BEFORE THE WAITANGI TRIBUNAL

WAI 3553
WAI 3503

IN THE MATTER OF	the Treaty of Waitangi Act 1975
AND	
IN THE MATTER OF	the Education and Training Amendment Act and Te Mātaiaho Urgent Inquiry **(WAI 3553)**
AND	
IN THE MATTER OF	a claim by **Ripeka Lessels** and **O'Sonia Hotereni** for and on behalf of New Zealand Educational Institute (NZEI) Te Riu Roa **(WAI 3503**)

NEW ZEALAND EDUCATIONAL INSTITUTE TE RIU ROA SUBMISSIONS IN REPLY TO THE CROWNS CLOSING SUBMISSIONS

Dated on this 1st day of May 2026

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TĒNĀ E TE TARAIPIUNARA

INTRODUCTION

1. These submissions are filed on behalf of NZEI Te Riu Roa (WAI 3503) in reply to the Crown's closing submissions addressing the proposed legislation regarding statutory references to The Treaty of Waitangi (Issues K-O) dated 29 April 2026.

2. The Crown's submissions on Issues K-O are, in essence, a holding position. They say: nothing is finalised, uncertainty is everywhere, the real harm cannot be assessed yet, and the big questions belong to the Education Kaupapa Inquiry. NZEI rejects that framing on principled grounds. Five specific propositions are advanced in reply: (a) uncertainty is not a shield, it is part of the prejudice; (b) the process breach is already established and the Crown's own concessions confirm it; (c) the Education Kaupapa Inquiry deflection should be rejected, including because that inquiry is not expected to be completed until 2034, almost a full generation of tamariki Māori operating without Te Tiriti protections in their education; (d) the Crown's position on statutory language is internally contradictory; and (e) the risk from purpose provision amendments is live, not speculative.

PART I: UNCERTAINTY IS A FORM OF PREJUDICE, NOT A DEFENCE

3. The Crown's central submission on Issues K-O is that the Proposed Bill's precise effect cannot be assessed because drafting remains unsettled. That argument inverts the Treaty analysis. Where the Crown advances a programme of legislative change without having determined the effect on its own obligations, the uncertainty is not an argument for deferral. It is evidence of a failure to self-inform before acting.

4. The Crown's own memorandum of 24 April 2026 confirms this position.[1] The Crown concedes the 'take into account' standard may not work for purpose provisions and that further Ministerial advice is required. That concession does not resolve the problem identified in NZEI's closing submissions. It confirms the Crown is advancing legislation whose effect on its foundational Treaty obligations remains, by its own account, undetermined.

[1] Education and Training Act 2020 (ETA), s 127(1)(d) (as enacted). Repealed on 19 November 2025 by s 8 of the Education and Training Amendment Act 2025 (2025 No 65).

5. NZEI kaiako and boards are operating **now** in the gap left by the repeal of s 127(1)(d) of the Education and Training Act 2020 ("**ETA**").[2] That provision, as enacted, imposed the following obligations on every State school board:

5.1 **s 127(1)(d) [repealed 19 November 2025]:** to give effect to Te Tiriti o Waitangi, including by (i) taking reasonable steps to make the school's physical environment reflect New Zealand's cultural diversity; and (ii) achieving equitable outcomes for Māori students; and (iii) providing for students to be taught, in accordance with their parents' or caregivers' wishes, in te reo Māori and according to tikanga Māori.

6. Since 19 November 2025, every State school board has governed without that obligation.[3] No replacement framework, minimum floor, guidance, resourcing, or monitoring mechanism has been provided. The prospect of further amendments to ss 4(d) and 32(h) compounds present uncertainty:

6.1 **s 4(d) [currently in force]:** The purpose of this Act is to establish and regulate an education system that ... (d) honours Te Tiriti o Waitangi and supports Māori-Crown relationships.

6.2 **s 32(h) [currently in force]:** The purpose of this Part is to establish a schooling system ... by ... (h) honouring Te Tiriti o Waitangi and supporting Māori-Crown relationships that make a difference to learning.

7. A kaiako advising a board about its Treaty obligations under the current Act cannot do so with any confidence when the Crown has publicly confirmed it intends to reduce those obligations but has not yet determined how. That operational uncertainty is concrete and present. It is not speculative future harm.[4]

PART II: THE PROCESS BREACH IS ESTABLISHED: THE CROWN'S OWN CONCESSIONS CONFIRM IT

8. The Crown's submissions appear to suggest that Tribunal findings are premature because no further legislation has been introduced. That conflates two distinct questions: whether the Crown's conduct to date constitutes a Treaty breach, and what relief should follow. The Tribunal can and should answer the first question

[2] Education and Training Amendment Act 2025 (2025 No 65), s 8, enacted 19 November 2025.
[3] Wai 3553, #3.2.019, Memorandum of Counsel for the Crown providing update on proposed changes to sections under the ETA, dated 24 April 2026 ("Crown Memo 24 April 2026").
[4] *NZ Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA) at 663 (per Cooke P).

now.

9. The process breach is not contingent on the passage of further legislation. It is established by the Crown's own concessions:

9.1 **No engagement before repeal:** Andy Jackson concedes there was no engagement with Māori in relation to s 127(1)(d) prior to AP428.[5] That is the most significant single concession in these proceedings. Cabinet overrode its own officials' recommendation that no changes to s 127 should proceed unless Māori engagement happened first.[6]

9.2 **Crown MAG finding overridden:** The Crown's own Māori Education Ministerial Advisory Group found the process was not Te Tiriti-compliant.[7] Cabinet overrode that finding.

9.3 **RIS condemns the preferred option:** The Ministry of Justice Regulatory Impact Statement records that consultation is 'one of the principal mechanisms' through which the Crown discharges good-faith obligations, and that 'there is a strong argument' the Treaty relationship gives rise to a consultation obligation.[8] The Crown knew. It proceeded anyway.

10. The Wai 3300 Tribunal's finding in *Ngā Mātāpono* that the Treaty References Review is inconsistent with Te Tiriti has not been remedied.[9] The Crown has not substantively changed its programme of reform in response to that finding. These are facts. They are not rendered less significant by the incompleteness of the Proposed Bill.

PART III: THE EDUCATION KAUPAPA INQUIRY DEFLECTION: A GENERATION CANNOT WAIT UNTIL 2034

11. The Crown invites the Tribunal to treat the broader ETA amendments as more properly suited to the Education Kaupapa Inquiry. The Tribunal should reject that submission. That inquiry is not expected to be completed until **2034**, with the

[5] Wai 3553, #A43, Brief of Evidence of Andy Jackson, 30 March 2026 (Jackson BOE) at [38].
[6] Jackson BOE at [33]. Cabinet agreed to complete removal on 15 October 2025: Cabinet Minute CAB-25-MIN-0026.
[7] Jackson BOE at [41]–[42].
[8] Wai 3553, #A52, Additional Documents of the Crown Memorandum, 16 April 2026, Regulatory Impact Statement: "Providing certainty on legislative references to the Treaty of Waitangi" (RIS), at 12. The RIS Quality Assurance Panel rated the RIS as not meeting quality assurance criteria.
[9] Waitangi Tribunal, *Nga Matapono / The Principles* (Wai 3300, 2024 pre-publication version).

relevant strategic goal target set for **2035**.[10] That is not a procedural alternative. It is the effective extinction of any timely remedy.

12. **A full generation of tamariki Māori.** A child starting Year 1 in 2026 will have completed their entire primary and intermediate schooling and begun secondary school before that inquiry concludes. Every year of that child's education from 2025 onwards is governed by a statutory framework that no longer requires their school board to give effect to Te Tiriti. If the Proposed Bill proceeds without Tribunal findings, those years will also be governed by a framework that has removed s 4(d) and s 32(h) from the Act's Treaty architecture. That is not theoretical future harm. It is the lived reality of a generation of ākonga Māori.[11]

13. **The remedy window is now.** The Crown has advised the Proposed Bill will not be introduced before early August 2026, and that claimant counsel will be notified with 48 hours' notice.[12] If the Tribunal defers its Stage One findings to the Education Kaupapa Inquiry, there is no realistic prospect of Tribunal findings before the Bill is introduced. That deferral is not a neutral procedural choice. It forecloses the possibility of effective pre-legislative remedy.

14. **The evidence is before the Tribunal now.** The Tribunal has extensive evidence directly relevant to the Proposed Bill's Treaty framework. The briefs of MacGregor-Reid, Jackson, Manning, Mahuika, Hayward, and Lessels all bear on the Crown's Treaty obligations under the ETA. The Tribunal has jurisdiction now. The suggestion that Māori should wait for another inquiry, one that will not conclude until the current generation of primary school students has left secondary school, does not remedy present and ongoing prejudice.

15. **The deflection repeats the fragmentation strategy.** Routing the Proposed Bill to the Kaupapa Inquiry while the Tribunal assesses the s 127(1)(d) repeal and curriculum reset separately would require a future Tribunal to evaluate a programme from which one-third has already been adjudicated in isolation.[13] NZEI's case is precisely that the three waves must be assessed together. The Crown's proposal to fragment them across two separate inquiries, one of which

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[10] The Waitangi Tribunal's Education Services and Outcomes Kaupapa Inquiry is listed with a strategic goal target of 2035, with the inquiry expected to be completed by 2034. See Waitangi Tribunal, *Strategic Plan*. A child commencing Year 1 in 2026 would complete Year 13 in 2038.

[11] Wai 3553, # 3.3.021, Closing submissions for the Crown regarding statutory references to the Treaty of Waitangi, 29 Apr 26, at [33] and [35].

[12] Crown Memo 24 April 2026: the Proposed Bill will not be introduced before early August 2026; claimant counsel to receive 48 hours' notice prior to introduction.

[13] Wai 3553, #3.1.057, Memorandum of Counsel for the Crown providing an update on the Treaty References Review, 14 April 2026.

will not conclude until 2034, is inconsistent with the Crown's obligations as an honourable Treaty partner.

16. **The moral injury to kaiako and the deterrence of future teachers.** The prejudice identified in these proceedings is not confined to tamariki Māori. Kaiako who have spent careers building Treaty-compliant practice are facing professional and cultural dislocation. They are being asked to continue their work within a statutory framework that has been deliberately stripped of the obligations that gave that work legal force. That is a form of moral injury that compounds the longer the current programme continues without remedy. There is a further and forward-looking dimension: a schooling system that cannot credibly commit to Te Tiriti as a governing principle is a system that will deter Māori from entering and remaining in the teaching profession. The consequences of that deterrence will be felt for a generation, not a term. It is a further reason why deferral to the Education Kaupapa Inquiry until 2034 is not an adequate answer.

PART IV: THE CROWN'S POSITION ON STATUTORY LANGUAGE IS INTERNALLY CONTRADICTORY

17. At paragraphs 53-55 of its submissions, the Crown argues that Treaty duties persist regardless of statutory expression. Ellen MacGregor-Reid confirmed that Crown education agencies bear significant and enduring Treaty obligations irrespective of their precise statutory form.[14] NZEI does not dispute that general proposition. The Crown cannot, however, maintain it while also maintaining that the removal of s 127(1)(d) was a benign reform. The two propositions are mutually inconsistent:

17.1 **If statutory language does not determine Treaty obligations:** then the removal of s 127(1)(d) was not a minor technical change. It was a deliberate decision to remove the legislative mechanism through which boards were required to give practical effect to those obligations. Without s 127(1)(d), a board may now lawfully redirect every Treaty resource with no legal consequence. The governance gap is institutional, not theoretical. The Crown's own Disclosure Statement, released on the same day as AP428, warned the removal could reduce the Crown's ability to support Māori educational success.[15]

[14] Wai 3553, #A42, Brief of Evidence of Ellen MacGregor-Reid, 30 March 2026 (MacGregor-Reid BOE) at [18]–[19].
[15] Wai 3553, #A52, Disclosure Statement released 3 November 2025 (same day as AP428) at 90.

17.2 **If statutory language is irrelevant:** then the Crown cannot argue the removal was necessary to achieve certainty about the scope of Treaty references in legislation. The removal serves no Treaty-protective purpose on the Crown's own analysis.

17.3 The Crown's double position, that obligations persist but their statutory expression does not matter, is an attempt to minimise the significance of the removal without engaging the Treaty consequences. Critically, s 9 of the ETA itself demonstrates why statutory expression matters: it serves as the Act's own index of Treaty obligations, mapping specific provisions to specific Crown duties.[16] With ss 9(1)(b) and 9(1)(d) now repealed and s 127(1)(d) removed, the Act's internal Treaty map has been materially redrawn. The Crown cannot disclaim that effect by asserting that obligations exist elsewhere in the general law.

PART V: THE PURPOSE PROVISION RISK IS LIVE, NOT SPECULATIVE

18. The Crown acknowledges at paragraph 50 of its submissions that amendments to ss 4(d) and 32(h) can have knock-on interpretive effects across the ETA, including for ss 127 and 90. The Crown then says the nature and extent of those effects is 'unclear.' That concession is more significant than the Crown allows.

19. Sections 4(d) and 32(h) are not peripheral provisions.[17] Section 4(d) is the Act's purpose provision. Section 32(h) is the system-wide obligation on the schooling framework. These provisions anchor the Treaty architecture of the entire Act. Section 9 expressly cross-references s 4 as one of the main provisions recognising the Crown's responsibility to give effect to Te Tiriti. If s 4(d) is reduced to a 'take into account' standard, s 9's own statement of the Act's Treaty framework is weakened at its root.[18]

20. The risk is not speculative. It is the Crown's own assessment, in its own documents, that it cannot yet determine what the amendments will do to the Act's foundational Treaty obligations.[19] That is not a reason for the Tribunal to defer. It is a reason for the Tribunal to act now, while the legislative programme can

[16] ETA, s 9. Sections 9(1)(b) and 9(1)(d) were repealed on 19 November 2025 by ss 6(1) and 6(2) of the Education and Training Amendment Act 2025 (2025 No 65).
[17] Crown Memo 24 April 2026 at [2.2.1]–[2.2.9]: the Crown concedes the 'take into account' standard 'may not work' for purpose provisions and that further Ministerial advice is required.
[18] ETA, ss 4(d) and 32(h). Section 9(1)(a) expressly identifies s 4 as one of 'the main provisions of this Act that recognise and respect the Crown's responsibility to give effect to Te Tiriti o Waitangi'.
[19] Crown Memo 24 April 2026 confirms the nine targeted provisions: ss 3(2)(e), 4(d), 6(2), 9, 32(h), 398B, 476(4)(b)(v), 535B(a), and 536A(1)(ii).

still be redirected. The Tribunal's findings at this stage do not require certainty about the Proposed Bill's final form. They require the Tribunal to assess whether the Crown's programme, including its direction and trajectory, is consistent with Te Tiriti principles. On the evidence before the Tribunal, it is not.

21. A further and specific contradiction runs through the Crown's own submissions on the Proposed Bill. At paragraph 33, the Crown states that whether and how the purpose provisions are to be amended remains subject to further Ministerial decision, and that officials are to provide further advice on the appropriate treatment of those three provisions. At paragraph 35, the Crown states that the precise wording has not been settled, but that the Minister has authorised drafting instructions and retains authority to make further decisions on minor and technical matters as drafting progresses. Those two propositions cannot be reconciled. If major decisions about the purpose provisions remain outstanding and subject to further Ministerial advice, then the Minister has not yet made those decisions and drafting instructions cannot have been issued in respect of them. If drafting instructions have been issued and the remaining matters are minor and technical, then the major decisions have already been made and the Crown's claim that outcomes remain uncertain is not candid. The Crown cannot simultaneously maintain that the purpose provisions are still under active consideration and that the legislative programme is sufficiently advanced to be characterised as proceeding in good faith. That contradiction is not a peripheral drafting issue. It goes to the Crown's candour before this Tribunal.

22. The Crown's approach must be assessed against New Zealand's international obligations. The Crown's submissions assess the adequacy of its own conduct entirely within a domestic statutory frame. They do not engage with New Zealand's obligations under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the United Nations Convention on the Rights of the Child (UNCROC), or the international covenants that bear directly on the rights of indigenous children in education. New Zealand is a signatory to and has ratified both instruments. UNDRIP affirms, among other things, indigenous peoples' right to establish and control their own educational systems in a manner appropriate to their cultural methods of teaching and learning,[20] their right to have

[20] UNDRIP, Article 14(1): "Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning."

their cultures and histories appropriately reflected in education,[21] and the obligation on States to consult and cooperate in good faith with indigenous peoples before adopting legislative or administrative measures that may affect them.[22] UNCROC reinforces that framework from the perspective of the child: Article 30 provides that children belonging to indigenous communities shall not be denied the right to enjoy their own culture or to use their own language;[23] Article 29 requires that education be directed to the development of respect for the child's own cultural identity, language and values;[24] and Article 12 recognises the child's right to be heard in matters affecting them.[25] The Crown's programme was advanced without meaningful engagement with tamariki Māori or their whānau, the very rights-holders UNCROC places at the centre of educational decision-making. The Bill of Rights Act 1990, s 20 provides a domestic floor:[26] members of a linguistic and cultural minority shall not be denied the right to use their language or enjoy their culture in community with others. These are not peripheral considerations. They are obligations the Crown continues to affirm at the United Nations and in other international forums. The Tribunal is entitled to measure the honour of the Crown against those obligations as well as domestic Treaty standards. On that measure, the Crown's position is more difficult still. The Crown's submissions are silent on this framework entirely. That silence is not an answer.

PART VI: RELIEF: URGENT STAGE ONE FINDINGS ARE REQUIRED

23. These reply submissions confirm that the case for urgent Stage One findings,

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[21] UNDRIP, Article 15(1): "Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information."

[22] UNDRIP, Article 19: "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them

[23] UNCROC, Article 30: "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language."

[24] UNCROC, Article 29(1)(c): education shall be directed to "the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own."

[25] UNCROC, Article 12(1): "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the weight being given in accordance with the age and maturity of the child."

[26] New Zealand Bill of Rights Act 1990, s 20: "A person who belongs to an ethnic, religious, or linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practise the religion, or to use the language of that community."

before introduction of the Proposed Bill, has not been diminished by anything in the Crown's submissions on Issues K-O. Three matters require Tribunal findings that the Crown's submissions leave unanswered:

23.1 Whether the repeal of s 127(1)(d), carried out without consultation, against official advice, with acknowledged adverse effects, constitutes a breach of Treaty principles;

23.2 Whether the Crown's advancement of the Treaty References Review, simultaneously across three waves while concealing each wave from Māori scrutiny of the others, constitutes a breach of candour and good-faith obligations; and

23.3 Whether the Proposed Bill, in its current direction, can proceed without first completing Treaty-compliant engagement with Māori education stakeholders.

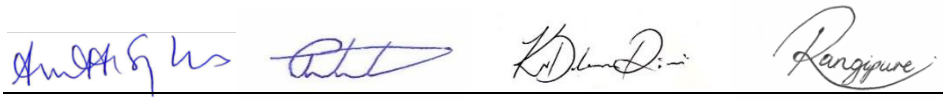
24. On all three questions, the evidence before the Tribunal, much of it drawn from the Crown's own witnesses, regulatory assessments, and internal advice, points in one direction.[27] The Crown's answer to these proceedings is Parliamentary sovereignty. NZEI's answer is that Te Tiriti obligations do not dissolve in the wash of a committee stage amendment. They do not wait until 2034.

25. NZEI's 50,000 members and the 1,859 signatories to Te Rarangi Rangatira will continue to do what they have always done: stand in front of their students and give Te Tiriti the practical content it requires. But they should not have to do it without boards legally required to support them, without a curriculum designed to enable them, and without a Crown standing beside them. The Tribunal is asked to restore the legal floor removed without consent, before the Proposed Bill removes what remains of the architecture above it.

[27] *Ririnui v Landcorp Farming Ltd* [2016] NZSC 62 at [105].

26. NZEI respectfully requests the Tribunal issue its Stage One findings well in advance of the introduction of the Proposed Bill, to enable effective pre-legislative remedy, for this generation of tamariki Māori, and for those who follow.

DATED at Rotorua this 1st day of May



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