriti and its principles?

A. Yes, I think that's right. I mean, there's a balance to be struck there, isn't there, between directly assessing the exercise in any statutory power and

the context in which it sits. But broadly speaking, yes, I would agree with that.

Q. And an example of that would probably be in relation to NELP itself, and I probably haven't got the time to go through the various steps in that regard. But right up through the progression of papers by the ministry to the minister, and by the minister to Cabinet, through from May, through to December 2024. There is a clear contemplation there that we are going to remove national education and learning priorities from the Act, that's correct?

A. Yes.

Q. But it's also clear right through until and including the 9 December 2024 Cabinet minute, and I can refer you to the page, which is 104 of the Cabinet minute of decision of 4 December 2024. Which is 97 in the top right hand corner, but the page I wanted to refer to is 104, which is page 6 of that Cabinet minute.

A. So, the Cabinet minute I have at page 97 in the top right hand corner, SOU24 **(inaudible 16:57:18)** 53 –

Q. Correct.

A. It has two pages –

Q. And then it has a ministry – this is the minister's paper attached to it.

A. Yes, right –

Q. Sorry, you probably have that as two documents and I have it stapled together, so apologies.

A. Page 6, yes.

Q. So, if we go to the minister's paper to Cabinet, page 6 and we are dealing here with NELP: "I am seeking to remove NELP in related positions from the Act." She says in paragraph 23, then makes this reference, which I'll come back to, schools were only required to consider or have particular regard to NELP. The NELP outlines a broad range of priorities for both the schooling and early learning sectors, many of which duplicate the education and learning objectives for early childhood, primary and secondary education in section 5(4) of the Act, and for schools, the objectives in section 127.

So, imbedding the governments priorities through proposed changes to school and board objectives means there is no longer a need for NELP. But even in December 2024 and paragraph 25, the minister is clear that the proposal is to remove the parts of section 5 that relate to the minister's ability to issue a NELP and the process around a NELP. However, it will not remove the content of section 5(4), which sets out the education and learning objectives for early childhood education of primary and secondary education. That's correct?

A. Yes, so, a couple of bits of context, I think. I believe that at some point between December 24 and the introduction of the legislations in the House that decision changed, and the remainder of section 5 was repealed. So, that was the minister's intent at the time, but as we all do, the government may have changed its mind, and I'm sorry if I have that slightly mangled, but anyway, it has come out now. The other thing I think that it's important to understand about the NELP, was that it was always optional, schools were never required to do it.

Q. Yes, I'll move to that in a moment. But those education and learning objectives that the minister, at least, right until December 2024 was committed to retaining. Notwithstanding that the NELP would go, as set out in section 5(4), include at paragraph (c) of section 5(4)(c), to instil in each child and young person, an appreciation of the importance of, one, the inclusion of different groups and persons with different personal characteristics. Two, diversity, cultural knowledge, identity, and the different official languages, and three, Te Tiriti o Waitangi in te reo Māori. That's correct?

A. Yes. I think it's worth reflecting on the legal status of those words –

Q. Well, perhaps, that's the question I'm going to come to, but I just wanted to just confirm, because again, the actual timing and rational for these decisions is quite difficult to locate at times. So, it is quite clear that that change occurs immediately prior to introduction, so the Bill, as introduced as section 5, gone completely, including these objectives in 5(4), doesn't it?

A. Yes, we are on the same wave length, Mr Fergusson, I was looking for that point myself. So –

Q. I think I can point it to you –

A. Yes and –

Q. – and then you can provide your clarification. So, if we can go to, there is a report and again, where one document starts, and one finishes is always a mystery with Cabinet papers in my view. But there is a report that starts at 127, report feedback on the draft Cabinet paper, approval to introduce the Education and Training Amendment Bill 2, 127 in the top right hand corner, 10 March 2025 from the ministry to the minister and associate ministers. You have got that? 134448 –

A. Yes.

Q. And then, if I turn over to paragraph 15 of that, it states, you, presumably the minister, have decided to repeal section 5(4), which sets out the education and learning objectives for early childhood, primary and secondary education and will seek Cabinet approval through an oral item at Cabinet Social Outcomes Committee on 11 March 2025 and an LEG paper will be updated to reflect Cabinets decisions. So, that indicates that this is a decision by the minister, not by Cabinet to make this change.

A. So, you are correct that the 10th of March paper refers to a decision that the minister made some days or weeks earlier, and it was then referred to Cabinet Social Outcomes Committee the following day. The fact that it was then referred to Cabinet committee means that the Cabinet has, in effect, endorsed that decision and when you get to the LEG paper that is provided, page 152, so CAB-25-MIN-0106. That confirms that Cabinet has agreed, the Legislation Committee, formally, that that change will progress.

Q. And what I'm struggling to find anywhere and perhaps it exists and I haven't been able to find it. Is a) the reason for that decision by the minister, and b) any advice by the ministry to the minister in relation to that late change.

A. It is usual that we would provide written advice, and I would expect that we did, this hearing, I wasn't expecting this to be focussed on the national education and learning priorities and so we may not have provided the relevant documentation. I'd be very happy to provide it to you if it exists.

Q. Through Crown counsel, that could be provided, that would be of assistance because it is relevant to what I would say, is the cumulative effect of changes –

A. Understood.

Q. – and the line of travel if it were, if you can appreciate that. Now, I did want to get across to that point about the legal status of NELP. Because presumably, at the point where NELP was going to go, but these objectives were going to be maintained. The minister was contemplating that they would have some relevance into the educational frameworks and presumably down into the curriculum delivery into schools, given the nature of what those objectives state.

A. The original proposal was to remove the NELP itself and the power to issue one for the reasons set out in the original Cabinet paper. I recall that we may, with the minister, have given some brief thought as to whether to keep the objectives or not. We were, however, very clear that even if they remained in the Act, they have no statutory force behind them, so there would just be a list of things.

Q. Well, they would have no statutory force because the NELP was gone, or because they have no statutory force regardless of whether they are an objective to be delivered through a NELP?

A. Yes, so the only statutory force that they ever had was by being a list of things that were required to be reflected in a NELP, or a SNELP, actually. And the SNELP, once published, was something that schools had to have particular regard to, which my lay understanding means, they had to read it and say if they weren't going to do it. So, you know, that's, I mean, without – the SNELP was never a very powerful statutory instrument and with it then having been removed or proposed to be removed, what was left was just a list.

Q. With respect to the view that you just provided, there was really no purpose to retaining it. That's not the advice and it's not reflected in those papers right up until December 2024, when the minister is quite specific and expressed that she will not remove the content in section 5(4). Which sets out education learning objectives for early childhood education, primary and secondary education. That's correct?

A. Yes, and then the minister, I think, quite reasonably, changed her mind once we looked at it in further detail. It's my recollection of the process.

Q. And does that reflect a view that this Bill, or sorry, this Act, in the minister's view is that the education and learning objectives for early childhood education and primary education, secondary education. Don't include whether express, because they were in section 5(4) or implicitly through the duties that – purpose of statements that we have seen referring to te Tiriti, tikanga, and te reo, to instil in each child and young person in appreciation of the importance of diversity, cultural knowledge, identity, the different official languages, Te Tiriti o Waitangi and te reo Māori. Is that no longer a learning and education objective?

A. I believe that were – now, I will just have to refer you, I think, back to 99, which is the social outcomes committee paper. I think that we say in here that, it may not be here, I'll be able to find you different references. Anyway, the point I'm making is that the bit of section 5(4) that you have read out, essentially, is about what schools have to teach. Whereas, you know, the other clauses that we have been discussing, including you know, section 127 itself is about how schools have to operate and think about those two things, they are quite distinct purposes. A section 90 curriculum statement is a hard statutory lever for requiring schools to teach particular content. The progression between the subsection of section 5(4) in the SNELP and then have regard to the plan is a very indirect way of telling a school that it has to teach akonga about te Tiriti. So, a section 90 curriculum statement is a much more direct way to achieve the same thing.

Q. Yes, and that's probably a point you were trying to make, sorry, I wouldn't say trying. That I think you make in your paragraph 28 of your affidavit, where you are referring to NELP and you talk about the decision to remove that NELP requirement, you don't focus in on the sub objectives at that point. But you say, at the end, at the top of page 8, at the end of paragraph 28 of your evidence, that many of those duplicated other objectives considered that as schools were only required to have regard to NELP, have particular regard isn't, not have regard to?

A. It was, I believe.

Q. That the governments priorities were best imbedded via statutory requirements in the Act, especially the school board objectives in section 127, and the curriculum statements that the Minister of Education can issue under section 90. So, essentially, those are the two mechanisms that replace whatever lifting NELP were doing. Would that be fair, in part?

A. We are almost there. Those two mechanisms, of course, were already there, and the NELP, simply, was another thing. Removing the NELP whilst retaining section 127 and section 90, the point we are making there is, the government can achieve the same purpose via direct statutory levers that already existed. So, just not a replacement, right?

Q. Right.

A. Yes.

Q. But it's correct isn't, that when NELP did exist and those statements were issued, those statements that were issued under section 5(1) by the minister had to be consistent with those objectives set out in section 5(4). Including the one I have referred to that refers to Te Tiriti o Waitangi and te reo, correct?

A. Yes, that is correct, yes.

Q. And there is no expressed provision anywhere in relation to section 90 relating to the curriculum that refers to those objectives. That is correct?

A. Yes, that is correct.

Q. Thank you and perhaps the paper, when you find it, will be clear as to the rational for that, so, appreciate that. The other issue I was trying to, again, identify, because I did have a whole lot of questions about consultation on the amendments that were made at the committee of the whole House and things. But I think you have really agreed that there was no engagement on those changes and/or the engagement that did occur. Problematic or otherwise, it was on the original proposal, which saw those te Tiriti provisions being essential supporting priorities, that is correct, objectives –

A. That is correct.

Q. Thank you. The other one I wanted to just explore was the removal of te Tiriti, which I think as it has been expressed and was expressed in terms of the final decisions made about the reference to te Tiriti and the Treaty

duty on school boards of trustees. I think you refer to this in your evidence as well, but I see it in relevant papers to Cabinet, including that, in October 2025, it refers to a rational, I think. That section 127 be amended to remove Treaty duties from school boards and recognition that schools are not part of the core Crown and boards are elected by the community. That's the expressed rational and the final, in that October 2025 paper, that's correct?

A. Yes, that's correct. That's the governments primary rational for the changes to section 127, yes.

Q. And up until that point, while there were changes proposed to clarify and address whether the obligation of give effect was appropriate. At that point, the minister and if one looks, for example, at the previous paper of which you are the author, to the minister on 7 September 2025, page 200 of the bundle, as I have it, METIS 1352221. The recommendation t the minster, the previous month was, we do not recommend changes to the following provisions in respect of te Tiriti without further engagement and design with Māori. That includes section 127(d) objectives of boards and governing schools, and the advisory recommends clarifying school board obligations and considering whether the requirement to give effect to te Tiriti is an appropriate obligation given their status. As Crown entities, at least, partially elected at a local council level.

A. Yes, that's correct and just for the avoidance of doubt, the advisory group referred to there is the TRAG or Treaty References Advisory Groups, and their report is the one that you received this morning. The specific reference there and I omitted to mention this earlier, for which, my apologies, is at page 42 of their report, which is page 57 of the material provided to the Tribunal overnight. So, 57 at the top, and 42 at the bottom –

Q. And 42 refers to section 127(1)(d) –

A. That's right, so that's the recommendation from the TRAG, the Treaty References Advisory Group, that I'm then referring to in paragraph 10.1 of the document at 202.

Q. And at that point it's the recommendation that's being made by the ministry is that that's a matter that should be the subject of further engagement –

A. That's correct.

Q. And that didn't occur, did it?

A. No.

Q. If we go back to that report of the advisory group on references to Treaty principles and legislation, hopefully we can come up with an acronym that works for future reference. The recommendation in relation to that, which is on page 43 of that report says, as well as the broader policy considerations introduced and set out above, amend to standardise the reference to the Treaty. So, that's part of the broader recommendation that references to te Tiriti/the Treaty, et cetera, should be standardised?

A. That's correct and you will be able to ask the Minister of Justice more detailed questions about that tomorrow, yes.

Q. Right, but in terms of the broader policy considerations and suggestions, if one moves up to that box above. In the wider context, we suggest that obligation to give effect to Te Tiriti o Waitangi, or both descriptions may be too strong. Boards are a Crown entity, section 153, but at least, partially, elected at local level. Whether it is appropriate to treat them as part of the Crown in the context of a Treaty partner is worthy of analysis and we are obviously aware of commentary around the change from several primary objectives to one paramount objective and supporting objectives. From our perspective, that is a legitimate policy change to be debated in that context and we have no particular insights to contribute. That's their commentary and their recommendation refers to that commentary. That's correct?

A. That's correct, yes.

Q. And in fact, if we go back a little earlier into that report at page 21, we see some specific commentary there regarding legal waiting, and at paragraph (g), wording suggestions and we have here, paragraph 59, precise wording is for policy makers and PCO to determine. But we offer the following suggestions, give effect to, where those acting under the Act are part of the Crown and must give effect to the Treaty. Then (b), and

this is the one I wish to highlight, assist the Crown to give effect to its obligations under the Treaty. Where those acting under the Act are not part of the Crown, such as local government. But Parliament wants to direct them or delegate to them, the implementation of some of the duties of the Crown.

So, I put to you that that alternative proposition, is it equally applicable if one is trying to create this distinction between school boards and Crown central, and the obligations under te Tiriti. That school boards effectively, under those previous provisions, while the obligation was to give effect to te Tiriti. They were effectively, in that regard, discharging, or part of the discharge of the Crown's broader obligation that you have acknowledged in respect of upholding, giving effect to honouring te Tiriti, that you agree, applies in the educational space.

A. These, I think, are questions where we are now in the territory where the Ministry of Justice is better placed to answer them. As I said, I can talk about the outcome of this, and I can talk about our advice into this process. But this report itself is very much something that my colleagues will be better placed to give evidence on.

Q. I suppose, I'll put this question to you because you obviously did do a report, even though we don't have it. Was the option of amending the wording to suggest, to rather, say that boards of trustees and delivering on the objectives are assisting the Crown to give effect to its obligations under the Treaty and option that was put to or recommended to the minister?

A. The majority of our advice and this is in the paper at page 200 of 17 September. But it is consistent with advice that we gave to the Ministry of Justice as well. Focussed not on the question of the level of Treaty duty and the remoteness or closeness to the Crown. But more on the substantive matters that were covered in the subsections of what was then section 127(1)(d). That's the primary focus that we have taken in our advice, and in relation to the Treaty duty itself, our advice is more focussed on the process that ministers might want to contemplate undertaking, rather then the duty itself.

Q. When you refer there, and again, I don't want you to step into the Ministry of Justice's shoes in that regard. You talk about advice the Ministry of Education provided to the Ministry of Justice or to the advisory group?

A. Well, we met with the advisory group prior to them producing their report. We provided quite a bit of material in the early stages, which was consistent with the stance we have then taken throughout. And our advice to the Ministry of Justice, subsequent to the TRAG report coming out, prior to them producing there minister's Cabinet paper, was consistent as well.

Q. Right, and that advice, you say there was a meeting, so presumably, no written advice in relation to that meeting?

A. That meeting was in August, before the group had produced its report –

Q. Right, so in terms of –

A. – it was a discussion about the relevance of te Tiriti and education. My recollection is that what we said was broadly consistent with the appendices to this paper.

Q. To which paper?

A. The paper at 200. So, there is a discussion in the appendices to that paper, of the relevance of te Tiriti to the education system, and that's very much aligned with the advice that we gave to the Treaty references group.

Q. Right, so that's the September paper you are referring to?

A. Yes, that's right.

Q. So, and that followed the meeting, and followed the report?

A. Yes, so, we met with them to give them general commentary on education and Treaty references, then they produced their report, and then we wrote this report to minister Stanford.

Q. Right, you didn't have anymore input back to the Ministry of Justice following that advisory group report?

A. When the Ministry of Justice then began preparing Cabinet papers, which ultimately resulted in the decisions you saw this morning, we provided a similar vein of advice, yes.

Q. And are those papers part of the disclosure that was made –

A. I don't believe so, no.

Q. Perhaps, again, subject to redactions, perhaps that request could be made for that as well –

A. I'm happy to work with Crown counsel on that.

Q. – given it may be relevant to questions that might be asked in the morning. I just have two final, very quick points. You placed an emphasis that I'll make legal submissions on or have particular regard to. But with respect, I disagree with your assessment, but that's by the by. You talked though about the, and I think this was emphasised by you, or by one of the other Crown witnesses, about nonetheless, there are still reporting obligations on schools, and you referred, I think, to the strategic plans and reporting against strategic plans and I think there annual strategic implementation plans as well, under the regulations. That is correct?

A. Yes, so that's the School Planning and Reporting Regulations 2023, which is a statutory instrument, yes.

Q. Yes, and part of, when one looks at those regulations and I won't take you to them given the time. There is a cross reference there to achieving or making progress to achieve the school's objectives. That's correct, isn't it?

HOUSEKEEPING – TIMING (17:24:16)

HEARING ADJOURNS: 5.25 PM

HEARING RESUMES: 5.33 PM

JUDGE MULLINS ADDRESSES MR WATSON – AVAILABILITY OF WITNESSES (17:33:46)

(17:34) MR FERGUSON TO ANDY JACKSON, ELLEN MACGREGOR-REID:

Q. Yes. My second penultimate point, we're just referring to, referencing the remaining and important reporting obligations of boards of trustees and I had just made reference to those obligations and their context which are under section 138, the strategic plan and your implementation of the plan, and that strategic plan is to set out the board's strategy for achieving or

making progress towards achieving its objectives during the relevant period, that's correct, isn't it?

A. [Andy Jackson] Are you referring to the page in the bundle?

Q. No, section 138 of the Act.

A. Yes, yes.

Q. Strategic planning document is about achieving or making progress towards achieving its objectives, the board's objectives, correct?

A. That's correct.

Q. And an annual implementation plan for each year that sets out how it intends to implement that strategy during the year, so there's annual and three-yearly reporting or plan development at the very least in that regard, that's correct?

A. That's correct, yes.

Q. And then the proposition I was putting to you is that under the Regulations which give further direction in that regard, that's the Education School Planning and Reporting Regulations 2023, and we don't need to go to those but the proposition is that when one looks at the content of strategic plans in Regulation 7, that strategic plan must include, (b) the board's strategic goals as developed in consultation with the school community for meeting the board's objectives as set out in section 127 of the Act, that's correct?

A. Yes.

Q. And so, any changes to 127 of the Act, including the changes that have occurred through the recent amendments, the effect of those changes is to alter the objectives of the board that it is reporting against in relation to the terms of that strategic plan and annual implementation plan, that's correct, isn't it?

A. Yes, that's correct, and just to round that out the point I made in my introductory comments is that, I mean, you're absolutely correct that the requirement to report against the generic Treaty duty is removed as a result of its removal from section 127, but many of the other reporting requirements remain, including in relation to Māori student achievement, bullying, harassment, and racism et cetera, which is a point that came up

in witness evidence yesterday. But yes, you're correct in the question you've asked, yes.

Q. All right. And it's not simply the general Treaty duty, is it, the reference to tikanga Māori as well is no longer within the objectives against which strategic planning is **(inaudible 17:37:09)**.

A. Yes, that's correct, because the change from section 127(1)(d) to (2)(e) has changed the content of those three sub points, yes.

Q. But this is all about boards delivering within an education framework and under a part of the Act that has those purpose of statements that still refer tikanga Māori and te Tiriti, isn't it?

A. Yes, that's correct.

Q. Just the final question or topic in relation to section 127. As it now states, we have this paramount objective now with supporting objectives, to ensure that every student at the school is able to obtain their highest possible standard in educational achievement, that's correct?

A. That is correct.

Q. And that there's a commonality in terms of the reference to achievement, educational achievement and is it educational excellence that's in the Coalition Agreement, or similar wording?

A. Yes, that's right. I don't have a copy of the Coalition Agreement in front of me, but that change to a paramount objective was the result of a Coalition Agreement, yes.

Q. And it's not correct that education, in education, was achievement is measurable solely with reference to numeracy, literacy, and mathematics, is it?

A. No, I don't think it is. I think there are other elements in education achievement, yes, such as other subjects for example, one would think about senior secondary school.

Q. And those key purposes that still remain in the Act about what the education system delivered under the Act, the purpose of it is there are a range of things, **(inaudible 17:39:17)** go to the education system, don't they?

A. Yes, that's right. So section 4(a), (b) and (c), there's an example of other elements of the purpose of the Act, and section 32(a) to (g) I suppose, yes. So yes, there are a broad range of purposes set out.

Q. And I suspect you will say there isn't a Ministry view on this, but when one looks at an overarching paramount objective of attaining the highest possible standard in educational achievement, and the objective whether sitting alongside that or as a supporting objective in the terms that it was originally stated in section 127(1)(d) with reference to te Tiriti and tikanga Māori, te reo Māori, there's no mutual exclusivity or inherent inconsistency between achieving those objectives and attaining the highest possible standard in educational achievement, is there, in your view?

A. No. The Ministry doesn't see a distinction – that those two things are mutually exclusive, and that's not the position that the Crown has taken either in relation to this inquiry.

Q. So the reason for the change was not to avoid any perceived conflict between the delivery of those te Tiriti related objectives and the attainment of educational achievement?

A. The reasoning is set out in the Cabinet paper of 15 October, and so no, the paper does not set out that the Government's view is that those two things are in conflict.

Q. So we're left with the reason in relation to the removal of te Tiriti is boards of trustees aren't the Crown and it's not their duty, is that correct?

A. That is the reason for the change that is set out in the Cabinet policy decision, that's correct.

Q. Thank you. I have no further questions. Well, I do, but I won't ask them. Thank you for your indulgence, witnesses and panel.

JUDGE MULLINS:

Thank you, Mr Ferguson. Given the time, the Tribunal is not going to ask all the questions that we had either. We are going to have to put some of those in writing, but there will be a few, and we acknowledge Crown witnesses for making yourselves available still at 5.42 pm.

(17:42) GERRARD ALBERT TO ANDY JACKSON, ELLEN MACGREGOR-REID:

Q. Tēnā kōrua otirā koutou. **Greetings to you all.** These won't require detailed responses, they are more it's what you might feel in relation to what I'm going to ask and I'm just going to be consistent, and you would have sat through yesterday as well as this morning, and the Tribunal asked and in particular I did of some of the witnesses for the claimants around the removal of section 127(1)(d) and whether they were aware of any of the boards around the country having raised any questions or challenges as to having to carry that te Tiriti obligation and the work of the board. Is the Ministry aware – I am asking the panel as a whole, feel free for anyone to answer – aware that any of the boards have raised issues or concerns about the te Tiriti obligation being onerous on boards?

A. [Ellen Macgregor-Reid] Kia ora. **Thank you.** Early on when the petitions first came in I'm aware of concerns being raised with the Ministry. In most recent years I'm not aware of those concerns. All I can tell you is the Minister has expressed to me that she has received correspondence, but I haven't seen the correspondence.

Q. Okay. So, that correspondence of late the Minister is referring to?

A. During this process. It was mentioned by the Minister of her being aware of boards who felt that the duty was – I'm trying to remember the word you used – but you know, they struggles with aspects of the duty. But the Ministry, we ourselves haven't had any recent correspondence from boards to that effect, no.

Q. Thank you. In terms of the curriculum, we did hear from, and I'm referring here to witnesses for Te Riu Roa, well, to the effect that it's not just the development of the curriculum which was in question, and I think it was Jessie Moss, not just the curriculum's development that was in question but the feasibility of delivery. And I see in – sorry, I want to get the names correct, I don't want to insult anyone – Pauline Cleaver's written statement provided today in response to some of these issues that the Minister had indicated that a consultative approach was preferred around the curriculum development rather than a co-design process **(inaudible 17:46:14)**, in her written statement from today. And the Minister of course

had indicated that she did not want to leave children and young people waiting longer for a new curriculum. From your experience, is the Ministry, I mean, is there sometimes tension about introducing a new curriculum whereby there will be, I suppose, problems of introducing something too fast? And the boards through to the principals and the faculties of the schools will have to essentially turn around and deliver something before they're ready to deliver it, or whether they've worked out how to deliver it. So, what I'm getting at here is that there's a potential tension between the Minister's need to implement something quickly without going through a co-design process with those who are responsible for delivering the curriculum that will essentially end up in the same place. There will be prejudice and therefore some gaps in the ability of the schools to actually deliver that curriculum. So, is that tension something that the Ministry sees and will try to address?

A. From my experience, I think it's fair to say we have faced that tension since we commenced the work on the original refresh of the curriculum. So it is, from my experience, a constant conversation with the sector about whether things are too fast. We regularly review, we regularly amend timeframes and quite often we are still asked to slow down. I think the government's perspective is a balance between respecting good implementation and time with children actually receiving the teaching and learning. So I think it's less about the Minister's need for speed, and I think she is, well, I know she is more motivated by how quickly children can experience the teaching. I know we took quite a long time on the structured literacy work. I commenced that back in 2018/19 I want to say. That went through a lot of co-design, lot of discussion, and a number of years later we were still to implement it. And I think we took too long because certainly through structured literacy, some of the approaches to mathematics, we are seeing some green shoots and I think there are some positive aspects there, but there is always that tension, there is that tension when change is being looked for. But we remain open to listening to those concerns, to amending timelines as does the Minister, and we have those conversations in the sector from a range, range of quarters of the profession are in regular contact.

Q. And just a supplementary to that and I don't want to go on too long but if there was to be essentially Ministry and advisory or to the minister, and Ministry approach to designing the new curriculum, those involved in that design – I'm not sure whether you'd be able to answer this with any degree of certainty about numbers or percentages, but are they people that are at the coalface of delivery of curriculum or are they people that essentially work in the area of curriculum development but aren't necessarily active within actually delivering curriculum in schools?

A. It is both. If Ms Cleaver had been able to remain she probably could have given you a more detailed breakdown. If it's okay with the panel, we can in writing.

Q. We'll send that in writing, yes.

A. But yes, if that's okay.

Q. Yes, thank you. That's me.

(17:50) DEREK FOX TO ANDY JACKSON, ELLEN MACGREGOR-REID:

Q. Kia ora kōrua. **Greetings to you both.** I come from a pretty remote part of the country up on the East Coast which is sort of cyclone city most of the week. But people up there I'm picking they will give you the thumbs up if by taking away the Treaty provision requirements in the Act that's going to get you to lift your game in educating the 97% of our kids who go to your schools and get them somehow up to the same level as the 3% who are in Kura Kaupapa Māori and Kura ā Iwi. Can you do that by taking away these things? Or if you can't, what's the point?

A. [Ellen Macgregor-Reid] Our intent is to achieve that.

Q. I will hold you to that.

A. Ka pai.

Q. Good.

(17:52) DR PAUL HAMER TO ANDY JACKSON, ELLEN MACGREGOR-REID:

Q. Tēnā kōrua. **Thank you both.** I've covered a lot of my questions obviously. There's just a few specific things I wanted to ask about. One of those is the RIS that was dated 25 November 2024 that obviously was

for the legislation that would make educational achievement the paramount objective, and I wanted to ask about a couple of things that are in the RIS. It says, and I'm sorry I don't have document references or anything, I don't have page references, but it says that a clearer focus on a few critical priorities will mean schools are not distracted by a focus on other matters which less directly contribute to improving student outcomes. It also says that section 127 outlines a large number of priorities for schools in terms of diluting each school's focus on student outcomes. So my question is really whether the Ministry is saying here that an obligation to give effect to the Treaty was a distraction or a dilution of a focus on student outcomes?

A. [Andy Jackson] I'm just reminding myself of the document. So that phrase I think appears in the context section of the RIS. So, if you're looking at page 3, whereas the context behind the policy **(inaudible 17:53:46)** has the status quo expected to develop. Paragraph 5, a clearer focus on a few critical priorities et cetera, which I think is similar to what you've just **(inaudible 17:53:54)** out.

Q. Yes.

A. We then go through, and I won't step through all of this, but we go through an options analysis in the RIS and then look at different options. And I mean I think in terms of the policy objectives themselves our advice is both to refocus schools on a smaller set of core priorities and to remove the NELP from the Act thereby removing the amount of kind of regulatory expectations. I think this isn't about saying that focussing on human rights or reducing racism compromises educational achievement, absolutely not. We have been very clear in our advice that we see those things as essential supporting objectives for the paramount objective of student achievement. This is more about the compliance effect on boards of having multiple different regulatory requirements in relation to their planning, right. So I just want to stress it's not a statement of a policy position or an educational philosophy that equity or equity goals in any way trade off against achievement goals. That's not the Ministry's view.

Q. Yes. Well I mean of course it doesn't mention that giving effect to the Treaty as being one of these potential distractions, but I mean of course

you'd accept that there'd be a school of thought that an emphasis on the Treaty is something that you can equate to improving student outcomes for many students?

A. Absolutely, and our advice to ministers is very clear that we see the articles and principles of the Treaty as a critical way to understand how the school system should be set up to achieve those outcomes, yes.

Q. Okay. I just wanted to ask about the change that came also in at the Committee of the whole house stage which was about te reo instruction being made available to the extent possible where parents ask for it, which is a return to the wording of the previous legislation before 2020, and I wanted to ask whether you had given your minister any advice at that time on whether that change was consistent with provisions of Te Ture mō Te Reo 2016?

A. Yes. So the paper of 17 September discusses these issues in some detail and the relevant section is where we look at Article II obligations. So, page 12 of that paper, the role of tikanga Māori, te reo and te ao Māori in supporting the Crown's obligations. And what we said here is we recommend retaining reference to the role of tikanga and te reo in supporting the educational success of Māori, ākonga Māori. When **(inaudible 17:57:29)** developments of this were positioned as optional prior to the 2020 changes, i.e. te reo and tikanga Māori were legislated as matters of parental choice. If you reverse this position, this would go some way to supporting the policy objective of Māori learner success but would not support the Crown's wider obligations towards te reo and mātauranga Māori. So that's the advice we've **(inaudible 17:57:49)** on that issue.

Q. Right. I think the disclosure statement attached to the Amendment paper noted the Crown's obligations under Te Ture mō Te Reo, but what you just read out didn't mention Te Ture mō Te Reo, did it?

A. No, not specifically, although the paper does talk earlier about the Māori Language Act 2016, Tai Mai Te Reo, and the Crown's other various strategies. So, I think we've covered the Crown's obligations broadly in my view, yes.

Q. Okay. Just a couple of things in your brief of evidence Ms Macgregor-Reid, at paragraphs 42 and 46, at 42 you refer a previous under-emphasis on school achievement and attendance, and I just… Are you referring here to the Ministry's prior under-emphasis on school achievement and attendance? I mean, because that sounds like you're being critical of previous administration, previous actions taken by the Ministry. So, that was one part of the question, and the second part is at paragraph 46 where you talk about policy themes. You're explaining and I couldn't tell if these were your policy themes or they were ones that came from ministers because you talk for example about concern backed up by data that the system has not been consistently delivering outcomes the community would reasonably accept. So, both there in paragraph 42 and again in paragraph 46, are these Ministry positions or are they a reflection of the way your Minister feels at the moment?

A. [Ellen Macgregor-Reid] So, paragraph 42, as I stated both in my evidence and in my opening ministers make policy decisions. The policy direction being set is that there needs to be more attention on attendance and achievement. That's not a criticism from me of previous administrations. I served previous administrations so I wish to be very clear about that. This is a statement of the policy direction that is driving the particular reforms being discussed here. So, that's at paragraph 42.

Q. Yes.

A. Paragraph 46, now, was the questions the same about…

Q. Yes, these policy themes and whether they're really – you're reflecting here the way your minister feels about a system delivering outcomes, the community would reasonably – would not accept. Or whether these are things that the Ministry itself feels.

A. So if we go back to, I want to say 2018-19 when I was advising the then Right Honourable Chris Hipkins as Minister of Education, we were having discussions then about the amount of flexibility within the New Zealand Curriculum, how too much learning was potentially being left to chance. That was picked up through the Curriculum Advisory Group. There are reports on this. So this is a theme in education policy thinking within the Ministry, which the sector is aware of, they were part of the Curriculum

Advisory process around that balance between local flexibility versus direction that's been occurring for some time. What I'm discussing here is that different ministers and different governments have made different decisions around if you think about as a see-saw, where they want that balance to sit.

Q. Okay.

A. Does that answer your… I'm not sure I answered your question.

Q. No, that's all right. It's probably not such an important point and I want to race through a few other matters.

A. Okay.

Q. I think I'll go back to Mr Jackson, and at your paragraph 11.2 you note the wording of the legislation at 2020 before the enactment of the Education and Training Act, so the very end of the Education Act, and you note of course the Treaty obligations were on school boards in that legislation, and I think they'd been brought in under the Education Update Amendment Act 2017 that the duty of school boards to act consistently with the principles of the Treaty, I think from memory.

A. [Andy Jackson] Yes, that is also my memory.

Q. Yes. So I mean, I think one thing we've been focusing a lot in this inquiry is on this change that came in in 2020, our reaction against it more recently, but we can see that the previous National government actually put a Treaty obligation on school boards in 2017, and what I am unaware of is whether either in 2017 or in 2020 there was any suggestion that school boards were not the right entities to carry Treaty responsibilities? I imagine officials did not provide that advice at the time, and so it seems like it's more of a new thing that's come in with maybe the **(inaudible 18:04:04 TRAG)** report. And you're nodding, so…

A. Yes, I share that assessment. I mean, the 2017 responsibility, you know, sits alongside the introduction of the NELPs, right.

Q. Yes.

A. Which I was saying in my comments about them being optional. I would've nevertheless envisaged at the time as a way of steering the system towards certain outcomes. The 2020 changes reflected the outcomes of the Tomorrow's Schools Review quite strongly. But I agree

with you that at the time there was plenty of concern about compliance for school boards, expressed by the sector if I've understood that correctly. But there wasn't, to my knowledge, a significant debate about whether they were the right entity to hold those responsibilities.

Q. Yes. Because of course that obligation is kind of expanded in the way it's worded in 2020, but I think a lot of us are forgetting that it had been there for a few years already at that point.

A. I think that's absolutely right, yes, and to my knowledge the **(inaudible 18:05:17 TRIAG)** report is the first time that has been raised by an advisory group. I believe that the Tribunal has previously issued some guidance in the Napier Hospital case about whether it's – the extent to which the Crown can delegate its Treaty duties. I don't have a view on that obviously. But yes, it's certainly a relatively recent piece of advice to be concerned about precisely where the duties are located.

Q. Yes, okay, thank you. I think the next one is quite a quick question. It's about the Ngā Mātāpono Report, Part 3, it was released on 22 October 2025, almost two weeks before the Amendment paper removing section 127(1)(d) was introduced on 3 November 2025. I just wonder whether the Ministry briefed the Minister of Education about the Tribunal's report and its recommendations? Because it did talk about section 127(1)(d) in its report. You may not need me to read out what it said.

A. Certainly, I don't have any record having briefed the minister in writing on that report. I mean, by then the policy decisions of course had been made and we were in the business of supporting the drafting of the Amendment paper itself. We may have discussed that with the Minister, I genuinely can't recall.

Q. Okay. Thank you. Now, I don't suppose either of you are in a position to answer any questions about Ms Cleaver's brief of evidence? I know Ms Macgregor-Reid you used to be in her role?

A. [Ellen Macgregor-Reid] I was in her role. I'm in a much broader role now.

Q. Yes.

A. So I can attempt to but I may not have the level of detail that obviously my Hautū for the Curriculum Centre has.

Q. Well, I mean, maybe I'll just try. I feel guilty for asking this after 6.00 o'clock at night. But it was something Dr Downs picked up on a reference in Ms Cleaver's brief of evidence to international evidence about the knowledge rich approach. That was at paragraph 63.

A. Thank you. I've located Ms Cleaver's brief.

Q. Yes. She talks about international evidence and she cites the Australian Education Research Organisation Report. Is this something I can ask you about?

A. I know the report exists. You might be better having Ms Cleaver answer in writing.

Q. Okay, yes. Well, what I will come to then is something a little bit different which is that you will have seen that the Tribunal had a few pieces of evidence, a couple of academic papers added to the record which take issue with that Australian Education Research Organisation Report and its promotion of a knowledge-rich approach. These were added to the Record of Inquiry before the hearings began. I don't know if you've had a chance to familiarise yourself with any of that?

A. I'm aware of the reports. Unfortunately Ms Cleaver was the witness who spent more time on those.

Q. Yes. Okay. I suppose the question I would have put to her was the international evidence seems pretty thin when you look around and you can see lots of other examples from the international arena which take a different approach with regard to knowledge-rich.

A. I will be happy to have Ms Cleaver provide a full written response to how we assess the evidence.

Q. Okay. Well one final thing I will ask then which also arises from her report is about the literature review that you commissioned from Learning First. Have you familiarity with that at all?

A. Again, from Ms Cleaver's brief I'm aware that that was commissioned. I'm aware that the Ministry has worked with Learning First. In terms of having spent deep amount of time myself on that report, I would not be your best witness.

Q. Right.

A. And my apologies for that. Unfortunately as Secretary **(inaudible 18:10:37)** across a few things.

Q. Yes, no, that's understood. I was going to say that the learning first report is very much an advocate for a knowledge rich approach. I wanted to know if we could see the terms of reference in the commissioning of that report. I'm aware that Learning First's CEO and founder is someone called Ben Jenson who is a very strong advocate for knowledge-rich, and I'm also aware that he has met several times recently in the last year or two with Minister Stanford. So these were things I was going to put to Ms Cleaver about whether really in commissioning this from Learning First it wasn't a case of looking at the literature about knowledge-rich in all its different forms including criticisms, but going to Learning First for a kind of a corroboration of the position that the Minister had on knowledge-rich.

A. I am aware from conversations with Ms Cleaver that both herself and the team read quite widely on knowledge-rich when the Government came in and discussions were occurring around knowledge-rich. The team took that very seriously and undertook quite a broad range of reading. But Ms Cleaver will both be able to provide you with any terms of reference you're asking for.

Q. Sure.

A. And I don't know, but a list no doubt of materials that herself and the team have referenced in regard to knowledge-rich.

Q. Okay. I'll ask one final question which is whether you're aware of the United Kingdom Government's recent review of the knowledge-rich approach in England, which is another document we had added to the record recently which showed that equity gaps had remained wide despite Eddie Hirsch's theory that those gaps would close. And so, that hadn't been something that had come through from the Ministry's evidence in this inquiry. But it's very recent and I wondered if you were familiar with that report and its implications?

A. I am familiar with the report. My reading of it at the time, but I need to go back and familiarise myself, is that the UK Report also found benefits in the approach that was being taken and they were not looking at moving

away from a knowledge-rich approach but rather making sure that the amount of content was balanced. And of course this is something that we're working through at the moment in consultation, and those are matters that claimants have raised around, you know, the amount of curriculum content, and these are all matters to be taken into account before we finalise the curriculum.

Q. Yes, I mean it did say that knowledge-rich should continue. It did say also things about the failure for it to close equity gaps and also how the standardised approach didn't cater to diverse student needs. So it was a mixed bag and it would seen to me something that quite a substantial review, over more than a decade of English focus on a knowledge rich approach to the curriculum that it seemed that the Ministry would want to look at quite carefully.

A. And we are looking at it carefully. I would note, and again Ms Cleaver will be able to talk to this more fully. There are differences in terms of the United Kingdom's approach to a knowledge-rich curriculum and our approach, including our ongoing emphasis on inclusivity, resources that are provided around it and some of the pedagogical practices that Ms Cleaver referenced. So while I accept those findings of the UK report and I did take the time to read it because I do recognise its significance, there are differences between what we are doing here and what's occurred in the UK and we're being very mindful of those lessons. But I will request that Ms Cleaver provides a fuller statement of that to you.

Q. Well I will put questions in writing.

A. Thank you.

Q. Thank you very much for answering this late. Thank you.

JUDGE MULLINS:

Tēnā kōrua. **Thank you both.** Look, I did have some questions but it is quarter past six and I appreciate you've made yourself available for longer. So, I hope this lands properly as I'm just going to share a story before we talk about what we're going to do tomorrow.

I am a mother of three teenage children and I'm sure there's people in the room that have teenage children, but they've got a language these days that I don't understand most of the time but they have all these different words, and one of those words is 'rizz'. And 'rizz' apparently means, for those of us over 40, that you've got game. And so, RIS has been a lot of times this afternoon and I've just received a text in the last half an hour from my daughter that says: "Mum, is that man (Mr Ferguson) asking you if you've got rizz? Because that is not okay as you are old. Or does it mean that he's telling you that you have it?" So yes, 'rizz' means many different things. I guess that tells us the importance of words. But I was trying my hardest not to laugh out loud when that text came in, so I will have to explain to her that it's not quite as exciting as that.

So there will be some questions from the Tribunal in writing. But I just did want to acknowledge the Crown witnesses, and including those behind who I recognise from a few years ago at the Kura Kaupapa Inquiry that are still there working hard and doing your best. So I thank you both for your evidence today and also Ms Cleaver for the time that she was available, and no doubt you will receive some questions to ask further in writing.

Okay, whānau. It has been a long day and before I pass it over to te reo o Whanganui **voice of Whanganui** to say a few final words, just talking about tomorrow.

HOUSEKEEPING – TIMETABLE (18:17:37)

MS SYKES ADDRESSES JUDGE MULLINS – WRITTEN MATERIAL (18:18:04)

MR WATSON ADDRESSES JUDGE MULLINS – TIMETABLE, WRITTEN MATERIAL (18:18:36)

JUDGE MULLINS ADDRESSES MR WATSON – MILESTONES (18:19:14)

LEGAL DISCUSSION – ORAL CLOSINGS, TIMETABLE, JUDICIAL CONFERENCE, MILESTONES (18:19:58)

(18:22) GERRARD ALBERT: (MIHI)

I te mea kāore koutou i haramai ki konei ki te whakarongo mai ki a au, me poto te wāhanga ki a au. Oti anō, me mihi ki te manawanui ka tika, te manawaroa o te minenga tangata, koutou i wahawaha mai te kupu, koutou i patapatai mai, patapatai atu ā koutou pātai, koutou i a koutou i ngā pātai. Katoa nei, he manawanui, he manawaroa tō koutou, tō tātou. Nō reira, kia piki te aroha, te kaha me te māramatanga ki runga ki a tātou. Hoki mai āpōpō i te pai, i te tika, i te mārama kia whakaoti ai ngā mahi, nō reira tēnā koutou. E huri ki tō tātou pā ake māna te kupu e whakairi. **Because you did not come here to listen to me, I will be brief. Nonetheless, I want to acknowledge the resilience and persistence of this assembly of people, those who have been asking questions, who have laid out their kōrero, and posed their questions and those who have replied to those questions. All of those, I want to acknowledge your resilience and persistence. And be strong and enlightened and come back so that we accomplish the work ahead. And so I turn to our elder to close off.**

KARAKIA WHAKAMUTUNGA (KEVIN PRIME)

HEARING ADJOURNS: 6.24 PM

HEARING RESUMES ON FRIDAY 17 APRIL 2026 AT 8.30 AM

KARAKIA TĪMATANGA (KEVIN PRIME)

(08:31) JUDGE MULLINS: (MIHI)

Mōrena tātou. E te pou whakawairua nāu tātou i whakarite, kua rarangahia ngā tira tangata ki roto i te whakaaro kotahi, ki raro hoki i ngā manaakitanga a rātou mā. Nō reira, e pā, tēnā koe. Ki a koutou katoa ngā stayers kua whakarauika mai i tēnei ata, tēnei au ka mihi nui ki a koutou. Ki a kōrua ngā tumuaki, tēnei au ka mihi. Appreciate you making yourselves available at late notice and also acknowledge the fact that you are on some tight timeframes this morning which is why I'm going to stop talking and pass it over to your counsel initially and then to claimant counsel. Kia ora, Mr Watson.

(08:32) MR JAMES WATSON: (CALLS)

Thank you, your Honour. I will be very brief with my remarks. To my right I have Andrew Kibblewhite, the Secretary for Justice and Chief Executive of the Ministry of Justice, and his colleague Caroline Greaney, Deputy Secretary Policy of the Ministry of Justice. They were requested to attend the hearing yesterday and are here and filed an outline of evidence last night. Your Honour has alluded to it, but the Chief Executive and his team have a tangi to get to at 10 and wanting to leave at 9.30 to get there on time. I appreciate that that differs I think in respect –

JUDGE MULLINS:

It does differ.

MR WATSON: (CONTINUES)

I think we updated the Tribunal last night as to that. I think the indication is 9.30 to get there for the funeral. Funeral is at 10, so I appreciate that differs. The information I gave I think at the time reflected our best information on that point.

With that being said, I am proposing to hand over to the witnesses who I understand will speak briefly, orally to what they've handed up to the Tribunal.

(08:33) ANDREW KIBBLEWHITE: (#A054)

E ngā mana, e ngā reo, e rau rangatira mā, tēnā koutou. Te whare e tū nei, whakatau mai, whakatau mai i runga i te kaupapa o te rā. Ngā mate o te wā, haere, haere, haere. Rātou mā ki a rātou, tātou te hunga ora ki a tātou. Ngā mana o tēnei rohe, tēnā koutou. Ngā mema o te Rōpū Whakamana i te Tiriti o Waitangi, ngā kaikerēme, ngā rōia, tātou katoa e tau nei, tēnei te whakatau, tēnā koutou, tēnā koutou, tēnā tātou katoa.

We are obviously here today because the Ministry of Justice's work on the Treaty Clause Review is directly relevant to the inquiry that you're undertaking in the Education space. So we were asked to appear yesterday. We moved quickly to prepare and file our material at short notice last night, and in the time we have available this morning we want to assist the Tribunal as best we can. If there are matters that need to be followed up or we can't get to in the time available obviously we can provide follow up answers.

On 15 April, the Crown filed Cabinet decision-making documents relevant to this inquiry, including the Cabinet paper, the Advisory Group Report, the Regulatory Impact Statement, and the Cabinet Minute. Material relating to Acts, other than the Education and Training Act has been redacted as irrelevant to this inquiry. Then last night we filed an outline of evidence and those documents are what we are here to speak to today.

I should be upfront. I think about two things at the outset. First, is the material particularly as prepared and submitted last night all happened in a very short timeframe. We've covered what we consider to be the material steps in the policy and decision-making process but if the Tribunal has questions that go beyond that then as I noted before we can follow up further subsequently. Second, we can speak to the advice that officials gave and the processes by which it was developed. We cannot speak to the reasoning behind ministerial decisions, this is a matter for ministers and not for officials.

Recognising time constraints, we're a bit in the Tribunal's hands. I could speak through the outline of evidence we provided last night or if you would prefer we

can take that as read and proceed straight to questions. So I am in your hands, Chair, on that.

JUDGE MULLINS:

I think that would be my preference, but if I just to claimant counsel, take it as read and just make time available for questions? I think they agree.

ANDREW KIBBLEWHITE:

Okay. Well, in that case, I don't need to make any further opening comments.

MRS CHELSEA TEREI-TIPENE ADDRESSES JUDGE MULLINS – CHRONOLOGY (08:36:18)

(08:37) MR JAMIE FERGUSON TO ANDREW KIBBLEWHITE, CAROLINE GREANEY:

Q. Mōrena **good morning**, Mr Kibblewhite, Ms Greaney. My name is Mr Ferguson, here for interested party Te Whakakitenga o Waikato, but just leading out on behalf of counsel on this and then others will follow, so I will try in this limited timeframe to be as brief as I possibly can, but I wanted to deal with some general matters in relation to the review in the context of the review, and then perhaps turning more specifically to the Education and Training Act aspect given the redacted documents where we've got some reference to those in them. Now, if I could just start in looking at your brief of evidence, obviously you've indicated that the underlying reason for the Treaty Principles Review was the commitment in the Coalition Agreement that you've set out in paragraph 21: Conduct a comprehensive review of all legislation (except when it is related to, or substantive to, existing full and final Treaty settlements), or references to 'The Principles of the Treaty of Waitangi' and replace all such references with specific words relating to the relevance and application, or repeal the references. That's correct? And that has effectively been the task that the Review Committee, the Advisory Group took on, albeit that there were some modified scope issues as one went along in terms of additional matters were placed before them, that's correct?

A. [Andrew Kibblewhite] That's correct.

Q. Thank you. Now, when I looked at the Cabinet paper that is at page 1 of the bundle that's been helpfully pulled together by Crown counsel, I just wanted to get an idea, is that – there's no date on that but is that November 2025? It's just unclear to me.

A. [Caroline Greaney] That's the Cabinet paper from March this year.

Q. Sorry. The paper to Cabinet. This is at page 1 of the bundle. The one that's headed 'In confidence. Office of the Ministry of Justice. Cabinet Social Outcomes Committee, review of references to the principles of the Treaty of Waitangi. Next steps.'

A. That was from March this year.

Q. When I go – can you go to page 9 of the bundle and it's also page 9 of that paper, paragraph 54, the references to the Treaty of Waitangi Legislation Bill is priority category 6 on the 2025 legislative programme, drafting instructions to be issued by the end of 2025. But that's in a March paper, is that right?

A. [Andrew Kibblewhite] That is right and that's because the year prior when the legislative programme was set that's what was anticipated, so that is just outlining what was in the 2025 legislative programme. So that's provided in the Cabinet paper because it's essentially reminding ministers of the timeframes where this had been considered.

Q. Okay.

A. So that refers to how it was referenced previous.

Q. Where does it sit within the 2026 priorities, is it still priority 6?

A. I think – I don't exactly know what priority is, but the intent that Cabinet is agreed is that it would be introduced in this sitting term.

Q. Thank you. What does priority 6 mean in that regard, is that a degree of urgency, is it?

A. [Caroline Greaney] Category 6 means drafting instructions to be issued that year.

Q. That year, right, okay. But drafting instructions have been issued now?

A. [Andrew Kibblewhite] They have been issued now and that's the phase that we're currently in.

Q. Right. And that follows on. So, drafting instructions **(inaudible 08:41:51)**, but we haven't got a draft bill that's gone to the Legislation Committee…

A. We haven't got a draft, and Cabinet was clear when they took the decisions that is in this paper that led to those drafting instructions that they were also seeking some further input, including from, well, they'd written to the National Iwi Chairs' Forum seeking further input, and they've been clear that there is opportunity to still further amend decisions before the legislation is finalised.

Q. Right. So just to be clear, the drafting instructions have gone to PCO, that's correct?

A. That's correct.

Q. And that followed on from the – I'm just going to double check that date. I've got the Cabinet Minute that's at the back of page 143 says on 23 February, following reference from the Cabinet Committee, Cabinet, that paper is February, isn't it?

A. [Caroline Greaney] Correct.

Q. Sorry, so that Ministerial paper you said was March?

A. It's February.

Q. Sorry?

A. It's February.

[Andrew Kibblewhite] February.

Q. It's February, all right.

A. Sorry.

Q. No, no, that's okay, we're all struggling with the timeframes.

JUDGE MULLINS:

Can I just stop you there. I just want to double check that because I understood when that was filed and it was the other night that it had a date of 10 December on it, was it that paper? That's the paper at page 1 you're talking about, Mr Ferguson?

MR FERGUSON:

Yes.

(08:43) JUDGE MULLINS TO ANDREW KIBBLEWHITE, CAROLINE GREANEY:

Q. So that was forwarded to us, so is that Cabinet paper for SOU, 10 December, Review of…

A. [Andrew Kibblewhite] There's a process when Cabinet decisions are taken and goes to a Cabinet Committee first, and so this paper was submitted to a Cabinet Committee I think in December.

Q. December.

A. It didn't proceed through to Cabinet because there were still further things being tested and discussed between those, so it didn't actually make it to Cabinet until I think we're now confirming February.

Q. End of February.

A. End of February.

Q. Okay. But it was originally sent somewhere from 10 December.

A. It went to a Cabinet Committee.

Q. It went to a Cabinet Committee, thank you.

A. So the Cabinet Committee, the process will be for, essentially the process of Cabinet papers is a minister will initially circulate a draft Cabinet paper to colleagues and officials will do it at the same level. A minister will then submit that to a committee. It goes through a committee process and then either goes straight to Cabinet, or if the committee is of the view that further conversations are needed or sometimes simply because the right ministers might not be at Cabinet at the day the paper is to be considered then it might be differed to a later Cabinet, and in this case that later Cabinet was in February.

Q. And that was the 26 February minute we've got.

A. Yes.

Q. So can we be satisfied that this, or do we know that this paper is unchanged from what went to the Cabinet Committee –

A. This is the paper, obviously with redactions, that went to Cabinet.

Q. But is it a further iteration of the one that went to the Cabinet Committee on 10 December?

A. [Caroline Greaney] The paper did not change, the text of the paper did not change between what was lodged for December and what was considered by Cabinet in February.

Q. In February. Okay. Thank you. Sorry, Mr Ferguson.

(08:44) MR FERGUSON TO ANDREW KIBBLEWHITE, CAROLINE GREANEY: (CONTINUES)

Q. No, no, no, that's precisely where we were trying to get to so that's been helpful. So this paper was drafted and initially presented in December. It remained in that form until being considered by Cabinet in February. Excellent. So, this iteration of the paper has multiple dates in various capacities.

A. [Andrew Kibblewhite] Indeed.

Q. But its genesis is December. That's good. It places its content applicably. And in this it said, as I recollect, introduction, or it might be in the Cabinet Minute, introduction by the end of the first quarter. That's now changed, hasn't it?

A. Well, I think the intent is within this Parliamentary term.
[Caroline Greaney] Are you able to point me to where it refers to the end of first quarter?

Q. Yes. It's in paragraph 8 I think, page 2: "I intend that a bill will be introduced in the first quarter of 2026."

A. So at the point that it was drafted and considered by the Cabinet Committee in December, that was the Minister's intention. **(inaudible 08:46:08)**

Q. Was that modified orally in February?

A. Well, the timing of legislation development and introduction to the house is actually quite fluid, and in the context of the wider **(inaudible 08:46:19)** programme.

Q. Yes, we know.

A. So that would have been a point in time intention. Obviously that is not how it's eventuated.

Q. Right. So coming out of the Cabinet decisions in February there was no altered timeframe or **(inaudible 08:46:37)** timeframe?

A. [Andrew Kibblewhite] I think there is a reference in the Cabinet Minute that came after that decision, if I can just find that minute.

Q. We've had reference to this Parliamentary term but I'm trying to find the…

A. Yes, I think there is something in the minute.

Q. Who has said that and where.

A. [Caroline Greaney] So in the Cabinet Minute at recommendation 26, it invited the minister to issue drafting instructions. So at the point in February the decision was made a bill hadn't been drafted, they were just issuing instructions. And then in recommendation 30, noted the Minister of Justice proposed introducing amending legislation to give effect to the outcome of the review within this Parliamentary term.

Q. Right. Okay. You mentioned some engagement which is, I understand, occurring or to occur contemporaneously with the drafting of the bill by PCO with… is it pou tikanga of the National Iwi Chairs' Forum, is that where the contact's been directed by the Minister, is that correct?

A. [Andrew Kibblewhite] Minister's written to the Iwi Chairs and I think Iwi Chairs are considering how to engage with that process at the moment.

Q. And that contact was in the last week or so, couple of weeks?

A. I think it was the 1st of April that the letter was sent to them.

Q. And what timeframe are they expected to respond and provide input on?

A. They're looking to provide that input over this month I think, in the letter it had invited feedback by the 24th I think. We actually met with some of the technicians and indicated that there could be another week in that timeframe if they needed it.

Q. And that'll feedback into a bill, a draft bill that will have been received within by the end of this month or something like that?

A. Well, the typical process after something goes off for drafting is it would come back to the Cabinet Legislation Committee which is the final committee before it goes to Cabinet to be confirmed for introduction into the house. At the point of the LEG Committee there is always the option for the Minister to bring some policy issues to that discussion as well, and if there are any changes to it that's when that would occur.

Q. That there is no broader contemplation of any – any broader engagement at all, and so we've got essentially a single point of focus to Iwi Chairs

who've been given effectively a couple of weeks to provide a response to presumably a redacted version of the Cabinet Minute in these related papers, so not dissimilar to what we've got but probably disclosing the other bits of legislation and commentary?

A. What you've described, yes, there are redactions to the same extent in the material there and it's gone to the Iwi Chairs to consider.

Q. Thank you. Now, when I look at the Minister's paper and I see in the executive summary differences in wording of paragraph 3 on that first page, differences in wording of references to Treaty principles in legislation have emerged over time, for example some legislation says give effect to and some says have regard to, without being clear that there's any difference in intent. In my view, these broad phrases can have big consequences and can be interpreted very widely both by government, institutions and courts. That's the Minister's view in that paper, isn't it?

A. That's correct.

Q. Because when I look at the Regulatory Impact Statement, there's obviously a different perspective given by the Ministry in terms of the uncertainty or lack thereof and the established understanding of both the principles of the Treaty and what those various legal weightings mean.

A. That's correct.

Q. And comments such as that by the Minister, and we've heard other comments made in the political realm and related places about this Treaty clauses review, and when one hears some of those comments there does seem to be some degree of underpinning of a perception, and you have heard comments made to this effect by people that there have been periods when Treaty clauses were included without much regard and analysis and, you know, perhaps because they were fashionable, those kind of flippant kind of political rhetoric comments have been made from time to time, haven't they?

A. I think those sorts of comments have been made, yes.

Q. And they're unhelpful, aren't they?

A. Well I think there is a legitimate policy issue that sits within this frame and that's why the previous governments have created the, I think it was the

Treaty Principles Oversight Group, a group called TPOG, and that was trying to bring a greater level of consistency. Because I think, to be honest, from a policy perspective there has – and this is included in our RIS as well that there's often, there is a clear purpose and intent behind the various clauses. Sometimes it has not been as well considered as it might have been and that's part of what successive governments have tried to tighten up.

Q. Yes, well let's just explore that for the moment. If we go back to the beginning because we see these provisions starting to manifest in the 1980s, in fact the first one on the list is the Environment Act of 1986 as I can see it. Now, in 1986, as I understand it Cabinet agreed that all future legislation should draw attention to any implications for the recognition of Treaty principles, and it was also resolved that ministers and government agencies should consult with appropriate Māori on legislation affecting Treaty interests and a thorough consultation must be undertaken when new legislation has the potential to affect an existing Treaty settlement. That's your understanding, isn't it?

A. That would represent good process, yes.

Q. And those matters are now confirmed in the legislation design, Advisory Committee legislative guidelines, aren't they?

A. They are.

Q. And in the Cabinet Manual 2017, note that the Treaty of Waitangi imposes particular standards of legislation, and when ministers submit bills to Cabinet's legislation committee for approval the covering submission must draw attention to any aspects of a bill that have potential implications for or may be affected by the Treaty, that's correct?

A. Yes.

Q. And so, what's clear to me when one looks through that list is that of 19 statues that were in appendix (b) of the Advisory Group's report is that they cover a broad range of times, starting in 1986 until 2023. And if one runs through those, I'm not going to do it, but those various Treaty provisions that are in differing forms have been introduced and promoted by political or by governments that have had a combination of political spectrums, National governments, Labour majority governments,

coalition governments between Labour and New Zealand First, between National and New Zealand First, Labour alliance, Labour progressive, et cetera, haven't they?

A. Indeed.

Q. And there's a variety of approaches to te Tiriti throughout those Acts and even between the Acts within the various administrations, that's correct?

A. There's a wide variety of different treatments.

Q. And the fundamental important matter, isn't it, and this is confirmed both by the advisory group, and I think also in a Regulatory Impact Statement is that it's really important to consider the context and purpose of each of those provisions with reference to the legislation and the field in which that legislation is operating in order to make any informed consideration about the appropriateness of the references to te Tiriti and the particular wording that's used, that's a fair comment?

A. Yes it is.

Q. And if we had more time I'd take you to the references, but I think that generally reflects the view the Advisory Group's got. They were very clear, weren't they, and in fact it was obvious from their terms of reference that they had a very limited timeframe, and while there was some input led by the Ministry of Justice, it was broadly a desktop exercise for them. They were looking at the wording. They weren't doing research and analysis into the purpose and intent and those broader issues. And in fact, they recommended that that was what should happen if one was contemplating changes, that's correct?

A. That's correct. I think they actually did a very remarkably good piece of work in the time they had available and they were clear what the limitations of that work was.

Q. And in fact, I think that's consistent through there and they were very carefully to be clear that they weren't suggesting the removal of Treaty provisions. And again, that they engaged with all the different alternative legal weightings and identified that they were – while some of them may require consideration as between descriptive and operative, the actual weighting was really a matter that was contextual and relevant to the

particular considerations and that decisions in terms of changing those matters are political in nature, and that wasn't their role, is that correct?

A. I think that's a fair summary of **(inaudible 08:58:10)**.

Q. Yes, I'm just to summarise in the time available.

A. Yes.

Q. I mean, I think they probably did err on the odd occasion of perhaps taking an inconsistent approach, and one example is the, and it's relevant here because of section 4(d) of the Education and Training Act, they make a comment, and I won't you to the page in the time, but they refer to the use of the word 'honour' the Treaty, your will recollect that, and they make a comment that that seems a little bit, I don't know, ethereal or something of that kind of nature and whether that's an appropriate term to be used apart from perhaps in a Treaty settlement, and you might recollect they made that observation. And then in relation to section 4(d) they commented in their recommendation as to whether to revisit the word honour in that regard, and I wonder whether, given that that is one of the clauses that seems to be fitting within and it's especially referred to within the Cabinet decision and obviously the proposed bill, and while no decision it appear to me has been made with relation to that specific provision, I can't see one on the face of it, but the term honour in that regard sits in the high purpose of statement of the Education and Training Act, talking about the education system delivering on a range of matters or reflecting a range of matters, including honouring the Treaty. And if one, and this is what the Advisory Group with due respect **(inaudible 08:59:50)** didn't do because it wasn't dropping into that level. If one steps back and looks at the context of te Tiriti in respect of education, then the notion that the scheme of the Act among other things is honouring the Treaty, it's a very different thing, isn't it, from specific provisions that might give a legal weighting to the Treaty or its principles, and I would suggest that that was intended to reflect the fact that te Tiriti exist in an educational setting as part of the fabric of our society as a key matter in relation to history and other subjects that are being taught that it resonates throughout in many ways. And it wasn't intended in that respect to import

anything else as there are other provisions within the Act that more directly deal with the Treaty. You could understand that perspective?

A. I think I understand the perspective you're outlining. I think a discussion about the specifics of how the Education provisions work together we would have always looked to our colleagues in the Ministry of Education to bring more expertise on that.

Q. Yes.

A. [Caroline Greaney] I wonder where it is helpful, so the Advisory Group report is on page 37 just if anyone's looking for the reference. The point the Group makes at that point is they note that section 4(d) uses the word honour and that it is sitting in the purpose section of that Act, and it says to honour te Tiriti o Waitangi and support Māori-Crown relationships. What the Advisory Group notes is that it's unclear what assists in **(inaudible 09:01:34)** that honour the Treaty actually does. And the other formulation such as recognises and respects, give effect, or even takes account of or have regard to would seem to provide more certainty. And I think that was part of the task that was set for that group, was to look at the provisions and through the lens of is there certainty and clarity of the drafting. And so, I mean, that's the comment that that group made.

Q. Yes and I suppose we can debate that back and forth, but we're talking about a purpose provision not a legal – those are all legal weighting that would go to a decision-maker it seems to me that they are proffering in that regard, and the problem with looking at provisions in isolation on the face of the page is one isn't stepping back and looking at the broader context and sign posts and other schemes that refer to te Tiriti and things Māori including tikanga, te reo, that exists within the frame of the Act. But as you note, that's a matter where specific input from the Ministry and careful consideration would be required as part of the decision making as to what to do in terms of section 40 or any other provision in any other Act for that matter, is that fair?

A. Yes.

Q. And so, what I'm struggling with in terms of the timeframes is seeing where or has that essentially with the decision of Cabinet to reject the recommendations in the Regulatory Impact Statement in terms of all the

options that were put up and go to a much more generic approach in my view, has that precluded effectively an agency by agency input on the specific changes not only to the Education and Training Act but to all the other Acts that are under review?

A. [Andrew Kibblewhite] I think you have a situation where advice was put, ministers made judgments on that recognising that, you know, there was some opportunity for input from departments or indeed from portfolio ministers, but equally that there was a higher level set of Cabinet decisions. It was aware of some of those uncertainties and therefore taking decisions that was cognisant of that.

Q. Yes. I didn't see in the Minister's paper reference to particular views from particular agencies. Did every agency with their respective piece of legislation have input post the advisory group's report and pre the preparation of this report in December?

A. [Caroline Greaney] All agencies were consulted on and had an opportunity, and had the opportunity to brief their own portfolio minister on what was proposed for the provisions in their legislation.

Q. And this issue came up yesterday where there were papers provided back into the Ministry of Justice by each of those departments, and in particular the Ministry of Education.

A. I'm not sure about papers necessarily but certainly there were conversations and discussions with those agencies.

Q. And we don't have any records of that input, do we?

A. We have a lot of communication and traffic between us in the agencies, so…

Q. What I suppose I'm getting to, is there any analysis specific to the decisions that are going to be made in relation to other provisions within the Education and Training Act from the Ministry of Education? Are they involved in the development from this point on or is this an exercise that has now been and continues be led by the Ministry of Justice in terms of the remaining steps in the process?

A. [Andrew Kibblewhite] I think the overarching process has been led by us at the officials' level and by our minister. As noted, we're in a phase now where there are some further conversations going on to the extent,

including with Iwi Chairs depending on how Iwi Chairs choose to engage with it. As a result of that, if there are changes proposed you would certainly see that officials from the relevant agencies would be involved in providing advice on the implications of whatever's proposed.

MR FERGUSON ADDRESSES JUDGE MULLINS – TIMETABLE (09:06:12)

(09:06) MS ANNETTE SYKES TO ANDREW KIBBLEWHITE, CAROLINE GREANEY: (MIHI)

Q. Kei te tuku mihi ki a kōrua i tae mai i tēnei rā i raro i te kapua pōuri. Kua rongo au, tētahi o ō hoa mahi i mate. I runga i taua tūāhuatanga kei te mihi atu ki a kōrua. **[Nil.]** I have three areas, and I'm going to try and be quick but you know my propensity for verbosity so I'll try very hard to keep it to five minutes. Can I take you please to the RIS that was given, and really I'm looking at it, I think it's the November RIS, and this question is for you, Ms Greaney. At the page 6 of it, the quality assurance statement, can you see that?

A. [Caroline Greaney] Yes.

Q. I found that quite an interesting criticism of the advice that was given to the Cabinet, can you tell me why and how that came about?

A. You're talking about the text in the box for the quality?

Q. Yes.

A. So the Regulatory Impact Statement is a – it's got a significant framework around how you do these documents. The intention of them is that what is – this is advice from officials to ministers to inform their decision-making. Every Regulatory Impact Statement has a review by a pool of trained people, trained in high quality, quality assurance who review the RIS and provide a statement as to whether this Regulatory Impact Statement meets the criteria or not. You'll note that this one has a rating of does not meet.

Q. Yes.

A. And the panel explains why. It's a transparency statement to be really clear about why this statement doesn't meet the criteria for a high quality RIS that meets the requirements. And you'll note there that it talks about

how the information and analysis doesn't meet it and it refers to the constraints and limitations in terms of the options considered, the timeframes, the lack of consultation especially with iwi and hapū as Treaty partners. So, that is what this statement says, yes.

Q. So from a public policy perspective that's quite alarming that you have a document that doesn't meet the quality assurance. So we come to February, has that improved by then? Is there a statement that can give us any confidence? I'm looking now at a document that was provided yesterday by my friends from her minister Erica Stanford which was Cabinet paper material as a proactive release dated 14 February. Do you have that document?

A. Is it a Ministry of Education document?

Q. Yes, it was from the minister but it was about matters that were proactively released relating to Cabinet paper material.

A. I don't have it with us.

Q. Have you seen that before?

A. I'm not sure that I have.

Q. I'll leave it there, I'll ask those questions in writing.

A. Okay.

Q. What is a Treaty settlement? I act for a significant group who have been around since Wai 11, the Te Reo Māori claim, who have been significant leaders in providing kaupapa Māori education and a pedagogy for that, and they have a particular document that's been negotiated they regarded as a Treaty settlement, because it certainly was recognised yesterday by the Chief Executive Officer of the Ministry of Education that she considered it the same way. I just want to say, would you consider a MOU that gives particular responsibilities and rights and relationship obligations, something that can be relied upon as a Treaty settlement from a public policy perspective? And you might want to answer that, Mr Kibblewhite.

A. [Andrew Kibblewhite] It would depend I think. I'm not sighted on that document, I don't understand whether when it was entered into –

Q. It was entered into six years ago.

A. Yes. I think it would be very dependent on the circumstances around it and how the Cabinet of the time considered it and then obviously what else went with it.

Q. So that's a difficulty that we're confronting in terms of Treaty relationships. You think that they are the gold standard because they are particular relationship agreements, and then they tend to be ignored. Is there actually any policy guidelines that allows people to assess, for example, who should be consulted when there's these kinds of relationships in place? I note that we're having consultation for example with the Iwi Leaders Group, but there is no consultation at all with Kura Kaupapa Māori or Ngā Kura ā Iwi which I act for who are primary deliverers for 3% of Māori children participating in their particular unique framework of learning.

A. I think the appropriate consultation and the obligations for consultation, the guidance for that is drawn from a whole range of different sources. Obviously the Tribunal has made a number of findings which we reference in our RIS and elsewhere which sets out a broad framework for consultation and there are other processes whether they are legal court processes as I think as was described earlier the legislation design guidance or the Cabinet Manual. So I think there isn't a very precise tickbox manual for how one consults with Māori and I think that's appropriate because it's very circumstance specific. There is a lot of guidance from a lot of quite authorotative sources about how it should best be done.

Q. So does that analysis regularly occur? And I'm going to go then in the specific circumstance, did it occur in this case? So does it regularly occur, that analysis, that it's context specific? We explore, as officials I'm talking about, giving advice to the minister of who should be engaged with, and then given reasons for that to occur?

A. Certainly I can speak to the work that we did in the Treaty references, we provided quite extensive advice to ministers over what we thought an appropriate level of engagement would be and we've had quite active discussions with ministers and ministers have had quite active

discussions amongst themselves over how they might engage on the issues that are before us in this space.

Q. Now, can I go to paragraph 9 and following of the joint statement that you made today, and this is my last matter. I ferreted last night a really great article you did sometime ago, Mr Kibblewhite, with Peter Boshiay**(inaudible 09:13:32)** on free and frank advice.

A. Well done.

Q. Can you recall that?

A. I do recall that article.

Q. Can I ask my friend from the Crown to give you one. One of the things that my clients are a bit concerned about is a lot of redactions in these documents without explanation, especially the stuff we received overnight. Normally when we get things redacted we get an indication of what provision of the OIA is being relied upon. Why didn't that occur here?

A. I think that'll be a function of the speed and the pace with which that all occurred. But the essential principle was the matters that weren't related to education or provided context to the overarching education issues, i.e. all those things that related to other bits of legislation were taken out.

[Caroline Greaney] If I just add to that, they haven't been released under the OIA and so that's why it doesn't refer to provisions in the OIA for redactions, it's purely around the relationship to the scope of this inquiry.

Q. Those papers weren't released under the OIA, they were given by Crown counsel to us yesterday. We had made OIA requests for certain information which was denied, and so we received the number of redacted documents which we're talking about today. I found that quite unusual that Crown would put it in with redactions. In this particular instance, the same material was provided for in another Waitangi Tribunal hearing with different redactions. Is there a different analysis framework as to why you would redact, for instance in Climate Change, certain material – sorry, you keep it open but you've redacted in this? I'm trying to figure out why.

MR WATSON:

Sorry, your Honour. These witnesses weren't involved in the Climate Change process so they can't speak to that.

MS SYKES TO ANDREW KIBBLEWHITE, CAROLINE GREANEY: (CONTINUES)

A. [Caroline Greaney] I can speak to that a little bit because we did look at that yesterday when we became aware from watching yesterday that there was a difference. It's purely, it's two different teams of people have looked at those documents and have made slightly different judgment calls on redactions. What I understand is what's been released in this inquiry is more has been released, it's been wider, but actually when looking at it they both look like legitimate judgment calls made, it's just they were done by two different people at two different points in time and under pace for these ones.

Q. There were some actually significant ones that were released in Climate Change but not here, so would you be able to review the decision on that and I think submit over – I think it's quite critical on the timing for our timeline.

A. Yes, very happy to review that.

Q. Now, getting back to the article and it's really about our concern that RIS' are done, and we saw it in the Treaty principles, Ngā Mātāpono, significant RIS asking for different processes and they were rejected by the government. I'm wondering what is happening to the obligation of full, free, frank advice where there's no reason seemed to be giving, it's just ministerial responsibility, not even Cabinet responsibility. Can you help me, is there a trend in that way since the Coalition arrangement? Is this new or is this something that's been developing as your paper suggests for a while? I'm referring to the document I've just handed in.

A. [Andrew Kibblewhite] Free and frank advice is obviously something that officials do. Ministers then consider that and take the decisions that they would take. I think there is still a lot of very constructive and direct free and frank advice given, I think you can see it in some of the materials in our RIS now. I think ministers of all political persuasions have always and

rightly had the prerogative to take a different decision than the advice that's put before them, and I think that's a feature of the last government as it's a feature of this government.

Q. I've just been told that my friend wants the follow-up so I'm the backstop Charlie here so I'm going to allow the principle cross-examiner, with your Honour's leave, to follow up with some questions.

A. [Caroline Greaney] May I add one little thing?

Q. Certainly.

A. I know I'm not responding to your question. Just in terms of the Regulatory Impact Statement and taking your point about free and frank advice, the document explicitly sets out the limitations and constraints on the process of giving advice, and that's part of us giving free and frank advice too to also talk quite explicitly in a way that is transparent where there were limitations placed on the process as a way of making that visible.

Q. See, it's really important for my clients, the NZEI Unions because they have been told that they have to enter NDAs in communicating with the Ministry of Education if they're to participate in these special groups. We heard from Ngā Kura ā Iwi that that NDA actually went as far as preventing them from talking about bespoke processes. And it seems to me that in itself is also interfering with the transparency required for full, free and frank advice. Would you like to comment?

A. [Andrew Kibblewhite] I wouldn't be in the position to comment on that.

Q. Okay. Do you want it in writing and comment if I give you the specifics?

A. That would be a question for the Ministry of Education I think, not for us.

Q. Okay. Thank you, kia ora.

(09:19) MR FERGUSON TO ANDREW KIBBLEWHITE, CAROLINE GREANEY:

Q. Sorry, Ma'am, I didn't want to cut my friend off, just given she'd indicated she had a couple of questions I presumably if I take another five minutes that'll leave time for the Tribunal. I just wanted to, the one issue, and I'll try sum it up as well, I just wanted to get back to the issue of Option 5, and when I look at the Regulatory Impact Statement – note, your Honour,

I'm avoiding using the term RIS today – at page 92 of the bundle, page 5 of the Regulatory Impact Statement, and it talks about limitations and constraints on analysis. It says Option 5 was added recently and has increased the number of provisions in scope. Now, by added recently, what timing are we talking about in that respect?

A. [Caroline Greaney] Just so that we're clear, Option 5 which is set out and it's described on page 16 of the document, Option 5 was a proposal to amend all Treaty standards to be no higher than the take into account standard.

Q. Correct.

A. So you're see through the process that we had been looking at the additional, the previous four options which was more of a case by case looking at each provision and deciding whether an amendment would be helpful, adding more detail, more description to be helpful, where there actually could be more clarity or consistency could be increased through non-legislative ways. And then it was through discussion, and I think it came after **(inaudible 09:21:16)** question for the timing, particularly might have to answer in writing to get it really clear for you exactly what point in the process that happened. But this was as a result of a ministerial discussion where this fifth option of them all being set at the same standard was introduced.

Q. So this is essentially Option 5 as introduced as almost the antithesis of what the Advisory Group were recommending which is to do the considered stage by stage analysis and then make decisions based on that, that's correct, isn't it?

A. That is correct and again I will want to come back in writing to be very clear, but my recall without referring to notes or anything is that is ministerial discussion after having received the report of that Advisory Group was the option of a single standard applied across all of them was being discussed and proposed.

Q. And so, when you say ministerial discussion, is that with your minister or likely the Ministerial Oversight Group as a whole?

A. [Andrew Kibblewhite] Can I just take one minute. Just noting the Advisory Group did describe the landscape of a lot of variability I think,

from memory, it also identified that there wasn't always a clear and understood rationale for that. It then didn't go as far, I think you're absolutely right, as saying that you should move all to a consistent standard, but it describes some of the context to which I think was influential to ministers there. There's a lot of different issues and not always for an obvious reason.

Q. Well I think with respect the advisory group was clear that it didn't undertake that analysis and said what's necessarily apparent on their looking at the terms within the legislation as to the rationale for differentiation and recommended that that analysis occur. That was their recommendation. It's disingenuous, isn't it, to suggest that somehow the ministers got that idea from the Advisory Group?

A. No, I think the ministers were informed by the Advisory Group and some of that description. I don't think they were taking it on board as a recommendation of the Advisory Group at all.

Q. All right. If I could just take you to page 47 of the Regulatory Impact Statement, page 134 of the bundle as it were, where option 5 is addressed, and option 5 I think as you said it's described on page 103 I think of the bundle, paragraph 60 and 61, so this is the, as you say, the standard is no higher than take into account. And then in the Regulatory Impact Statement that's prepared, 105, the effective option 5 on the Crown's ability to uphold its Treaty obligations is unclear. Impacts would be context specific and depend on the nature of the Treaty interest and the provision type. At a high level this change is likely to be seen to signal a shift in the Crown's position on the status and importance of the Treaty which could have a cooling effect on the important decision-maker's place on Treaty considerations. Option 5 has no apparent benefits and risks significant damage to the Māori-Crown relationship. It is likely to be seen as reducing existing Treaty protections in legislation. This negative impact is likely to be exacerbated by lack of consultation with Treaty partners. That was the view expressed in the Regulatory Impact Statement, wasn't it?

A. That's correct.

[Caroline Greaney] That's correct, yes.

Q. And that was in November 2025, and the only outreach to any Māori group was at the beginning of this month after drafting instructions have been issued for input within a two week period, that's correct?

A. [Andrew Kibblewhite] Well, the input is probably a bit longer than a two week period, but it's a short time I think with extension, it gets out to a month.

Q. Nothing has been done in the process or decision-making to mitigate in any way any of those risks and adverse effects that are identified in the Regulatory Impact Statement, have there?

A. Well, the ministers were I think looking to this process of consultation now and the ministers have looked for – the minister has been clear as that even as it goes through a Select Committee process there'll be opportunity for more discussion on it.

Q. And in terms of input from the various agencies on the potential change to Treaty provisions within their respective legislation, that's gone now too, isn't it, with a decision in terms of option 5, any input now is effectively would be a rearguard action and unusual given you've got a Cabinet decision that favours this option?

A. I think the Cabinet decision was an across the board decision. So any change in relation to that would have to be argued that there was a grounds for an exemption or something different from that broad position.

Q. And would have to be argued in the kind of post essentially a draft bill coming back from PCO?

A. I think the timing of when you had that argument, I mean, would depend when it was raised and what other things were going on.

Q. And given the risks identified in the Regulatory Impact Statement and the adverse effects, if we're looking at provisions within legislation that refer to giving effect to, recognising and providing for, having particular regard to, as I understand option 5 and with obviously not having seen the bill, every single one of those provisions is to be changed to "take into account", is that correct, that's the decision that's been made?

A. [Caroline Greaney] For the legislation that's in scope, that they would be standardised, yes.

Q. And I'm not sure we can go back to our point about the word honour and section 4(d), but assuming that it is within scope and it seems to be and that somehow viewed to be a legal weighting issue, so say for looking at, seeing what the bill actually says, one can reasonably presume that section 4(d) will now talk about an education system and a purpose that takes into account te Tiriti or the principles of te Tiriti, is that a reasonable assumption?

A. [Andrew Kibblewhite] I think a new default assumption that would always be able to be tested in any individual case, but a new default assumption would be the – take account for those bits of legislation that are identified and within scope, yes.

Q. And you are well aware of the case law and the fundamental difference that exists between those different legal weightings, give effect to, recognise and provide for, have particular regard to, and take into account, all being well traversed by the courts in a whole range of statutory contexts and those differences are material and important, aren't they?

A. I think that's understood and it's flagged in the Minister's Cabinet paper that there's both a variability and then a desire to essentially set a default at the level of "take account of".

Q. So, when one has at some point talked about the need for clarity in terms of understanding and implementation, in fact, in the circumstances where it's quite clear on the face of the RIS that there is no evidence of uncertainty or lack of clarity in that respect, one might have some debates about why it was there, but in terms of its application and implementation that any change from those higher standards within legislation to the standard of take into account which is the lowest legal weighting, so it means one can look at it and disregard it, can with all due respect not be objectively considered as anything else than a decision by this Government to downgrade and reduce the status and importance of te Tiriti of Waitangi and its principles in legislation across the board in terms of all of these statutes at least, objectively that's the only interpretation, isn't it?

A. If I was to interpret I think you can see as it's set out in the Cabinet paper the Minister's intentions are pretty clear there, there is something about variability and there is about limiting the clause at the level of take account of.

Q. But you accept that take into account is the lowest standard in terms of legal weighting, that's right, isn't it?

A. Yes.

Q. And that is exactly when I am finishing, Ma'am, thank you.

JUDGE MULLINS:

Thank you Mr Ferguson. Tēnā kōrua. Kāore ā mātou pātai. **Greetings to you both. We have no questions.** The Tribunal don't have any questions that we need to put to you now. There may be a couple that may come through in writing but not many. But again, thank you both for making the time available today, appreciate that you have to go and safe travels. Appreciate the time. Tēnā kōrua, tēnā koutou. **Thank you.**

HOUSEKEEPING – JUDICIAL CONFERENCE (09:32:28)

DR SEASON-MARY DOWNS ADDRESSES JUDGE MULLINS (09:32:58)

HEARING ADJOURNS: 9.33 AM

JUDICIAL CONFERENCE HELD FROM 10.02 AM TO 10.28 AM

HEARING CONCLUDES: 10.28 AM

MINISTRY OF JUSTICE
Tāhū o te Ture

Notes of Evidence Legend

National Transcription Service

Indicator	Explanation
Long dash –	Indicates interruption: Q. I think you were – (*Interrupted by A.*) A. I was – (*Interrupted by Q.*) Q. – just saying that – (*First dash indicates continuation of counsel's question.*) A. – about to say (*First dash indicates continuation of witness' answer.*) This format could also indicate talking over by one or both parties.
Long dash (within text)	Long dash within text indicates a change of direction, either in Q or A: Q. Did you use the same tools – well first, did you see him in the car? A. I saw him through – I went over to the window and noticed him.
Long dash (part spoken word)	Long dash can indicate a part spoken word by witness: A. Yes I definitely saw a blu – red car go past.
Ellipses … (in evidence)	Indicates speaker has trailed off: A. I suppose I was just… *(Generally witness has trailed off during the sentence and does not finish.)* Q. Okay well let's go back to the 11th.
Ellipses … (in reading of briefs)	Indicates the witness has been asked to pause in the reading of the brief: A. "…went back home." The resumption of reading is noted by the next three words, with the ellipses repeated to signify reading continues until the end of the brief when the last three words are noted. A. "At the time…called me over."
Bold text (in evidence)	If an interpreter is present and answering for a witness, text in bold refers on all occasions to the interpreter speaking: Q. How many were in the car? A. **There were six.** Q. So six altogether? A. **Yes six** – no only five – **sorry, only five.** *(**Interpreter speaking** – witness speaking – **interpreter speaking**.)*
Bold text in square brackets (in evidence)	If an interpreter is present and answering for a witness, to distinguish between the interpreter's translation and the interpreter's "aside" comments, bold text is contained within square brackets: Q. So you say you were having an argument? A. Not argue, I think it is negotiation, ah, re – sorry. **Negotiation, bartering. [I think that's what he meant]** Yeah not argue.