

HŪTIA TE RITO O
TE HARAKEKE,
KEI HEA
TE KŌMAKO E KŌ?

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*The Interim Stage One Report of
the Education and Training Amendment Act
and Te Mātaiaho Urgent Inquiry*

PRE-PUBLICATION VERSION

WAI 3553

WAITANGI TRIBUNAL REPORT 2026



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PREFACE

This is a pre-publication version of the Waitangi Tribunal's report *Hūtia te Rito o te Harakeke, kei Hea te Kōmako e Kō?* As such, all parties should expect that, in the published version, headings and formatting may be adjusted, typographical errors rectified, footnotes checked and corrected where necessary, and illustrative material inserted. However, the Tribunal's findings and recommendations will not change with the publication of this report.

*Hūtia te rito o te hararakeke
Kei hea te kōmako e kō?
Whakataerangitia
Rere ki uta, rere ki tai
Kī mai, kī ahau
He aha te mea nui o te ao?
Māku e kī atu
He tāngata, he tāngata, he tāngata.*

*Pluck out the heart of the harakeke
Where will the bellbird sing?
It will fly aimlessly
Inland and seaward
If you were to ask me
What is the most important thing in the world?
I would say
It is people, it is people, it is people.*

HE WHAKAMARAMA

Ki ta mātou mōhio nō te tūpuna whaea o Te Aupōuri, a Meri Ngāroto, tēnei whakatauki, tēnei waiata tangi hoki.

He ariki tapairu a Meri Ngāroto, ā, i tukuna ia hei tatau pounamu ki Te Rarawa hei hohou te rongo nā runga i ngā take i waenganui i aua iwi e rua.

Kāore i taea e Meri Ngāroto te whai tamariki. E ai ki ētahi kōrero, nā tētahi mākutu i utaina ki runga i a ia, engari ko ētahi atu kōrero kāore e kōrero mō te mākutu. Kia ahatia, e whakaae whānuitia ana kāore ia i whai uri.

Mo te ātāhua a tona whakamahi i te harakeke, hei tohu ōrite ki te whānau, hei tangi mō tōna pūwekutanga, nā tona tatau pounamu ka tau te rangimārie ki a ia. Ko te rito te tino ngākau o te harakeke, e tiakina ana e te awhi rito, me ngā tūpuna. He whakaaturanga tēnei i te whirinaki me te whakawhirinaki o te whānau me te whakapapa.

Mo tenei kaupapa kua whakaritea e matou te Tiriti me nga pānga ki nga tirohanga Māori ki te ao i roto i te mātauranga, ki te rito e tiakina ana e te rangapū kua whakatūria e te Tiriti. Mehemea ka unuhia aua āhuatanga i te pūnaha mātauranga e te ture, me pehea rā ā tātou tamariki me ngā whānau Māori e tupu, e puāwai ai?

We understand this whakatauaikī or waiata tangi can be attributed to Te Aupōuri tūpuna whaea Meri Ngāroto.*

Meri Ngāroto was an ariki tapairu and was offered as a tatau pounamu to Te Rarawa to broker peace between the two iwi.

Meri Ngāroto was unable to have children, some say this was because a mākutu had been placed on her. Other retellings do not include reference to a mākutu, but, it is generally accepted that she was unable to bear children.

Meri Ngāroto beautifully used the harakeke, symbolic of the whānau unit, to lament her inability to bear children and therefore secure peace through the tatau pounamu. The rito is the heart of the harakeke protected by the awhi rito and the tūpuna (the outer fronts), together showing the dependence and interdependence of whānau and whakapapa.

The bellbird feeds off the flowers of the harakeke and is a further example of how the harakeke is a source of life for not just the whānau but for others dependant on it.

For our purposes we have likened the treaty and references to it as well as the Māori world view in education, to the rito, protected by the partnership the treaty establishes. If those things were to be removed from the education system, then how will our tamariki and whānau Māori grow and flourish?

* We acknowledge there may be variations to the kōrero of the ariki tapairu Meri Ngāroto. We selected this whakatauaikī because we believe it captures in beautiful imagery, the substance of the claims and our findings.

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Waitangi Tribunal
Te Rōpū Whakamana i te Tiririti o Waitangi
Kia puta ki te whai ao, ki te mārama

The Honourable Paul Goldsmith
Minister of Justice

The Honourable Erica Stanford
Minister of Education

The Honourable David Seymour
Associate Minister of Education

The Honourable Tama Potaka
Minister for Māori Development
Minister for Māori Crown Relations: Te Arawhiti

The Honourable Shane Jones
Minister for Regional Development

The Honourable Chris Bishop
Attorney-General

Parliament Buildings
WELLINGTON

14 May 2026

E te Kāhui Minita tēnā ra koutou e kawē tonu ana i ngā kaupapa o te motu. Tēnā anō hoki ki o tātou aitua maha kua hinga atu ki tua o te ārai. Kua tangihia rātou, kua mihiā, kua pororoakitia, na reira me kī kua ea.

We enclose our interim report concerning the proposed reforms to the Education and Training Act 2020 ('the Act') following the treaty clause review – *Hūtia te Rito o te Harakeke, kei Hea te Kōmako e Kō?* We have found the Crown's approach to the reforms has breached the treaty principles of partnership, active protection, and good government and caused prejudice to Māori. We recommend you correct course and immediately halt the advancement of the proposed amending legislation.

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If any changes are objectively needed to the Act's treaty provisions, then you should meaningfully engage with Māori in their co-design.

This inquiry has moved quickly. In mid-April our panel convened to hear claims to which we had granted urgency concerning both the removal of school boards' obligations to give effect to te Tiriti o Waitangi and changes to Te Mātaiaho/the New Zealand Curriculum. On the eve of hearing, Crown counsel filed a memorandum revealing your intention, as agreed by Cabinet on 23 February 2026, to downgrade the treaty standard in multiple sections of the Act to no higher than 'take into account', to amend or repeal section 536A(1), and to replace references to te Tiriti with a reference to both texts. Cabinet's decisions were new to us and had been made without any consultation or engagement with Māori.

At the request of claimant and interested parties, and recognising the significance of the proposed reforms, we have prepared this stage one report to inform your decision-making on whether and how to proceed with amending the Act. Most significantly, we hope to dissuade you from proceeding with a course of action that further breaches treaty principles and risks additional prejudice to Māori.

In the report, we concluded the Crown owed a duty to engage meaningfully with Māori on the reforms. This reflects the constitutional significance of the proposals; that the change is not neutral – it proposes to downgrade the strength of the Crown's treaty obligations as expressed in the Act, or even remove them entirely; and the unique context of education where the Crown owes particular obligations to actively protect taonga Māori, including te reo Māori and mātauranga Māori. This required the Crown to engage with Māori on all proposed changes to the Act.

We concluded that, despite receiving advice from the *Ngā Mātāpono* Tribunal regarding how to conduct a treaty-compliant treaty clause review, the Crown pursued a treaty-inconsistent course of engaging with a singular national Māori body, the National Iwi Chairs Forum, and only after substantive decisions had been made. We found Minister Goldsmith's view that the select committee would otherwise provide a sufficient opportunity for others to provide input to be manifestly inadequate and an insult to Māori. We considered that the Crown acted contrary to officials' advice and demonstrated a reckless disregard for the (likely and advised) harm to the Māori–Crown relationship that would result from its approach.

Next, we considered whether the Crown, in the absence of meaningful engagement with Māori, had adequately informed itself through internal policy processes of the potential implications of the proposed changes,

including their impact on Māori interests. We concluded Cabinet agreed to the proposals despite clear and repeated advice from officials that constrained timeframes had precluded in-depth analysis, not enough was known about the potential impact of the proposals, and the Regulatory Impact Statement was insufficiently developed to form the basis for Ministers to make an informed decision.

What was known, however, was the proposals carried a risk of harm to the Māori–Crown relationship and, as treaty provisions can act as safeguards for Māori interests, reducing or repealing obligations therein could disproportionately impact Māori. We agreed with officials that downgrading treaty standards in the Act to as low as ‘take into account’ would signal a shift in the Crown’s commitment to the treaty as it applies to education. Minister Goldsmith is yet to make decisions on changes to the purpose provisions in the Act, which refer to giving effect to and honouring the treaty. He seems likely to downgrade those commitments too, the potential impact of which would send ripple effects across the Act.

In summary, the decision to diminish the Crown’s treaty obligations in the Act to one of the lowest standards of ‘take into account’ – despite the lack of engagement and the strongly worded official advice not to do so – represents a major breach of the treaty and its principles. It is as bad as the Treaty Principles Bill in its attempt to erase the Crown’s duty to comply with the agreement made between Māori and the Crown in 1840. It may even be worse, because the Treaty Principles Bill in theory was never going to be enacted. It is, as we put it, an attempt by the Crown to takahi the mana of the treaty and its place in the laws of Aotearoa. We do not have jurisdiction to discuss the amendments intended for other pieces of legislation, but we would be surprised if our findings did not apply equally to those as well.

We wish it were possible to say these Crown reforms following the treaty clause review are without precedent. However, the pattern of reforms advanced by the coalition Government, including the Treaty Principles Bill, the repeal of section 7AA of the Oranga Tamariki Act 1989, the Marine and Coastal Area (Takutai Moana) Act reforms, the Māori ward referenda reforms, and the Regulatory Standards Bill show a pattern of lawmaking where treaty-inconsistency is common, and not exceptional. We believe the reforms also run counter to the forward momentum demonstrated by successive Governments in Aotearoa New Zealand in the last 50 years; a forward momentum generally characterised by a desire to honour our founding document, not denigrate it, and to work to perfect the treaty partnership.

We strongly urge the Crown to step back from the proposed reforms and to engage meaningfully with Māori and take immediate steps to repair the Māori–Crown relationship. This is important to not only honour the Crown’s obligations under the treaty, but also to restore a relationship the Crown itself knows is in a fragile state.

Our work now turns to the matters we originally granted urgency to focus on and which will be the subject of our next report. We see them also as urgent, and regard it as a matter of regret that we have had to divert our attention for the time being to as serious a matter as this. We reserve our jurisdiction to consider the proposed reforms further should there be material developments, and to comment on these reforms in the context of our stage two report.

Nāku noa nā

A handwritten signature in black ink, appearing to read 'Rachel Mullins', with a stylized flourish above the name.

Kaiwhakawā Rachel Mullins
Presiding Officer

ABBREVIATIONS

app	appendix
CMA	Crown Minerals Act 1991
doc	document
DRS	dispute resolution scheme
ETA	Education and Training Act 2020
fn	footnote
HC	High Court
KC	King's Counsel
ltd	limited
memo	memorandum
MOE	Ministry of Education
MOJ	Ministry of Justice
NICF	National Iwi Chairs Forum
NKAI	Ngā Kura ā Iwi
NZCA	<i>New Zealand Court of Appeal</i>
NZEI	New Zealand Education Institute
NZHC	<i>New Zealand High Court</i>
NZLR	<i>New Zealand Law Reports</i>
NZRMA	<i>New Zealand Resource Management Appeals</i>
NZMC	New Zealand Maori Council
NZQA	New Zealand Qualifications Authority
p, pp	page, pages
PCO	Parliamentary Counsel Office
QA	quality assurance
RIS	regulatory impact statement
RMA	Resource Management Act 1991
ROI	record of inquiry
s, ss	section, sections (of an Act of Parliament)
TWOW	Te Whakakitenga O Waikato Incorporated
v	and (in a legal case name)
vol	volume
Wai	Waitangi Tribunal claim

Unless otherwise stated, footnote references to briefs, claims, documents, memoranda, papers, statements of issues, submissions, and transcripts are to the Wai 3553 record of inquiry, a copy of the select index to which is appended to this volume. A full copy of the index to the record is available on request from the Waitangi Tribunal. All URLs were current at the time of going to print.

CHAPTER 1

INTRODUCTION / KUPU WHAKATAKI

This stage one report concerns proposed changes to the Education and Training Act 2020 (ETA), agreed upon by Cabinet on 23 February 2026, that would:

- ▶ amend treaty references within the ETA so that, where a direction is needed to indicate the strength or nature of the treaty obligation, no higher standard than ‘take into account’ is used;
- ▶ replace references to ‘Te Tiriti o Waitangi’ in the ETA with a reference to both the Treaty of Waitangi and te Tiriti o Waitangi; and
- ▶ amend or repeal section 536A(1) of the ETA so that dispute resolution scheme operators, which are private entities, do not have treaty obligations.¹

These proposed reforms, and the treaty clause review that preceded it, can be traced to the New Zealand National Party and New Zealand First Party coalition agreement. After the coalition Government was sworn in, Cabinet then determined the scope, process, and objectives for the review (as we set out in chapter 2).

The Tribunal in the *Ngā Mātāpono* urgent inquiry previously reported on the objectives and proposed process for this review prior to any Cabinet decisions being made about whether or how to amend specific treaty provisions. The Tribunal found (among other findings) that failing to engage with Māori or involve Māori in decision-making about changes to each provision would breach the principle of partnership and recommended the Crown revise the process and objectives of the review to be treaty compliant.² Cabinet now having made decisions regarding the amendment of specific treaty provisions, this Tribunal is tasked with inquiring into the treaty compliance of the Crown’s decisions with respect to the ETA, including its approach to consultation.

The Tribunal was first made aware of the ETA reforms on the eve of its hearing into two other education reforms of the coalition Government. The news, once broken, set in train the reorganisation of the scheduled hearing to hear from additional Crown witnesses, the expansion of the Tribunal’s statement of issues, and, at the request of inquiry parties, this stage one report.

We chose to report early on these reforms ahead of other issues in this inquiry because we recognise the significance of these proposed legislative changes to the

1. Document A52, p 144; we set out the specific provisions affected in section 1.6.

2. Waitangi Tribunal, *Ngā Mātāpono/The Principles: Part III of the Report of the Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown’s Treaty Principles Bill and Treaty Clause Review Policies – Pre-publication Version* (Wellington: Waitangi Tribunal, 2025), pp 46, 49

ETA, which could be placed before the House in the very near future. The reality is we have a narrow window within which to issue our report so as to inform significant legislative drafting processes that are ongoing. On 16 April 2026, Crown counsel informed us the Crown could not commit to wait until we issued our report to introduce amending legislation.³ On 23 February 2026, Cabinet invited the Minister of Justice, the Honourable Paul Goldsmith, to issue drafting instructions for an amending Bill to the Parliamentary Counsel Office (PCO), and we were informed both that amending legislation may be introduced from early August 2026 and that Minister Goldsmith is considering further amendments to the ETA's purpose provisions.⁴

1.1 WHAT IS AT ISSUE?

Broadly, the claimants and interested parties had three major concerns with the proposed changes to the ETA. First, they claimed the Crown's process breaches treaty principles as the Crown has failed to adequately engage with Māori.⁵ Secondly, they submitted the Crown, having failed to engage adequately with Māori, has failed to properly inform itself of the potential impacts of the reforms on Māori and treaty interests in education.⁶ Lastly, they argued that the reforms have constitutional significance and that downgrading treaty standards in the ETA risks diluting the Crown's obligations as expressed in statute, reducing accountability for treaty compliance, and removing safeguards for treaty interests in education.⁷

The Crown acknowledges it did not carry out a formal consultation process with Māori before Cabinet took its decisions, and the process that preceded Cabinet's decisions was not 'a fully conventional policy process led by officials'.⁸ The Crown was alive to the likelihood that, when assessed against existing Tribunal jurisprudence, the Tribunal might comment negatively on the decisions associated with the proposed legislation.⁹ However, the Crown submitted that final decisions on amendments to the ETA are yet to be made and, in particular, that uncertainty exists regarding whether and how the purpose provisions in the ETA may be amended.¹⁰ Accordingly, the Crown submitted potential prejudice arising from the reforms is 'unclear at this stage' and argued the Tribunal 'is not well placed to inquire into the impact or prejudice' of the reforms without a stronger evidential basis.¹¹

3. Memorandum 3.2.4, p 1

4. Memorandum 3.2.19, p 3; doc A52, p 145

5. Submission 3.3.19, pp 17–18; submission 3.3.13(a), pp 4, 9

6. Submission 3.3.13(a), p 18; submission 3.3.19, p 10

7. Submission 3.3.20, pp [3]–[4]; submission 3.3.13(a), pp 4, 28; submission 3.3.19, pp 16, 20; submission 3.3.14(a), pp 17–18

8. Submission 3.3.21, p 13

9. Ibid, p 15

10. Ibid, pp 7, 8

11. Ibid, p 15

1.2 THE STRUCTURE OF THIS REPORT

This report begins with the procedural history of the inquiry before setting out the content and function of the relevant ETA provisions. We then describe the background to Cabinet's February 2026 decision, including the treaty clause review that preceded it, before analysing the issues. Lastly, we present our findings and recommendations.

1.3 THE INTERIM REPORT

This report is interim in nature in the sense that we reserve our jurisdiction to consider the proposed ETA amendments further should there be material developments. However, we confirm these are our final findings and recommendations on the Crown's proposed course of action as has been presented to the Tribunal as of writing. We reserve the right to comment on the broader ETA changes in the context of our further findings on section 127(1)(d) and the curriculum changes. (See appendix I for the Tribunal statement of issues, issue (k).)

As noted above, this report has been prepared expeditiously at the request of claimants and interested parties. In these circumstances, parties should expect that, in a later published version, headings and formatting may be adjusted, typographical errors rectified, and footnotes checked and corrected where necessary. Additional illustrative material may be inserted. However, the Tribunal's findings and recommendations will not change with the publication of this stage one report. In the interests of brevity, we have not included a separate section on treaty jurisprudence in this report, instead noting the relevant treaty principles and standards in our analysis and findings below.

1.4 A NOTE ON TERMINOLOGY

This report adopts the terminology used in the Waitangi Tribunal's *He Whakaputanga me te Tiriti/The Declaration and the Treaty: The Report on Stage 1 of the Te Papanahi o Te Raki Inquiry* report; namely, we 'use "te Tiriti" to refer to the Māori text, "the Treaty" to refer to the English text, and "the treaty" to refer to both texts together or to the event as a whole without specifying either text'.¹²

1.5 THE PROCEDURAL HISTORY OF THE URGENT INQUIRY

On 19 November 2025, the Tribunal received an application for an urgent hearing, along with amended statements of claim, concerning: the Crown's repeal of section 127(1)(d) of the ETA, which removed the statutory obligation on school boards to ensure schools give effect to te Tiriti o Waitangi; and proposed changes to Te Mātaiaho – the New Zealand Curriculum. This application for urgency was filed

12. Waitangi Tribunal, *He Whakaputanga me te Tiriti/The Declaration and the Treaty: The Report on Stage 1 of the Te Papanahi o Te Raki Inquiry* (Lower Hutt: Legislation Direct, 2014), p 11

jointly by the Wai 1464/Wai 1564 claimants on behalf of Te Kapotai, and the Wai 682 claimants on behalf of Te Rūnanga Nui o Ngāti Hine.¹³

On 3 December 2025, the Tribunal received a further statement of claim and application for urgency concerning the same issues from the Wai 3503 claimants, Ripeka Lessels and O’Sonia Hotereni, on behalf of themselves and Te Riu Roa – the New Zealand Education Institute (NZEI).¹⁴ NZEI is a professional organisation and union representing nearly 50,000 members who work across the early childhood, primary, intermediate, secondary and tertiary education sectors.¹⁵

On 5 December 2025, Tribunal Chairperson Chief Judge Dr Caren Fox appointed a Tribunal panel to determine the applications for urgency and inquire into the claim issues, should urgency be granted.¹⁶

On 2 March 2026, after receiving submissions from the Crown and interested parties, we granted the claimants’ applications for urgency.¹⁷ Our reasoning for granting urgency is set out in full in those memorandum-directions, and will be covered in more detail in our stage two report. Significantly, in our decision we noted ‘[a]ny legislative change altering the nature and manner of the Crown’s Treaty obligations has a constitutional significance’, and as such the amendments to section 127(1)(d) met the ‘importance’ test for the granting of urgency.¹⁸

After the claimants’ urgency applications were granted, 12 parties were granted interested party status to the urgent inquiry.¹⁹ These interested parties are:

- ▶ Ngā Kura ā Iwi o Aotearoa (Wai 3502);
- ▶ Dr Kenneth Kennedy and Toro Bidois on behalf of themselves and the New Zealand Maori Council (Wai 3428);
- ▶ Te Aute College claims (Wai 1456 and Wai 2332);
- ▶ Gazala Maihi on behalf of the New Zealand Post Primary Teachers’ Association – Te Wehengarua (Wai 3504);
- ▶ Te Amohaere Hauiti-Parapara on behalf of Te Kura Kaupapa Māori O Hawaiki Hou (Wai 3540);
- ▶ Thomas Henry for himself and on behalf of the Ōtāhuhu Māori Wardens (Wai 3492);

13. Statements of claim 1.1.1, 1.1.2; submission 3.1.2

14. Statement of claim 1.1.3; submission 3.1.5. The claim filed by Ms Lessels and Ms Hotereni was filed on behalf of themselves and NZEI. NZEI is not a Māori organisation per se but rather a professional organisation and union representing members both Māori and non-Māori who work across the early-childhood, primary, intermediate, secondary, and tertiary education sectors. The involvement of NZEI was not opposed by the Crown. For the purposes of this inquiry, the Tribunal is of the view that NZEI is an organisation that includes a group of Māori and is therefore representative of their interests before the Tribunal.

15. Te Riu Roa membership includes ‘teachers and leaders in the early childhood education and primary sectors (including Kura Kaupapa Māori, Kura ā-Iwi, and Wharekura); support staff in the early childhood, primary, intermediate, and secondary education sectors; school advisors employed by universities; and Learning Support Staff’ employed by Te Tāhuhu o te Mātauranga/the Ministry of Education (see statement of claim 1.1.3, p1).

16. Memorandum 2.5.4, p2

17. Memorandum 2.5.1, p12

18. Ibid, p11

19. Memorandum 2.5.2, p4; memo 2.5.2(b), p1; memo 2.5.7, p2; memo 2.5.7(b), p1.

- ▶ Mereana Peka for herself and on behalf of the Turehou Māori Wardens (Wai 3491);
- ▶ Rita Beckmannflay on behalf of herself and Ngāti Torehina ki Mataure Ō Hau;
- ▶ Te Whakakitenga o Waikato Incorporated;
- ▶ Te Rūnanga Nui o Te Aupōuri Trust (Wai 2831);
- ▶ Dr Hope Tupara on behalf of Te Ropu Wahine Maori Toko i te Ora/the Maori Women's Welfare League Incorporated (Wai 2959); and
- ▶ Dr Cathy Dewes on behalf of Te Rūnanga Nui o Ngā Kura Kaupapa Māori Incorporated (Wai 1718).²⁰

Next, we scheduled an urgent hearing for 15 to 17 April 2026, to be held at the James Cook Hotel in Wellington.²¹ On 14 April 2026, one day prior to the hearing, Crown counsel filed a memorandum informing the parties of the Crown's proposals to further amend the ETA (as outlined above).²² Despite the relevant Cabinet decision having been made on 23 February 2026, the Crown did not inform us of these broader changes until this time. On the evening of 15 April, the Crown filed the documentary material relevant to Cabinet's decision.²³

The filing of information related to the ETA amendments at the eleventh hour before hearing was extremely unhelpful to the Tribunal and to the claimants and interested parties. Not only did it require the reorganisation of the hearing schedule, but key matters were also determined in the time that elapsed between Cabinet's February 2026 decisions and the April hearing, including the Tribunal's statement of issues. The Crown was also late in filing its outline of closing submissions, and this outline was merely a bullet-pointed list with headings received on the morning of hearing. This was not proportionate to the more substantive outlines filed by the claimants and interested parties. It made it incredibly difficult for claimant and interested party counsel and the Tribunal to engage with the Crown's position during the presentation of closing submissions. This frustration was amplified by Crown counsel's inability to be forthcoming in response to Tribunal questions regarding the proposed ETA reforms. To be clear, our criticism is not directed at the individuals representing the Crown but with their evident difficulty in obtaining instructions. The degree of unhelpfulness demonstrated by the Crown was unusual when compared to Crown participation in other Tribunal inquiries that we have experienced.

The proposed changes to the ETA identified in Crown counsel's memorandum were of immediate concern to the claimants and interested parties in this urgent inquiry, though beyond the initial scope of the urgency applications as granted on 2 March 2026. Given these broader legislative amendments were highly relevant to the specific claim issues before this Tribunal, Judge Mullins (the Presiding Officer for this inquiry) requested officials from Te Tāhū o te Ture – the Ministry of Justice

20. Memorandum 2.5.7(b), p 1

21. Memorandum 2.5.9, p 2

22. Memorandum 3.1.57

23. Document A52

(MOJ) appear before the Tribunal during the hearing to answer questions about the proposed ETA changes and the treaty clause review that preceded it.²⁴ On 17 April, Andrew Kibblewhite, Secretary of Justice and Chief Executive of MOJ, and Caroline Greaney, Deputy Secretary, Policy at MOJ, appeared before the Tribunal.²⁵

On the same day, we held a judicial conference with counsel to discuss next steps in the urgent inquiry, given the Crown's memorandum on the broader ETA changes.²⁶ At the judicial conference, claimant counsel raised concerns a Bill amending the ETA could be introduced to the House before the Tribunal had the opportunity to report.²⁷ Crown counsel had previously indicated a Bill amending the ETA was intended to be introduced this Parliamentary term, though noted these timelines were subject to change.²⁸ Claimant counsel also noted the National Iwi Chairs Forum (NICF) – which the Crown proposed to consult on the ETA changes before introducing amending legislation – only had until 24 April 2026 to provide feedback.²⁹ With these concerns raised, claimant counsel requested the Tribunal issue an interim report on the broader ETA changes ahead of its reporting on section 127(1)(d) and changes to the curriculum.³⁰

In light of this request, Judge Mullins directed the inquiry parties to file an amended statement of issues for the urgent inquiry, incorporating new issues focused on the proposed ETA changes.³¹ The same day, claimant counsel filed an amended statement of issues, agreed to by the Crown.³² On 20 April, Judge Mullins confirmed the revised statement of issues as the final statement of issues for the urgent inquiry.³³ A copy is included as appendix I to the report.

On 24 April, at the request of the Presiding Officer, the Crown filed an updating memorandum confirming the amendments agreed to by Cabinet and updating the Tribunal on timeframes for the introduction of amending legislation.³⁴

On 28 April, a second hearing was held at the James Cook Hotel in Wellington for oral closing submissions on both the section 127(1)(d) and curriculum issues, as well as the broader proposed changes to the ETA.³⁵ On 29 April, the parties'

24. Hearing livestream, 16 April 2026, beginning at 12:53 pm. While the treaty clause review is at times referred to in the relevant policy documents as the 'treaty reference review', for the sake of internal consistency and clarity in this report we refer to this process exclusively as the 'treaty clause review'.

25. Transcript 4.1.1, p 333

26. Memorandum 2.6.1, p 2

27. Judicial conference audio recording, 17 April 2026, beginning at 10:14 am

28. Memorandum 3.1.57, p 2

29. Judicial conference audio recording, 17 April 2026, beginning at 10:14 am

30. Memorandum 2.6.1, p 3. Interested party counsel also requested earlier reporting on the ETA changes (judicial conference audio recording, 17 April 2025, beginning 17:35 pm).

31. Memorandum 2.6.1, p 2

32. Memorandum 3.2.8; memo 3.2.8(a); memo 3.2.9, p 1

33. Memorandum 2.6.1, p 2; memo 2.6.1(a)

34. Memorandum 3.2.19

35. Memorandum 2.6.1, p 3

closing submissions were due.³⁶ On 1 May, claimant and interested parties' reply submissions were due.³⁷

1.6 WHICH PROVISIONS OF THE ETA ARE AFFECTED BY CABINET'S DECISION ?

The provisions most significantly affected by Cabinet's February 2026 decisions are sections 9(1),³⁸ 535B(a) and 536A(1)(a)(ii).³⁹ Crown counsel also confirmed three purpose provisions – sections 4(d), 32(h), and 398B – are also subject to further decisions by Minister Goldsmith, which could result in significant amendments.⁴⁰ To aid the reader, we set out the text of these provisions here, alongside a brief discussion of their function and the decisions Cabinet has made which are relevant to them.

Three further provisions in the ETA are affected by Cabinet's decision to standardise every reference to 'te Tiriti o Waitangi' so that both the Treaty of Waitangi and te Tiriti o Waitangi are referred to: sections 3(2)(e), 6(2), and 476(4)(b)(v).⁴¹ The full text of the relevant ETA provisions and their functions are set out in appendix II and appendix III.

1.6.1 The provisions most affected by Cabinet's decision

1.6.1.1 Section 9(1)

Section 9 is a descriptive treaty provision.⁴² Section 9(1) lists the 'main provisions of this Act that recognise and respect the Crown's responsibility to give effect to Te Tiriti o Waitangi', while section 9(2) lists '[o]ther provisions related to Te Tiriti o Waitangi in the context of the regulation of the education system.' Cabinet agreed to standardise the reference to the treaty in this section, so it instead refers to both the Treaty of Waitangi and te Tiriti o Waitangi.⁴³ Cabinet also agreed that the treaty standard of 'give effect to' in section 9(1) be amended to 'take into account'.⁴⁴

36. Ibid, p 4

37. Memorandum 2.7.1, p 3; submissions 3.3.22, 3.3.23

38. Crown counsel confirmed that section 9 would be amended to the lower 'take into account' standard (memo 3.2.19, p 2). Although the Crown did not specify which subsection would be affected, we interpret this to mean section 9(1), as this is the part of the section that contains the higher 'give effect to' treaty standard, as referred to in the schedule to the Cabinet paper (doc A52, p 14).

39. We note that Crown counsel's memorandum stated that section 536A(1)(ii) would be amended (memo 3.2.19, p 2). We understand this to refer to section 536A(1)(a)(ii).

40. Memorandum 3.2.19, pp 1–3

41. Document A52, p 144; memo 3.2.19, pp 1–2. While not mentioned by Crown counsel, we note that the Cabinet minute stated the Minister of Justice will receive further advice from MOJ officials regarding the standardisation of appointment provisions, which may affect section 476(4)(b)(v) as an appointment provision (see doc A52, p 144).

42. For a full definition of 'descriptive' versus 'operative' treaty provisions, see doc A52, p 96.

43. Document A52, p 144; memo 3.2.19, p 2

44. Memorandum 3.2.19, p 2; Education and Training Act 2020, s 9

The Current Text of Section 9(1)

9 Te Tiriti o Waitangi

- (1) The main provisions of this Act that recognise and respect the Crown's responsibility to give effect to Te Tiriti o Waitangi are—
 - (a) section 4, which states that the purpose of this Act includes establishing and regulating an education system that honours Te Tiriti o Waitangi and supports Māori–Crown relationships; and
 - (b) *[Repealed]*
 - (c) section 6, which provides that the Minister and the Minister for Māori Crown Relations: Te Arawhiti may, for the purpose of providing equitable outcomes for all students, and after consulting with Māori, jointly issue and publish a statement that specifies what the Ministry, TEC, NZQA, the Education Review Office, and Education New Zealand must do to give effect to public service objectives (set out in any enactment) that relate to Te Tiriti o Waitangi; and
 - (d) *[Repealed]*
 - (e) subpart 6 of Part 3, which provides for the establishment and operation of Kura Kaupapa Māori, Te Aho Matua, and te kaitiaki o Te Aho Matua; and
 - (f) subpart 3 of Part 4 and Part 4A, which provide for the establishment and operation of wānanga; and
 - (g) section 321(c), which provides that the council of a polytechnic must ensure that the polytechnic operates in a way that allows the polytechnic to develop meaningful relationships and engage with communities at a local level, including with Māori employers and hapū and iwi.

1.6.1.2 Section 535B(a)

Section 535B sets out the obligations of a code administrator. Currently, NZQA fulfils this role.⁴⁵ It administers the code issued by the Minister of Education, which 'provide[s] a framework for the well-being and safety of' domestic tertiary students, including those attending wānanga.⁴⁶ The code administrator monitors the tertiary providers for compliance with the code, including the extent to which the purposes of the code are being met. Significantly, one of the purposes of the current code is to 'contribut[e] to an education system that honours Te Tiriti o

45. 'NZQA as Code Administrator', New Zealand Qualifications Authority, <https://www2.nzqa.govt.nz/tertiary/the-code/nzqa-as-code-administrator>, accessed 30 April 2026

46. Education and Training Act 2020, ss 11, 534

The Current Text of Section 535B

535B Further obligations of code administrator

A code administrator must—

- (a) exercise and perform all of its functions, powers, and duties in a manner that honours Te Tiriti o Waitangi and supports Māori-Crown relationships; and
- (b) report annually to the Minister on the exercise and performance of its functions, powers, and duties, including the extent to which providers and signatory providers are giving effect to their obligations under the codes, and publish the report on an Internet site maintained by or on behalf of the code administrator; and
- (c) provide information to the Minister, at the request and in the form specified by the Minister, relating to—
 - (i) the performance of its duties and functions; and
 - (ii) the performance of providers and signatory providers in meeting the requirements of a code.

Waitangi.⁴⁷ The code requires tertiary providers to have strategic goals in place for supporting the well-being of learners through (among other things) contributing to an education system that ‘honours Te Tiriti o Waitangi’. The code also requires tertiary providers to provide staff with training on te Tiriti o Waitangi, and learners with opportunities to use te reo Māori and tikanga Māori.⁴⁸ Section 535B(a) requires a code administrator to, among other things, ‘perform all of its functions, powers, and duties in a manner that honours Te Tiriti o Waitangi and supports Māori–Crown relationships’. Cabinet agreed to standardise the reference to the treaty in this section, so it instead refers to both the Treaty of Waitangi and te Tiriti o Waitangi.⁴⁹ Cabinet also agreed that the treaty standard of ‘honours’ be amended to ‘take into account’.⁵⁰

1.6.1.3 Section 536A(1)

Section 536A sets out how a dispute resolution scheme (DRS) operator must perform their role. The DRS is intended to resolve disputes between students and tertiary education providers regarding contractual and financial matters, or a claim for redress as a result of the breach of the well-being and safety code referred

47. New Zealand Qualifications Authority, *The Education (Pastoral Care of Tertiary and International Learners) Code of Practice* (Wellington: New Zealand Qualifications Authority, 2021), p7

48. Ibid, pp 12–13, 17

49. Document A52, p 144; memo 3.2.19, p 2

50. Memorandum 3.2.19, p 2

The Current Text of Section 536A(1)

536A How DRS operator must perform role

- (1) A DRS operator must perform and exercise its functions, powers, and duties in a manner that contributes to an education system that honours Te Tiriti o Waitangi and supports Māori–Crown relationships by—
- (a) resolving disputes in a way that—
 - (i) has regard to tikanga Māori; and
 - (ii) is consistent with the principles of Te Tiriti o Waitangi; and
 - (b) responding to the concerns and interests of Māori in the administration and operation of the scheme.

to above.⁵¹ DRS operators are also required, under current applicable rules, to take any action necessary to address concerns relating to the application of tikanga or treaty-inconsistency in the resolution of disputes.⁵² Section 536A(1)(a)(ii) requires a DRS operator to perform its functions ‘in a manner that contributes to an education system that honours Te Tiriti o Waitangi and supports Māori–Crown relationships’, including by resolving disputes in a way ‘consistent with the principles of Te Tiriti o Waitangi’. Cabinet agreed to amend or repeal this section so that DRS operators, which are private entities, do not have treaty requirements.⁵³

1.6.2 The purpose provisions subject to further decisions by Minister Goldsmith

Crown counsel confirmed three purpose provisions in the ETA are still under consideration by Minister Goldsmith.⁵⁴ Whether the treaty weighting in these provisions will be amended, or removed entirely, is therefore not yet known.

Significantly, Cabinet authorised Minister Goldsmith, in consultation with the Ministerial Oversight Group and the Minister responsible for each Act, ‘to make further decisions, in line with the policy decisions agreed by Cabinet, where necessary.’⁵⁵ This makes future amendment to or repeal of the treaty standards contained in three purpose provisions of the ETA possible, depending on the Minister’s decision.⁵⁶ We discuss these purpose provisions – sections 4(d), 32(h), and 398B – below.

51. Education and Training Act 2020, s 536

52. Education (Domestic Tertiary Student and International Student Contract Dispute Resolution Scheme) Rules 2023, r 36(e)

53. Document A52, p 144; memo 3.2.19, p 2

54. Memorandum 3.2.19, pp 1, 2. The purpose sections under consideration are sections 4(d), 32(h), and 398B.

55. Document A52, p 145

56. Memorandum 3.2.19, pp 2–3

The Current Text of Section 4

4 Purpose of Act

The purpose of this Act is to establish and regulate an education system that—

- (a) provides New Zealanders and those studying in New Zealand with the skills, knowledge, and capabilities that they need to fully participate in the labour market, society, and their communities; and
- (b) supports their health, safety, and well-being; and
- (c) assures the quality of the education provided and the institutions and educators that provide and support it; and
- (d) honours Te Tiriti o Waitangi and supports Māori–Crown relationships.

1.6.2.1 Section 4(d)

Section 4 sets out the purposes of the Act. Section 4(d) states that one of the purposes of the Act is to ‘establish and regulate an education system that’, among other purposes, ‘honours te Tiriti o Waitangi and supports Māori–Crown relationships.’ Cabinet agreed to standardise the reference to the treaty in this subsection, so it instead refers to both the Treaty of Waitangi and te Tiriti o Waitangi.⁵⁷ Amendment of the treaty standard of ‘honours’ in this section remains subject to a further decision by Minister Goldsmith.⁵⁸

1.6.2.2 Section 32(h)

Section 32 sets out the purpose of Part 3 of the Act, which covers primary and secondary education. Section 32(h) states that the purpose of Part 3 is to ‘establish a schooling system that supports all learners/ākonga to gain the skills and knowledge they need to be lifelong learners/ākonga and fully participate in the labour market, society, and their communities’ by, among other things, ‘honouring Te Tiriti o Waitangi and supporting Māori–Crown relationships that make a difference to learning.’ Cabinet agreed to standardise the reference to the treaty in this section, so it instead refers to both the Treaty of Waitangi and te Tiriti o Waitangi.⁵⁹ Amendment of the treaty standard of ‘honouring’ remains subject to a further decision by Minister Goldsmith.⁶⁰

1.5.2.3 Section 398B

Section 398B sets out the purpose of the Part 4A of the Act, which covers wānanga. It states that the purpose of Part 4A is to ‘provide for the establishment,

57. Document A52, p 144; memo 3.2.19, p 1

58. Memorandum 3.2.19, pp 1, 4

59. Document A52, p 144; memo 3.2.19, p 2

60. Memorandum 3.2.19, pp 2, 4

The Current Text of Section 32(h)

32 Purpose of Part 3

The purpose of this Part is to establish a schooling system that supports all learners/ākonga to gain the skills and knowledge they need to be lifelong learners/ākonga and fully participate in the labour market, society, and their communities by—

- -
 -
 -
 -
- (h) honouring Te Tiriti o Waitangi and supporting Māori–Crown relationships that make a difference to learning; and

The Current Text of Section 398B

398B Purpose of Part 4A

The purpose of this Part is to provide for the establishment, modification, and administration of wānanga in a manner that gives effect to the principles of Te Tiriti o Waitangi and supports Māori–Crown relationships and, in particular, that—

- (a) better reflects the unique characteristics, functions, and purposes of wānanga in the tertiary education system for delivering the best possible education outcomes for ākonga; and
- (b) recognises the interests of iwi or Māori in ensuring the effective governance and administration of wānanga; and
- (c) enables direct accountability to iwi or Māori for the performance of wānanga.

modification, and administration of wānanga in a manner that gives effect to the principles of Te Tiriti o Waitangi and supports Māori–Crown relationships.’ Cabinet agreed to standardise the reference to the treaty in this section, so it instead refers to both the Treaty of Waitangi and te Tiriti o Waitangi.⁶¹ Amendment of the treaty standard of ‘gives effect to’ remains subject to a further decision by Minister Goldsmith.⁶²

61. Document A52, p 144; memo 3.2.19, p 2

62. Memorandum 3.2.19, pp 2, 4

CHAPTER 2

BACKGROUND TO THE PROPOSED EDUCATION AND TRAINING ACT AMENDMENTS / HE WHAKAMĀRAMA MŌ NGĀ WHAKAREREKE E MAROHITIA ANA KI TE TURE MĀTAURANGA

2.1 THE TREATY CLAUSE REVIEW

As noted in the introduction, the proposed ETA amendments, and the treaty clause review that preceded it, can be traced to the New Zealand National Party and New Zealand First Party coalition agreement, which committed to:

Conduct a comprehensive review of all legislation (except when it is related to, or substantive to, existing full and final Treaty settlements) that includes ‘The Principles of the Treaty of Waitangi’ and replace all such references with specific words relating to the relevance and application of the Treaty, or repeal the references.¹

After the coalition Government was sworn in, Cabinet then determined the scope, process, and objectives for the review. Specifically, on 9 September 2024, Cabinet agreed the review would consider references to the principles of te Tiriti o Waitangi/the Treaty of Waitangi in 28 pieces of legislation.² The purpose of this review was

to ensure that where it is appropriate to encapsulate te Tiriti o Waitangi/the Treaty of Waitangi or the Treaty relationship in legislation, these provisions are clear about how the Treaty applies in the context of each legislative regime to reduce uncertainty and support better compliance.³

It is our understanding that, at this stage of the review, not all provisions of the ETA were within scope, as some refer to ‘Te Tiriti o Waitangi’ directly and not to the principles of the treaty.⁴

On 5 May 2025, Cabinet agreed to establish a Ministerial Oversight Group to make in-principle decisions relating to the review, subject to Cabinet

1. New Zealand National Party and New Zealand First Party, ‘Coalition Agreement’, 24 November 2023, p 10

2. Wai 3300 ROI, doc A30, pp 32, 34; we understand that the number of in-scope statutes was subsequently reduced (see Wai 3553 ROI, doc A52, p 81).

3. Wai 3300 ROI, doc A30, pp 32, 34

4. See Wai 3300 ROI, doc A30, pp 20–21; see also Wai 3553 ROI, doc A54, p 4.

confirmation.⁵ The Ministerial Oversight Group was comprised of Minister Goldsmith; the Attorney-General, the Honourable Judith Collins KC; the Minister for Regional Development, the Honourable Shane Jones; and the Minister for Māori Crown Relations: Te Arawhiti, the Honourable Tama Potaka. Cabinet also agreed to establish a Ministerial Advisory Group (the Advisory Group) to advise the Ministerial Oversight Group on engagement and proposals to retain, amend, or repeal treaty references.⁶

2.2 THE MINISTRY OF JUSTICE'S ASSESSMENT FRAMEWORK

On 3 June 2025, Ms Greaney, Deputy Secretary, Policy at MOJ sent the Ministerial Advisory Group an analysis prepared by MOJ officials with input from the relevant agency for each in-scope statute (the 'Assessment Framework').⁷

The Assessment Framework included analysis of each provision of the ETA that was then in scope of the review, namely, sections 9(2)(d) and 9(2)(g), 127(1)(d), 281(1)(b), 398B, 476(4)(b)(v), and 536A(1)(a)(ii).⁸ For each section, it set out Te Tāhuhu o te Mātauranga/the Ministry of Education (MOE) assessment of the operation, clarity, and intent of each provision, and the options and implications for retaining, amending, or repealing it.⁹ The framework noted:

Amending or repealing *any* of the provisions in the absence of meaningful Treaty-consistent consultation with Māori would likely negatively impact the Māori-Crown relationship. These risks will depend in part on the scale and nature of the changes proposed. [Emphasis added.]¹⁰

At a high-level, the framework also noted there was an opportunity for some operative provisions 'to consider whether it would be appropriate to introduce an established standard for consideration of the Treaty such as "have regard", "take account" or "give effect" to the Treaty', but '[f]urther policy work would be needed to determine what standard may be appropriate in any given context'.¹¹

We do not summarise the framework completely here. However, officials' commentary regarding sections 398B, 476(4)(b)(v), and 536A(1)(a)(ii) is relevant and bears repeating.

Officials described that section 398B is 'intended to summarise and signpost the content and intent of Part 4A' of the ETA and provide 'a guide to its interpretation', and 'helps ensure that legislative settings for wānanga provided for in Part 4A' are treaty consistent and 'provide a safeguard for wānanga interests through

5. Wai 3300 RO1, doc B25, pp 21, 23

6. Ibid, p 21; see doc A52, p 79; the members of the Ministerial Advisory Group were David Cochrane (Chair), John Walters, Marama Royal, and James Christmas (doc A52, p 18).

7. Document A54(b), pp 3, 5

8. Ibid, pp 12–13, 18, 19

9. Ibid, p 21

10. Ibid

11. Ibid, p 23

specific legal recognition of the Treaty based relationship between wānanga and the Crown.¹²

Officials explained that Part 4A of the ETA was ‘the result of work arising from the Whakatupu Mātauranga (Wai 2698) claim’ filed with the Tribunal by Te Wānanga o Raukawa in 2017.¹³ Officials stated Part 4A was ‘co-designed with the three wānanga’ and that wānanga ‘emerged as a response from iwi and hapū to poor educational outcomes for Māori in the Pākehā or “mainstream education” system and are considered an exercise by Māori of rangatiratanga.’¹⁴ The framework recorded further that the Crown had acknowledged its treaty obligations to wānanga through the Deeds of Settlement for Wai 718 and the Wai 2698 Relationship Protocol with Te Wānanga o Raukawa.¹⁵

Officials advised that section 398B was ‘clear and specific’ and ‘clarifies and aids in the interpretation of Part 4A by specifying the Māori rights and interests it applies to.’¹⁶ It was ‘not readily apparent’ how the provision could be amended to be clearer or more consistent with other provisions, but repealing the provisions would ‘reduce clarity’ regarding the purpose of Part 4A.¹⁷

Officials explained that section 476(4)(b)(v), in turn, requires the Minister of Education, when considering whether to appoint a member to the Teaching Council, to have regard to the collective knowledge of members of the Council, including in relation to the partnership principles of te Tiriti.¹⁸ Officials noted that the reference to a singular treaty principle was ‘unusual and not supported by a strong policy rationale’ and that the provision could be amended to refer to treaty principles generally instead of the partnership principle alone.¹⁹

In regard to section 536A(1)(a)(ii), officials explained that it ‘broadly is intended to ensure that dispute resolution scheme’s processes are aligned’ with section 4(d) of the ETA and was ‘intended to address the concern that a DRS operator, which is appointed by the responsible Minister, is a private entity and is therefore not automatically bound by the Crown’s Te Tiriti obligations.’²⁰ Officials advised that the section ‘could be amended to be more specific about what is required of DRS operators to ensure their operations are consistent with the Crown’s Treaty obligations,’ noting it may be inappropriate in the context for private contractors to ‘have in-depth knowledge of, and give effect to, the Treaty principles.’²¹ Officials noted repealing the provision ‘may not change the required approach’ because section 536A already required DRS operators to have regard to tikanga and respond to the concerns and interests of Māori, and section 536A(1) requires DRS operators to

12. Ibid, p109

13. Ibid

14. Ibid

15. Ibid

16. Ibid, p39

17. Ibid

18. Ibid, p42

19. Ibid

20. Ibid, p81

21. Ibid, p82

act in a manner that contributes to a system that honours te Tiriti and supports Māori–Crown relationships.²² However, they considered that repealing the provision would make section 536A ‘less clear and specific about what is required of DRS operators’ and may increase uncertainty.²³

Lastly, the framework identified sector groups relevant to each provision. For section 536A(1)(a)(ii) alone, for example, this included over 20 interested groups, including the Māori Education Ministerial Advisory Group (discussed further below), Te Matakahuki (a collective group representing Kura Kaupapa Māori, Kōhanga Reo, Ngā Kura ā Iwi, and Te Taihū o Ngā Wānanga), the Matauranga Iwi Leaders Forum, Te Wānanga O Raukawa, Te Wānanga o Aotearoa, and Te Whare Wānanga o Awanuiārangi.²⁴

2.3 ‘TE TIRITI O WAITANGI’ PROVISIONS ARE ADDED TO THE REVIEW

In July 2025, the Minister of Education, the Honourable Erica Stanford, and Minister Goldsmith agreed, subject to Cabinet confirmation, that an additional eight ETA provisions be included in the review. According to a Cabinet paper referring to this decision, these provisions were to be included in the review ‘for consistency.’²⁵ The Ministerial Oversight Group subsequently met with the Advisory Group on 14 July and confirmed the review would consider all provisions of the ETA that refer to the Treaty of Waitangi or te Tiriti o Waitangi.²⁶

Following the agreement between Ministers Stanford and Goldsmith to widen the scope of the review, as at this date, it is our understanding that the following provisions of the ETA were in scope of the Advisory Group review:

- ▶ sections 9(2)(d), 281(1)(b), 398B, 476(4)(b)(v), and 536A(1)(a)(ii) (originally included within the scope of the review and referring to the principles of the treaty); and
- ▶ sections 3(2)(e), 4(d), 5(4)(c)(iii), 6(2), 9, 32(h), 127(1)(d), 535B(a), and schedule 13, clause (4)(d)(i) (added subsequently and referring to ‘Te Tiriti o Waitangi’).²⁷

2.4 THE MINISTERIAL ADVISORY GROUP REPORT

On 8 August 2025, the Advisory Group reported to the Ministerial Oversight Group following its review of 18 in-scope statutes, including the ETA.²⁸ It found a variety of phrasings and expressions of treaty provisions existed in the legislation, and considered this a major source of ‘uncertainty and legal risk’ – not only for

22. Document A54(b), p 83

23. Ibid

24. Ibid, pp 82, 110; see Waitangi Tribunal, *Kei Ahotea Te Aho Matua* (Petone: Blue Star Group (New Zealand) Ltd, 2025), p 16.

25. Document A52, p 6

26. Document A54, pp 4–5

27. Document A52, pp 51, 57, 61

28. Ibid, pp 16–87

the Crown but also for Māori and other users of legislation.²⁹ The Advisory Group observed that, as the treaty was not part of New Zealand domestic law, 'the extent of the Crown's obligations and rights remains open to debate. Parliament can use legislation to refine that and guide the Courts and the Tribunal in their interpretive work.'³⁰ Accordingly, it made both general and specific recommendations to improve clarity, consistency, and specificity in treaty provisions.³¹

As acknowledged at hearing by Andrew Kibblewhite, Secretary of Justice and Chief Executive of MOJ, the Advisory Group's review was largely a 'desktop exercise' that considered, the report noted, a 'range of materials' including (among other things) the texts of the statutes, analysis provided by officials (including the Assessment Framework summarised above) Crown documentation and guidelines, and the Legislative Design and Advisory Committee guidelines.³² The report also noted the Advisory Group had received a briefing from a senior MOE official. However, it had not received 'the benefit of full contributions' from MOE officials on the additional ETA provisions included in the review beyond its initial scope, and 'specifically on how they are operationalised in practice.'³³ As noted above, the additional ETA provisions added to the review in July were not analysed in the Assessment Framework.

In addition to specific recommendations regarding the provisions within scope, the Advisory Group also made a general recommendation that 'the direction to those acting under and interpreting' statutes be standardised.³⁴ Particularly relevant for our purposes, the Advisory Group discussed the implications of the 'take appropriate account of', 'give effect to', and 'honours' treaty standards. Its view was 'give effect to' indicated a higher standard and suggested it be used 'where those acting under the Act are part of the Crown, and must give effect to the Treaty', or 'when the Crown is dealing directly with a Treaty interest.'³⁵ In contrast, 'take appropriate account of' was 'a lesser standard and suggests there may be countervailing considerations.'³⁶ The Advisory Group suggested 'take into account' be used 'where either Crown or non-Crown entities may well have other factors as well as the Treaty to weigh up under the Act.'³⁷ The Advisory Group emphasised the decision as to which standard should apply in a particular provision was ultimately a policy matter for the Crown.³⁸ The Advisory Group recommended 'very vague' standards such as 'uphold' and 'honour' not be used at all, though it noted such terms may be appropriate in treaty settlement legislation.³⁹

29. Ibid, pp 18, 20, 24

30. Ibid, pp 33–34

31. See *ibid*, p 25

32. Transcript 4.1.1, p 343; doc A52, p 22

33. Document A52, p 51

34. Ibid, p 25

35. Ibid, pp 24, 33–36

36. Ibid, p 33

37. Ibid, p 37

38. Ibid, p 34

39. Ibid, pp 35, 36

In general, the Advisory Group did not recommend the repeal of entire treaty provisions, considering it unlikely to reduce uncertainty and improve compliance.⁴⁰ Instead, in their view, repealing provisions ‘would simply leave a gap to be filled over time by further case law’ in the majority of cases.⁴¹ Repealing provisions also risked ‘send[ing] a message’ to the courts or users of statutes ‘which may not be intended’.⁴²

Regarding the ETA specifically, the Advisory Group commented that the Act used ‘a confusing and inconsistent array of references to the Treaty’ and it was unclear why there was ‘such significant variation in duties, language and references to the Treaty and Treaty principles’.⁴³ In their view, this warranted ‘a coherent policy analysis as to what is being sought to be achieved through each of these sections, and the reasons for the inconsistencies between them’.⁴⁴ For the purpose section 4(d) (which was of course not covered by MOJ’s Assessment Framework), the Advisory Group noted that, ‘[i]f it is Parliament’s intention that the education system should honour Te Tiriti o Waitangi and support Māori–Crown relationships’, then the ETA should indicate what that requires of those with roles in the system.⁴⁵ The group advised similar specificity should be provided in section 535B(a) (which was also not included in the Assessment Framework): ‘If it is Parliament’s intention that a code administrator should honour Te Tiriti o Waitangi and support Māori–Crown relationships’.⁴⁶ The Advisory Group recommended the standard of ‘honours’ in sections 4(d), 32(h) and 535B(a) be replaced with alternative wording, considering it ‘vague’ and seemingly ‘inappropriate’ for the contexts.⁴⁷

For the purpose section 398B, the Advisory Group was more reserved, noting that although the provision was ‘vague’, it was ‘probably appropriate as a purpose statement applying to all of Part 4A’ in the context of wānanga and ‘also seems to be a response to’ the Waitangi Tribunal claim of Te Wānanga o Raukawa (Wai 2698).⁴⁸ Concerning section 536A(1)(a)(ii), the Advisory Group queried whether it was appropriate to impose an obligation on DRS operators to ‘honour’ te Tiriti when it appeared they ‘have a degree of independence from the Crown’.⁴⁹ The Advisory Group was also ‘concerned’ section 476(4)(b)(v) singled out the principle of partnership, noting it was arguable that that understanding of other principles could also be relevant, and recommended a review of the policy rationale behind the singular reference to one treaty principle.⁵⁰ In addition, the group

40. Document A52, p 18

41. *Ibid*, p 19

42. *Ibid*

43. *Ibid*, p 52

44. *Ibid*

45. *Ibid*, p 53

46. *Ibid*, p 60

47. *Ibid*, pp 53, 57, 60, 84

48. *Ibid*, p 59

49. *Ibid*, p 60

50. *Ibid*, pp 59, 60

recommended references to ‘Te Tiriti o Waitangi’ in all in-scope ETA provisions be replaced with a reference to both texts.⁵¹ We will discuss the Advisory Group’s specific commentary and recommendations regarding section 127(1)(d) in our stage two report.

Finally, the Advisory Group recommended both general and targeted engagement on the changes, noting both the Crown and claimants had agreed in the Tribunal’s *Ngā Mātāpono* inquiry that the principle of partnership was relevant to the treaty clause review and that consultation would be required.⁵² Specifically, it recommended targeted engagement with (among other parties) ‘groups relevant to a particular Act.’⁵³ The Advisory Group considered general engagement could ‘most usefully occur through organisations such as the NICE, or other organisations like the Federation of Māori Authorities.’⁵⁴

2.5 THE MINISTRY OF EDUCATION REPORT

On 19 September 2025, officials provided advice to Minister Stanford, the Minister for Tertiary Education and Skills (the Honourable Penny Simmonds), and the Minister for Universities (the Honourable Shane Reti) on a draft Cabinet paper prepared by Minister Goldsmith (the September 2025 MOE report).⁵⁵ In light of the draft Cabinet paper’s proposals to amend treaty provisions following the Advisory Group’s review, the report provided advice on the relevance and application of the treaty in the context of education to inform the Ministers’ appraisal of the reforms.⁵⁶ We note that the Tribunal has not seen this iteration of the draft Cabinet paper discussed in this education report.

At the time MOE was consulted on the draft Cabinet paper, it appears, as described by MOE officials, to have proposed amending the treaty standard in treaty provisions of the ETA (including ‘honour Te Tiriti’ in section 4(d) and ‘give effect to Te Tiriti’ in section 9(1)).⁵⁷ However, no specific treaty standard was yet nominated for each provision. As officials stated, ‘[w]hile standardisation in principle has good intent . . . there is no definition as yet of what the standard might be.’⁵⁸ The options being considered at that point instead appear to have been ‘give effect to’ and/or ‘have regard to’, rather than ‘honour’ or ‘uphold.’⁵⁹

MOE officials noted the draft Cabinet paper also sought agreement to targeted consultation on the proposed reforms.⁶⁰ This was to be facilitated by MOJ and

51. Ibid, pp 53, 61, 84, 85

52. Ibid, p 38

53. Ibid

54. Ibid

55. Document A43(a), p 200

56. Ibid

57. Ibid, pp 201, 202

58. Ibid, p 202

59. Ibid, p 201

60. Ibid

include engagement with the NICF and the New Zealand Māori Council.⁶¹ In addition, the draft Cabinet paper proposed a three-week period of agency-led targeted engagement, with MOE to lead engagement with groups relevant to the ETA, where the specific groups would be determined by the Ministers.⁶² That engagement, the report recorded, would ‘be done via a discussion document’.⁶³

Noting several concerns MOE had with the proposal, officials recommended the Ministers not agree with this engagement approach.⁶⁴ In their view, while the engagement proposed was intended to be ‘targeted, quick and tightly held’, MOE officials did not think ‘we could (or should) contain the issue to a small number of interested groups.’⁶⁵

MOE officials cautioned the proposed approach to consultation was not recommended for three further reasons. First, many leaders and practitioners were ‘strongly attached’ to the treaty provision formulations in sections 4(d) and 9(1) that were introduced with the ETA in 2020.⁶⁶ Secondly, sections 4(d) and 9(1) applied not only to education in general, ‘but also to Kaupapa Māori Education including Kura Māori and Wānanga’ and ‘[c]hanging Te Tiriti references for these movements engages their Te Tiriti interests directly.’ MOE officials were very clear taking this action ‘unilaterally or with minimal consultation is likely to lead to significant challenge’ and ‘most importantly risks breakdown of the Crown’s relationships with these movements.’⁶⁷ Lastly, officials noted engagement on the proposals ‘would be very difficult to manage without either Māori or the Crown knowing what legislative standard the Crown proposes to shift to.’⁶⁸ Finally, the report emphasised that the Crown in developing treaty provisions was expected to do so ‘in consultation, and, where possible, in partnership with Māori.’⁶⁹ MOE officials did not recommend changes to sections 476(4)(b)(v) or 536A(1)(a)(ii) ‘without further engagement and design with Māori.’⁷⁰

Although no consultation on the proposals had yet occurred, the report recorded MOE officials had met with the Māori Education Ministerial Advisory

61. Document A43(a), p 201

62. Ibid

63. Ibid

64. Ibid, pp 201, 202

65. Ibid, p 202

66. Ibid

67. Ibid

68. Ibid

69. Ibid, p 201

70. Ibid, pp 202, 203

Group⁷¹ to ‘take their advice on Te Tiriti clauses generally’.⁷² While the group had not been provided with a copy of the Advisory Group’s advice at the time of this hui, the report noted, the group had ‘reinforced’ the importance of both ‘high-level Tiriti clauses’ in legislation for ‘direction-setting’ and as a ‘signal to Māori of the Crown’s intentions’, as well as ‘specific Tiriti responsibilities for education organisations in support[ing] educational successes for ākonga Māori’.⁷³ The group, the report stated, also made clear ‘it is important the Crown follows a Tiriti-compliant engagement and policy development process’, including ‘working in good faith with Māori on the development of Tiriti references’. The group was ‘concerned that the process followed so far is not Tiriti-compliant’.⁷⁴ The report noted the Ministers may wish to meet with the group to seek their advice before proceeding with the reforms.⁷⁵

MOE officials also raised additional concerns regarding the amendment of treaty provisions in the ETA more generally. Specifically, the report warned amending ‘Te Tiriti references’ within the ETA ‘is a significant and controversial task’ officials considered would ‘lead to widespread public debate and potentially conflict within the education system that would distract from the Government’s education reform programme’.⁷⁶ MOE officials did ‘not recommend changes to Te Tiriti provisions in the Act without further engagement and design with Māori . . . because of the clear guidance to Ministers and public service departments on the constitutional position of Te Tiriti’.⁷⁷

MOE officials also considered the ETA ‘should provide for the Crown’s commitments to Te Tiriti’.⁷⁸ In this regard, officials noted ‘[t]here are multiple ways in which the articles and principles of Te Tiriti are relevant to education’ as ‘grounded in the evolving understanding of Te Tiriti in terms of case law, rights and obligations’.⁷⁹ At a high level, officials advised ‘there are three ways in which the Crown’s obligations under Te Tiriti play out’.⁸⁰ First, there is the Crown’s obligation under article 3 to support Māori educational success. Secondly, there is the Crown’s obligation to support kaupapa Māori or bespoke educational models connected to article 2 and Māori rangatiratanga over the education of tamariki

71. The Māori Education Ministerial Advisory Group was established in September 2024 by MOE. Its membership includes Will Workman (Chair), Olivia Hall, Dame Georgia Kingi, Billie-Jean Potaka-Ayton, and Turi Ngatai. Its former Chair, Dr Wayne Ngata, resigned on 19 June 2025. According to MOE, its members have experience in social and economic policy, school and education sector leadership, and matauranga Māori and te reo Māori revitalisation (see ‘Māori Education Ministerial Advisory Group’, 11 June 2025, Ministry of Education, <https://www.education.govt.nz/our-work/strategies-policies-and-programmes/maori-education-and-language/maori-education-ministerial-advisory-group>, accessed 3 May 2025).

72. Document A43(a), p 201

73. *Ibid*, pp 201, 205

74. *Ibid*, p 205

75. *Ibid*

76. *Ibid*, p 201

77. *Ibid*, p 204

78. *Ibid*, p 203

79. *Ibid*

80. *Ibid*

Māori. And thirdly, there are the Crown’s ‘[o]bligations that extend beyond education’ due to the wide-ranging influence of education, including its role as ‘one of the main ways in which the Crown supports te reo and mātauranga Māori, as well as building a broader society that understands the role of the Te Tiriti [*sic*].’⁸¹ MOE officials also reminded Ministers that ‘[t]here are multiple taonga in the education system, that have been recognised as such by the Waitangi Tribunal, and by the Crown’, giving the examples of wānanga, te reo Māori, tamariki Māori and the whānau unit, and mātauranga Māori.⁸²

Having outlined the relevance and application of ‘te Tiriti’ to education, MOE officials recommended that, if the Ministers still wished to pursue the reforms to the ETA, then ‘policy analysis will need to engage with the various ways in which Te Tiriti is relevant to education.’⁸³ In terms of mainstream schooling, MOE officials advised Cabinet would also need to form a position on ‘four key policy questions’ before amending the Act.⁸⁴ These were, namely:

- ▶ How to codify the Crown’s obligation to run a school system that supports educational fairness, whether to include provisions specific to Māori, and how to frame this in terms of individual schools.
- ▶ The role of tikanga and te reo Māori in supporting this obligation.
- ▶ How to provide for whānau Māori to exercise choice between schooling systems.
- ▶ What the Crown’s obligations are in respect of te reo and mātauranga Māori in the English medium schooling system.

In making decisions, Ministers would also ‘need to consider the relevance of Te Tiriti as a whole, not just its application within schools or tertiary institutions.’⁸⁵

In sum, although the final form of the treaty standard was not known to MOE, its officials advised the Ministers the proposals were controversial, recommended broader engagement with Māori, and specified a number of context-specific questions Cabinet would need to grapple with in deciding whether to amend the ETA. As we discuss next, the Cabinet paper that was finalised by Minister Goldsmith in December 2025 advocated for the ‘take into account’ wording for treaty provisions in the ETA. It also narrowed the scope of consultation, with Minister Goldsmith proposing to only consult the NTCF and no other groups ahead of introducing amending legislation.

At hearing, Andy Jackson, Hautū Te Pou Kaupapahere/Deputy Secretary Policy at MOE confirmed MOE also provided advice to MOJ subsequent to the Advisory Group report.⁸⁶ He explained the tenor of that advice was consistent with MOE’s stance advanced in this September 2025 MOE report to Ministers (summarised

81. Document A43(a), p 204

82. *Ibid*, p 205

83. *Ibid*, p 204

84. *Ibid*

85. *Ibid*, p 201

86. Transcript 4.1.1, p 314

above).⁸⁷ It should be kept in mind, as we explain below, that none of this MOE advice was prepared in response to Minister Goldsmith's proposal to lower the treaty standard in sections 9(1) and 535B(a) as was confirmed by the Minister in the Cabinet paper.⁸⁸

2.6 MINISTER GOLDSMITH'S CABINET PAPER

After receiving the Advisory Group report, as noted above MOJ officials drafted a Cabinet paper on behalf of Minister Goldsmith representing his position on the desired reforms following the treaty clause review.⁸⁹ Minister Goldsmith lodged the Cabinet paper with the Cabinet Social Outcomes Committee before it agreed in December 2025 to refer it to Cabinet.⁹⁰ In February 2026, Cabinet approved the Cabinet paper and made a series of decisions that we cover in section 2.8.⁹¹

As is common, we understand there were several iterations of the Cabinet paper that were prepared and internally consulted on before the final version was lodged with the Cabinet Social Outcomes Committee and later Cabinet. As set out in section 2.5, MOE officials provided advice on an earlier iteration from the one eventually approved by Cabinet.

The Cabinet paper (among other actions) sought Cabinet's approval to amend in-scope Treaty references so that 'in situations where a "Treaty standard" is needed, which indicates the strength or nature of the Treaty obligation, no higher standard than "take into account" is used' (the 'treaty standard proposal'). It also sought to 'standardise' references to the treaty so that both the Treaty of Waitangi and te Tiriti o Waitangi are referred to in all instances (the 'text proposal'), and to amend or repeal section 536A(1) so that DRS operators do not have treaty obligations.⁹² We note the version of the Cabinet paper provided to the Tribunal contained redactions, and therefore the full extent and nature of the proposed reforms for the other 22 statutes within scope of the review was unclear until counsel for Te Whakakitenga o Waikato Incorporated gave us a copy of Minister Goldsmith and Minister Jones' letter to the NICF that described the changes agreed by Cabinet and the statutes affected.⁹³ We summarise that correspondence in section 2.10.

In introducing his proposals, Minister Goldsmith described the policy problem to be solved by the amendments as follows:

Differences in the wording of references to the 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 is any difference in intent. In my view, these broad phrases can have big consequences, and can be interpreted very widely,

87. Ibid

88. Document A52, p 10

89. See doc A54, p 2

90. Document A52, p 143; transcript 4.1.1, p 338; submission 3.3.20, p 6

91. Submission 3.3.20, p 6

92. Document A52, pp 11, 12

93. See memos 3.2.24(a), 3.2.24(b)

both by government institutions and the courts. I consider there is an opportunity to bring much better clarity and certainty.⁹⁴

Regarding the ‘take into account’ proposal, Minister Goldsmith’s view was the ‘requirements to “give effect” to the Treaty principles do not promote the balanced consideration of all relevant factors in decision-making and “take into account” is the more appropriate standard.’⁹⁵ He noted the ‘take into account’ standard would ‘not work in all instances’ and ‘no standard at all is likely to be required’ for (among other sections) long titles or purpose provisions.⁹⁶ The change would therefore ‘primarily apply to descriptive and operative provisions.’⁹⁷ Minister Goldsmith stated the text proposal was ‘to reduce uncertainty’, and he and Minister Stanford considered it was ‘not appropriate’ for DRS operators, as private entities, ‘to have this type of Treaty requirement.’⁹⁸

Within the context of the ETA, the implication of the treaty standard proposal would be to amend section 9(1) to replace the ‘give effect’ standard with the lower standard of ‘take into account’, and to amend section 535B(a) to replace the standard of ‘honours’ with the lower standard of ‘take into account.’⁹⁹ Finally, the Cabinet paper raised several significant considerations for, and potential implications of, the proposed changes. First, it recorded MOJ officials’ advice that ‘the lack of engagement prior to policy decisions will have adverse effects on the Māori Crown relationship’, and noted the findings and recommendations of the Tribunal’s *Ngā Mātāpono* report.¹⁰⁰ It noted the increased risk of litigation and Tribunal claims, including claims alleging breach of treaty principles due to lack of engagement, and potential impacts on Māori interests and the Māori–Crown relationship.¹⁰¹ Specifically, it noted ‘[d]ecisions to repeal or reduce obligations under Treaty provisions have the potential for wide ranging impacts on Māori interests’, and that these effects on Māori depend ‘on the nature and significance of Māori interests in the context of each Act.’¹⁰² Minister Goldsmith acknowledged exploration or quantification of those impacts had not been possible within the time available and without consultation with Māori.¹⁰³

Despite these concerns, Minister Goldsmith was satisfied the opportunity to provide input during select committee on an amendment Bill to give effect to the proposals, as well as targeted engagement with the NICE, would ‘be sufficient to ensure any views are considered before enactment.’¹⁰⁴ Regarding the *Ngā Mātāpono*

94. Document A52, p 1

95. *Ibid*, p 5

96. *Ibid*

97. *Ibid*

98. *Ibid*, pp 4, 5

99. *Ibid*, p 14

100. *Ibid*, pp 7–8

101. *Ibid*, pp 7–9

102. *Ibid*, pp 9–19

103. *Ibid*, p 9

104. *Ibid*, pp 6, 7

report, Minister Goldsmith acknowledged its findings and recommendations but ‘consider[ed] that the purpose and process of the review, as agreed by Cabinet, are necessary to effectively address the issue of certainty in legislation and to better support compliance’ and he therefore did not ‘consider it necessary to make changes to the review in line with the Tribunal’s recommendations.’¹⁰⁵

Minister Goldsmith further acknowledged there had been limited engagement internally with public service agencies regarding the treaty standard proposals contained in the Cabinet paper. Specifically, Minister Goldsmith confirmed Te Tari Whakatau and MOE had only been consulted on an earlier version of the Cabinet paper, which did not include the treaty standard proposal. The Cabinet paper makes no mention of whether or how Te Puni Kōkiri was consulted on the Cabinet paper during its preparation.¹⁰⁶ Ms Greaney (Deputy Secretary, Policy at MOJ) claimed at hearing that all agencies had been consulted on the Cabinet paper and ‘had the opportunity to brief their own portfolio Minister on what was proposed for the provisions in their legislation,’¹⁰⁷ but this was clearly not the case with regard to the treaty standard proposal. This understanding is corroborated by statements in MOE’s September 2025 briefing to education Ministers (summarised above) that the legislative standard the Crown proposed to shift to was not yet known.¹⁰⁸

Finally, the Cabinet paper referred to a regulatory impact statement (RIS) prepared by officials on Minister Goldsmith’s proposals, noting the MOJ’s Quality Assurance Panel had reviewed the RIS and considered it did not meet the quality assurance criteria, and was constrained by timeframes and lack of consultation with iwi and hapū. We discuss this statement next.¹⁰⁹

2.7 REGULATORY IMPACT STATEMENT

Accompanying Minister Goldsmith’s Cabinet paper was a RIS prepared by MOJ officials and finalised on 13 November 2025, with an analysis of Minister Goldsmith’s proposal to amend legislation in response to the Advisory Group report.¹¹⁰

In the view of officials, the treaty standard proposal had ‘no apparent benefits’ and risked ‘significant damage to the Māori–Crown relationship as it is likely to be seen as reducing existing Treaty protections in legislation.’¹¹¹ When articulating this risk, MOJ officials emphasised that ‘[r]ecent nation-wide protests in response to the Treaty Principles Bill suggests the Māori–Crown relationship is currently in a fragile state.’¹¹² MOJ officials warned there was also a ‘[p]ossibility for wide ranging

105. Ibid, p8

106. Ibid, p10

107. Transcript 4.1.1, p 346

108. Document A43(a), p 202

109. Document A52, p9

110. Ibid, pp 88–142

111. Ibid, p134

112. Ibid, pp 136–137

impacts on Māori social, cultural, economic, and environmental interests' arising from the proposal.¹¹³

MOJ officials cautioned the proposal was 'unlikely to meet the objective of ensuring Treaty provisions are clear as to how the Treaty applies in the context of each legislative regime.'¹¹⁴ They emphasised the functionality of existing Treaty provisions in the statute book, arguing that the 'weighting of existing provisions is generally well-understood and often supported by well-established practice approaches and significant case-law.'¹¹⁵ Additionally, '[h]aving some Treaty directions impose more onerous obligations than others can helpfully indicate where Parliament considers Treaty obligations to be most strongly engaged.'¹¹⁶ MOJ officials noted flexibility in provisions can be deliberate, and '[c]urrent best practice guidance for legislative design recommends bespoke provisions that seek to provide certainty as to rights and obligations but also build in sufficient flexibility so that they are enduring.'¹¹⁷ Overall, MOJ officials advised that the status quo (no change to the provisions) was preferable to Minister Goldsmith's treaty standard proposal.¹¹⁸

Among other comments, MOJ officials advised the impact of the treaty standard proposal on the interpretation of the affected sections and the Crown's ability to uphold its treaty obligation was 'uncertain', explaining this impact 'would be context specific and depend on the nature of the Treaty interest(s) and the provision type.'¹¹⁹ MOJ officials also noted that where a significant Māori interest was at play, 'the particular formulation may make little practical difference to the Court's interpretation' of the relevant provision.¹²⁰ While the impact was uncertain, MOJ officials warned it was 'likely to at least be seen to signal a shift in the Crown's position on the status and importance of the Treaty', which 'could reduce the importance decision-makers place on Treaty considerations.'¹²¹

Concerning the specific changes proposed to the ETA, the RIS noted the treaty standard proposal would 'not apply to purpose provisions, long titles, and appointment provisions as those provisions do not typically impose standards of obligations.'¹²² On this basis, officials therefore only considered the implications of this proposal for sections 9(1), 535B(a), and clause 4(d)(i) of schedule 13 to the ETA.¹²³

MOJ officials also advised strongly against Minister Goldsmith's proposal to repeal treaty provisions, stating that '[t]here is limited evidence available to

113. Document A52, p 135

114. *Ibid*, p 134

115. *Ibid*

116. *Ibid*

117. *Ibid*, p 99

118. *Ibid*, pp 112, 134

119. *Ibid*, p 132

120. *Ibid*, p 135

121. *Ibid*, p 133

122. *Ibid*, p 134

123. *Ibid*, p 132

support the assumption that existing provisions are causing uncertainty and that the proposals would result in greater certainty.¹²⁴ Consistent with the Ministerial Advisory Group's report, the RIS stated that, '[i]n all instances', repealing treaty provisions was 'likely to increase, rather than decrease, uncertainty'.¹²⁵

Regarding the proposed repeal of section 536A(1) of the ETA, in particular, MOJ officials stated the provision was 'intended to ensure that DRS operator processes are aligned with' purpose section 4, and was a way to address concerns a DRS operator would 'not automatically [be] bound by the Crown's Te Tiriti obligations' as a private entity.¹²⁶ The RIS recorded that MOE had 'advised that it consider[ed] DRS operators should provide services in a manner that recognises the Treaty as they provide services to tamariki and rangatahi Māori'.¹²⁷ MOJ officials advised that amending section 536A(1) to be more prescriptive would be preferable to repealing the section, as it would 'provide certainty for all relevant parties' while 'enabl[ing] scrutiny of the specific requirements for DRS operators'.¹²⁸ Repealing the provision 'would result in uncertainty about whether/how' section 4 relates to DRS operators and 'reduce the ability to legally challenge decisions made by the Crown that do not appear to meet its Treaty obligations in the way it provides for the operation of a dispute resolution service'.¹²⁹ Likely referring to the *Ngā Mātāpono: Part III* report, the RIS recorded the Tribunal findings that 'repeals resulting from a process with constrained timing that reduces the scope for robust policy analysis and engagement' would breach treaty principles.¹³⁰

A central theme of this RIS, particularly in relation to the treaty standard proposal, was the inability of officials to undertake in-depth policy analysis in light of the directed timeframes. MOJ officials emphasised the treaty standard proposal had been 'a late addition proposed by the Minister of Justice' that increased the number of in-scope provisions to be evaluated by the RIS.¹³¹ This made it impossible for officials 'to undertake in-depth analysis of the impact of this change for each provision affected, or to consult with impacted agencies'.¹³² MOJ officials also explained that because of the condensed timelines of the Treaty clause review generally, 'it has not been possible to undertake a first principles Treaty analysis of all relevant Acts to determine whether the Treaty is being appropriately provided for or not'.¹³³

The RIS also emphasised the shortcomings of the policy process generally, in light of the lack of consultation with Māori. MOJ officials explained 'the Minister of Justice directed a process that has not included engagement with iwi and hapū

124. Ibid, p 91

125. Ibid

126. Ibid, p 110

127. Ibid

128. Ibid, p 112

129. Ibid

130. Ibid, p 110

131. Ibid, pp 89, 92

132. Ibid, p 92

133. Ibid

(as Treaty partners) or relevant stakeholders to understand their views and shape policy options.¹³⁴ MOJ officials noted that thorough testing of the Cabinet paper's assumption that 'take into account' was the preferable treaty standard had been limited by the lack of consultation.¹³⁵ MOJ officials argued the views of Māori were 'particularly pertinent' in this context 'given the constitutional relevance of Treaty provisions, which impact our collective understanding of the Treaty and its place in the legal system.'¹³⁶ MOJ officials stressed '[c]onsultation with iwi and hapū is one of the principal mechanisms through which the Government discharges its responsibility to make informed decisions and act in good faith towards Māori.'¹³⁷ MOJ officials further highlighted the findings and recommendations of the Tribunal's *Ngā Mātāpono* report regarding engagement on the review.¹³⁸ Their view was that the lack of engagement to date was 'contrary to Treaty principles and Waitangi Tribunal recommendations.'¹³⁹

The lack of consultation was also cited by MOJ's Regulatory Impact Assessment Quality Assurance Panel (QA Panel) in finding the RIS to have failed to meet quality assurance criteria. In their view:

the constraints and limitations imposed by Ministerial direction in terms of the options to be considered, timeframes, and the lack of consultation, especially with iwi and hapū as Treaty partners, are material. The Panel considers these constraints have meant that the analysis is not sufficiently developed to form a basis for Ministers to make informed decisions. This has been exacerbated by the late inclusion of several significant proposals.¹⁴⁰

We note that both the Cabinet paper and the RIS refer to the findings and recommendations of the *Ngā Mātāpono: Part III* report concerning the purpose and process of the treaty clause review. We summarise the report, relevant to both the chronological narrative of the treaty clause review and our analysis that follows, in section 2.9 below.

2.8 THE CABINET DECISION

On 23 February 2026, following reference from the Cabinet Social Outcomes Committee, Cabinet (among other decisions) agreed that:

- ▶ references within scope of the review 'should be amended so that in situations where a "Treaty standard" is needed, which indicates the strength or nature of the Treaty obligation, no higher standard than "take into account" is used';

134. Document A52, p 92

135. Ibid, pp 92, 98

136. Ibid, p 98

137. Ibid, p 100

138. Ibid

139. Ibid, p 136

140. Ibid, p 93

- ▶ ‘to standardise Treaty provisions, a reference to both the Treaty of Waitangi and te Tiriti o Waitangi should be used in all instances, and provisions should retain references to treaty principles’;
- ▶ section 536A(1) of the ETA ‘should be amended or repealed so that dispute resolution service operators, which are private entities, do not have Treaty requirements’; and
- ▶ ‘provisions referring to the Treaty itself’ in the ETA be formally included in the review.¹⁴¹

The Cabinet minute also noted Minister Goldsmith’s intention to consult the NICF on Cabinet’s decisions prior to final approval of the Bill, and that Minister Goldsmith proposed to introduce a Bill to give effect to Cabinet’s decisions ‘within this Parliamentary term’. Further, Cabinet invited Minister Goldsmith to issue drafting instructions to the PCO.¹⁴² Crown counsel subsequently advised the Tribunal that amending legislation, on current timeframes, would not be introduced to the House until early August 2026.¹⁴³

Finally, Cabinet agreed:

- ▶ its standardisation approach ‘will (unless it is inappropriate to do so) be applied to future legislation to ensure that the benefits of increased certainty across the statute book is maintained’; and
- ▶ ‘where the Treaty is found to be relevant to future legislation, a standard form descriptive Treaty provision should be included as the presumed preference unless it is inappropriate in the circumstances.’¹⁴⁴

Significantly, Cabinet’s February 2026 decision was silent on an important point: whether treaty standards need to be altered in the purpose provisions of the relevant legislation. The Cabinet Paper acknowledged the ‘take into account’ standard ‘will not work in all instances and no standard at all is likely to be required in purpose provisions, long titles, or appointment provisions.’¹⁴⁵ As such, Cabinet agreed only to amend the treaty standard in circumstances where a standard is required.¹⁴⁶ On 24 April 2026, Crown counsel confirmed that ‘the application of the “take into account” proposal to the purpose provisions is subject to further consideration’. Specifically, ‘the proposal to amend the Treaty weighting is subject to a further decision by Minister Goldsmith, supported by Ministry of Justice advice’, in relation to sections 4(d), 32(h) and 398B.¹⁴⁷ The Cabinet Minute authorised Minister Goldsmith, in consultation with the Ministerial Oversight Group and the Minister responsible for each Act, to make further decisions, in line with the policy decisions agreed by Cabinet, where necessary.¹⁴⁸ We comment further on the potential for amendment of these sections in section 3.3(2) below.

141. Ibid, pp 144, 145

142. Ibid, p 145

143. Memorandum 3.2.19, p 4

144. Document A52, p 144

145. Ibid, p 5

146. Ibid, p 144

147. Memorandum 3.2.19, pp 2–3

148. Document A52, p 145

2.9 THE WAITANGI TRIBUNAL'S NGĀ MĀTĀPONO: PART III REPORT**2.9.1 The treaty clause review policy process**

Released on 22 October 2025, *Ngā Mātāpono: Part III* considered Crown decisions relating to its Treaty clause review following the Tribunal's interim report in August 2024. The interim report had recommended the review be paused and reconceived 'through collaboration and co-design engagement with Māori'.¹⁴⁹

Particularly relevant for the purposes of our report is the Tribunal's commentary on the policy process surrounding the treaty clause review. In May 2025, a truncated process for the treaty clause review was directed by Minister Goldsmith, which the Tribunal considered in its report.¹⁵⁰ First, initial preferred options on whether to amend or repeal each clause would be made by the Ministerial Oversight Group with advice from the Advisory Group. Next, agencies, with support from the MOJ, would engage identified Māori groups and relevant stakeholders on the initial proposals. Finally, the Ministerial Oversight Group would seek final decisions from Cabinet, including approval to draft amending legislation.¹⁵¹ Timeframes indicated Cabinet would approve consultation on proposals in July with the oversight group confirming proposals from September to October 2025, with Cabinet taking a decision to approve drafting of any amending legislation at the beginning of November 2025.¹⁵²

The Tribunal considered condensing such a substantial and contentious review to a six-month timeframe risked 'poor outcomes (under-informed policy and decision-making) and significant damage to Māori rights and interests as well as to the Māori-Crown relationship'.¹⁵³ The Tribunal found that the Crown would breach the principles of the Treaty and cause prejudice to Māori if it continued with its planned approach. It considered that making preliminary decisions about the clauses with the advice of the advisory group without engagement with Māori, and then rapidly progressing the review without time for sufficient engagement with, or the full involvement of, Māori, would be inconsistent with the principle of partnership.¹⁵⁴ The Tribunal found the planned approach created the potential for discriminatory outcomes for Māori, which would breach the principle of equity.¹⁵⁵

The Tribunal made a series of recommendations. These included: extending the review timeline to allow for Māori engagement and robust policy work; removing the possibility of repealing treaty clauses; allowing for the co-design of or full

149. Waitangi Tribunal, *Ngā Mātāpono/The Principles: The Interim Report of the Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown's Treaty Principles Bill and Treaty Clause Review Policies – Pre-publication Version* (Wellington: Waitangi Tribunal, 2024), p188; Waitangi Tribunal, *Ngā Mātāpono: Part III*, p1

150. Ibid, pp 32–35

151. Ibid, pp 33–35

152. Ibid, p 32

153. Ibid, p 43

154. Ibid, p 46

155. Ibid, p 47

consideration of Māori views regarding any amendments; and providing requisite resources for Māori participation in engagement.¹⁵⁶

2.9.2 The policy process that eventuated

The policy process that ultimately followed was even more truncated than the one criticised by the Tribunal in *Ngā Mātāpono*. The process approved by Minister Goldsmith in May 2025 provided for agency consultation with Māori groups on initial preferred options of the Ministerial Oversight Group before Cabinet approval to draft amending legislation was given. What has occurred in practice is that Cabinet has already approved the specific amendments and invited Minister Goldsmith to issue drafting instructions to the PCO, in the absence of any consultation with Māori – an omission strongly cautioned against in official advice. The NICF was being consulted during our hearings, not on initial preferred options for reform, but on specific amendments already agreed to by Cabinet. The *Ngā Mātāpono* Tribunal found the policy process amounted to a treaty breach where even preliminary decisions were being made in the absence of meaningful consultation. However, what has occurred is an even more unilateral advancement in decision making by Cabinet than the *Ngā Mātāpono* Tribunal anticipated. We consider the treaty implications of this in our analysis section below.

2.10 THE NATIONAL IWI CHAIRS FORUM CORRESPONDENCE

On 2 April 2026, Minister Goldsmith and Minister Jones wrote to Professor Margaret Mutu and Aperahama Edwards, the Pou Tikanga Co-Chairs of the NICF, informing them of the reforms agreed to by Cabinet in February 2026 and seeking their ‘views’ on the decisions.¹⁵⁷ The letter described the rationale for the changes and specific treaty provisions to be repealed across multiple statutes, and outlined the treaty standard proposal and treaty text proposal.¹⁵⁸ The NICF were also provided with a full list of changes agreed by Cabinet covering all in-scope statutes.¹⁵⁹

‘While Cabinet has made decisions in order that the drafting of the Bill can progress,’ the Ministers’ letter stated, ‘we are committed to engaging with you on the draft of the Bill and are open to discussing changes with our Cabinet colleagues.’¹⁶⁰ The letter offered the Pou Tikanga until 24 April to provide feedback, noting the select committee process would ‘otherwise provide a sufficient opportunity for those with interests to have their say.’¹⁶¹ As noted above, Mr Kibblewhite (Secretary

156. Ibid, p 49

157. Memorandum 3.2.24(a), p [1]

158. Ibid, pp [1]–[3]

159. Ibid, p [1]. The list was referred to as an attachment in the letter, but counsel for Te Whakakitenga o Waikato stated NICF did not receive the appendix until 9 April 2026 (memo 3.4.16, p 1; see also memo 3.2.24(b), p 2). Judge Mullins requested that counsel for Te Whakakitenga o Waikato file a copy of the unredacted appendix with the Tribunal, but counsel were unable to do so as it was provided to NICF ‘in confidence’ (memo 2.7.1, p 3; memo 3.4.16, p 2).

160. Memorandum 3.2.24(a), p [1]

161. Memorandum 3.2.24(a), p [3]

of Justice and Chief Executive of MOJ) subsequently offered the NICF a week's extension to 1 May during a hui on 14 April.¹⁶²

On 22 April, Tukoroirangi Morgan (Chair – Pou Taiao), Professor Margaret Mutu (Co-Chair, Pou Tikanga), Aperahama Edwards (Co-Chair, Pou Tikanga), Marama Royal (Chair, Pou Take Aahuarangi), Rahui Papa (Chair, Pou Tangata), and Jamie Tuuta (Chair, Pou Taahua) sent a letter to the Prime Minister, the Right Honourable Christopher Luxon.¹⁶³ It stated:

On behalf of the NICF, we *oppose in the strongest possible terms* both the proposed legislative amendments and the process which has been followed to date. We further *reject entirely* the process for engagement with the NICF, which seeks comments within an extraordinarily short timeframe and in circumstances where Cabinet has already made substantive decisions and drafting instructions have gone to PCO, and there has been a complete failure to engage with iwi and hapū in any meaningful way prior to those decisions being made. [Emphasis in original.]¹⁶⁴

The NICF stated that the Crown's failure to engage with iwi and hapū on the reforms was a 'direct breach of the Crown's Te Tiriti obligations.'¹⁶⁵ The breach was compounded by the 'highly abridged timeframe' for the NICF to provide feedback and the 'overused and frankly offensive suggestion' that input during the select committee process would be sufficient.¹⁶⁶ It was 'particularly egregious' to the NICF that Cabinet had made decisions to include the ETA and the Climate Change Response Act 2020 when issues relating to both statutes 'are the subject of active hearings before the Waitangi Tribunal.'¹⁶⁷

The NICF rejected emphatically the cited rationale and objectives of the reforms, stating:

It is clear to us that these proposed reforms are ideologically driven and not grounded in good public policy that will address a specific problem or need. They are not isolated amendments with no unintended consequence. Rather, they are extensive and far-reaching amendments that erode the recognition of Te Tiriti across a broad range of legislation.

Any suggestion that these proposals reflect a need for clarity and certainty is specious. Instead, they represent a conscious decision by your Government to purposively diminish the statutory recognition of Te Tiriti and its principles without any proper analysis or justification.¹⁶⁸

162. Memorandum 3.2.7, p 1

163. Memorandum 3.2.24(b). Minister Goldsmith and Minister Jones were also recipients of the letter.

164. Ibid, p 2

165. Ibid

166. Ibid, pp 2–3

167. Ibid, p 3

168. Ibid

It was 'clear' to the NICF that Cabinet had disregarded its own advice in agreeing to the reforms, including the QA Panel's assessment that the RIS was insufficiently developed to provide the basis for informed Ministerial decision-making, the risks identified in the RIS, and the Advisory Group's recommendations for broader engagement.¹⁶⁹ The NICF noted the Advisory Group had also explicitly approached their advice on the understanding that 'genuine engagement with Māori' would occur on Ministers' 'preliminary decisions'.¹⁷⁰

The NICF urged the Prime Minister to 'immediately withdraw the present proposals and instructions to PCO', and to meet with the NICF 'to discuss and agree on a Te Tiriti compliant process by which improvements to relevant statutes are progressed on a fully informed and carefully considered, statute by statute, basis'.¹⁷¹

169. Ibid

170. Ibid

171. Ibid, p 4

CHAPTER 3

DID CABINET'S DECISION TO AMEND THE EDUCATION AND TRAINING ACT BREACH TREATY PRINCIPLES? KO TE WHAKATAUNGA A TE KOMITI MATUA KI TE WHAKAREREKE I TE TURE MĀTAURANGA HE TAKAHANGA I NGA MĀTĀPONO O TE TIRITI?

3.1 TRIBUNAL ANALYSIS

The key matter the Tribunal must determine is whether Cabinet's 23 February 2026 decision to amend the provisions of the ETA breached the principles of the treaty. In light of the evidence before us, we consider there are three key matters the Tribunal must ascertain in order to assess the treaty compliance of the Crown's action, which we set out here:

- ▶ First, is there a treaty duty on the Crown to engage with Māori on the proposed changes to the ETA?
- ▶ Secondly, if the Crown has a duty to engage with Māori, has its engagement process and proposed approach to seeking input from Māori on the changes been treaty compliant?
- ▶ Thirdly, if the Crown has not met the standards required of its duty to engage with Māori, has the Crown adequately informed itself through internal policy processes of the potential implications of the proposed changes, including their impact on Māori interests?

We set out the parties' positions on these three issues below.

3.2 PARTIES' POSITIONS

3.2.1 The claimants and interested parties' positions

Claimants and interested parties argued the substance of the Crown's proposed reforms, and the process the Crown followed, including its failure to engage meaningfully with Māori, breached treaty principles.¹

Dr Kenneth Kennedy and Toro Bidois on behalf of themselves and the New Zealand Māori Council (NZMC) argued the Crown's duty to engage with Māori goes beyond mere consultation in this case.² Instead, the constitutional nature of the decision, as 'Te Tiriti would be significantly reduced through statute', and 'the disproportionate impact on Māori', requires the Crown to engage meaningfully

1. See, for example, submission 3.3.13(a), pp 23–24, 27–28; submission 3.3.14(a), pp 17–19; submission 3.3.19, pp 10, 13–18; submission 3.3.20, p [5]

2. Submission 3.3.19, p 16

with Māori.³ Such engagement must be done with ‘full consideration of Māori interests’ and ‘developed through a co-design process.’⁴ Claimants and other interested parties similarly argued the reforms have constitutional implications.⁵

Claimants and interested parties submitted the Crown has failed to adequately engage with Māori on the reforms. Instead, they argued, the Crown followed a treaty-inconsistent course that: ignored officials’ advice; only engaged with the NICE, despite their not having a ‘mandate to represent all iwi, hapū, and whānau interests’; provided the NICE an ‘utterly insufficient’ timeframe to provide feedback given the breadth and scope of the changes proposed; and failed to engage with Māori in the education sector who will be most impacted by the reforms.⁶ NZMC asserted the Crown’s emphasis on the ability to submit to the select committee was also ‘misguided and inappropriate’ and ‘relegate[s]’ Māori to ‘bystanders in the development of this Bill’ when Māori are likely to experience the most adverse consequences from the reforms.⁷

Claimants and interested parties submitted that the Crown, having failed to engage with Māori, has not adequately informed itself of the potential impacts of the reforms on Māori or Māori interests.⁸ They argued Ministers agreed to the reforms against officials’ advice, including advice the reforms would harm the Māori–Crown relationship and ‘generate litigation.’⁹ Ripeka Lessels and O’Sonja Hotereni for and on behalf of NZEI argued the Crown cannot claim to be actively protecting taonga when ‘it does not know the consequences for tamariki Māori of removing or diluting the Act’s remaining Treaty provisions.’¹⁰ Ngā Kura ā Iwi submitted that the Crown has disregarded the warnings of the *Ngā Mātāpono* Tribunal and ‘accelerated precisely the programme the Tribunal said would breach Te Tiriti.’¹¹ Interested parties argued that the Crown failed to specify how risks to Māori will be mitigated in the reforms.¹² Te Whakakitenga o Waikato argued the Crown’s ‘reckless approach to policy-making is plainly premised on the intention to suppress te Tiriti.’¹³ Claimants and interested parties similarly argued the reforms were motivated by ideology, rather than a sound policy rationale.¹⁴

3. Submission 3.3.19, p 16

4. Ibid

5. Submission 3.3.13(a), p 28, see also p 7; submission 3.3.14(a), pp 17–18

6. Submission 3.3.19, pp 17, 18; submission 3.3.13(a), pp 4, 9–10, 19; see also submission 3.3.24, pp 14–17

7. Submission 3.3.19, pp 17, 18. Ngā Kura ā Iwi specifically submitted that the Crown’s failure to engage with them prior to making policy decisions breached the memorandum of understanding that they have with MOE, He Kawa Whakapūmau (submission 3.3.14(a), pp 5–6).

8. Submission 3.3.13(a), p 18; submission 3.3.19, p 10; submission 3.3.14(a), pp 13, 14–15

9. Submission 3.3.19, pp 10, 11; submission 3.3.13(a), p 4; submission 3.3.14(a), p 4

10. Submission 3.3.13(a), p 16; see also submission 3.3.14(a), p 16

11. Submission 3.3.14(a), p 9; see also submission 3.3.24, p 9

12. Submission 3.3.19, pp 10–12

13. Submission 3.3.24, p 21, see also pp 11, 17

14. Submission 3.3.19, p 13; submission 3.3.20, p [5]; submission 3.3.13(a), p 6; see also submission 3.3.14(a), p 4

Claimants and interested parties argued downgrading treaty standards in the ETA to 'take into account' risked: diluting the Crown's obligations as expressed in statute; removing accountability for treaty compliance; and removing safeguards for treaty interests.¹⁵ NZMC submitted that reducing treaty weightings to the 'take into account' standard was 'an intentional positioning away from requiring the Crown to uphold, recognise or give effect to Te Tiriti and instead relegates it to a balancing exercise'.¹⁶ Ms Lessels and Ms Hotereni argued the ETA's treaty provisions 'give practical effect to the Crown's duty to actively protect te reo Māori, tikanga Māori, and matauranga Māori in education [and] are the legislative architecture of active protection', and the cumulative effect of the Crown's actions 'is the systematic dismantling' of that architecture.¹⁷ Gazala Maihi on behalf of the Post Primary Teachers' Association – Te Wehengarua argued the 'take into account' standard could permit decision-makers to disregard the treaty where they considered it interfered with other statutory principles and allow the Crown to 'dodge' judicial accountability for treaty compliance.¹⁸ Te Kapotai and Ngāti Hine argued Cabinet's decisions and the related documentation 'shows the Crown intends to further reduce the recognition and provision for the treaty', engaging matters of 'fairness and transparency as standard features of good law and policy making.'

Te Whakakitenga o Waikato argued the decision to adopt 'take into account' as the general standard was misconceived and a 'deliberate suppression of the status of the Treaty'.¹⁹ In addition to this being the 'weakest Treaty standard', it argued it 'offers no additional clarity' and may increase uncertainty as it gives no indication to decision-makers regarding the appropriate weighting for the consideration.²⁰ They argued the Crown's adoption of a flat standard was also not informed by adequate policy analysis and was inconsistent with the Advisory Group's report, which 'emphasise[d] contextual, purpose-based consideration of individual provisions, and broadly recommends against a singular general standard'.²¹ It argued the reforms are to be 'made without proper analysis of their context, purpose or underlying rationale' for the provisions.²² It also raised concern 'the presumption that Acts should be read consistently with' the treaty would mean the 'take into account' standard might 'lead courts to conclude that the obligations on decision-makers are materially the same as those under a "give effect to" standard'.²³

Regarding the specific provisions affected, Te Whakakitenga o Waikato submitted: 'take into account' was 'conceptually ill-suited to a listing provision' like section 9; amending section 536A(1)(a)(ii) to the 'take into account' standard 'risks

15. Submission 3.3.20, p [3]; submission 3.3.13(a), p 4; see also submission 3.3.14(a), p 13; submission 3.3.17, p 12

16. Submission 3.3.19, p 6

17. Submission 3.3.13(a), pp 24, 25

18. Submission 3.3.20, p [4]

19. Submission 3.3.24, pp 17, 19

20. Ibid, p 17

21. Ibid, pp 10–11

22. Ibid, p 18

23. Ibid, p 19, citing *Barton-Prescott v Director-General of Social Welfare* [1997] 3 NZLR 179, p 184

marginalising Māori affected by code administrator decisions'; the proposed repeal of section 536A(1) is 'antithetical' to both the Advisory Group's report and MOE advice, including MOE advice that 'DRS operators should provide services consistent with [section] 4(d) as they provide services to tamariki and rangatahi Māori and its repeal would result in uncertainty'.²⁴

Claimants and interested parties had particular concerns regarding the reform of purpose provisions in the ETA. NZMC had 'grave concern' that amending the provisions, particularly section 4(d), would 'significantly alter the entire framework of the Act that has been set up to establish an education system that is Te Tiriti compliant'.²⁵ In their submission, the treaty standard reforms send 'a clear message to those who operate under the ETA that Te Tiriti is no longer an essential component to underpin the application of the Act'. The reform, NZMC argued, could also be construed as the Government attempting to undermine judicial findings 'that treaty clauses should not be narrowly construed but given a broad and generous construction'.²⁶

NZMC argued that, while the Advisory Group had deemed the term 'honour' to be too vague, its use must be understood 'in the historical context of both the history of [the] Crown's breaches directly through the education system from its use of a tool of assimilation, corporal punishment for use of te reo, and ongoing inequalities experienced by' ākongā Māori.²⁷ When this context is understood, including the case law that has developed concerning the 'honour' of the Crown, it argued, the term is not vague 'but entirely appropriate' in the purpose section of the ETA.²⁸ To remove it, 'constitutes a specific action to "dishonour" the Treaty and the Crown's obligations owed under it, as well as to take backwards steps in regards to redress'.²⁹

Te Whakakitenga o Waikato argued the potential amendment of ETA purpose sections 4(d), 32(h) and 398B would also be 'internally inconsistent', 'unclear and unwarranted'.³⁰ For example, amending section 4(d) to the 'take into account' standard would be 'flawed' as it is a 'purpose provision rather than an operative or descriptive clause that imposes a specific standard'.³¹ In these circumstances, it is 'unclear exactly what "Treaty weighting" Minister Goldsmith would be determining, or if references to the treaty would be retained at all in the ETA's purpose provisions'.³²

Ms Lessels and Ms Hoterani similarly argued that section 4(d), which 'commits the education system to honouring Te Tiriti', was 'the statutory expression

24. Submission 3.3.24, pp 19–20, 21

25. Submission 3.3.19, p 7

26. Ibid, referring to *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127; see also submission 3.3.14(a), p 16.

27. Submission 3.3.19, p 7

28. Ibid, pp 7–8; see also submission 3.3.24, pp 3–4

29. Submission 3.3.19, pp 7–8

30. Submission 3.3.24, p 12

31. Ibid

32. Ibid, pp 12–13

of constitutional obligations developed through decades of judge-made law.³³ In their submission, '[t]o remove or diminish' section 4(d) 'is not a technical amendment', but 'the legislative erasure of a constitutional foundation built through generations of law'.³⁴ They argued 'removing or weakening' the treaty standards in sections 4(d) and 32(h) would 'directly reduce the levers educators and ākonga Māori have to ensure the education system upholds Te Tiriti'.³⁵ That the purpose provisions might be amended, they argued, means the threat is not 'merely one of dilution but of wholesale removal of the foundational commitment at the heart of the legislation'.³⁶

3.2.2 The Crown's position

The Crown submitted the decisions it has taken to date should 'be understood as forming part of an ongoing policy process rather than a final and complete set of legislative instructions' as 'several matters remain subject to further development before legislation is introduced, including the treatment of purpose provisions, the drafting process and general legislative process'.³⁷ In particular, the Crown noted that '[w]hether and how' the purpose sections 4(d), 32(h), and 398B 'will be amended remains subject to further ministerial decision'.³⁸ In its submission, 'assessment of whether the relevant purpose provisions require amendment does not necessarily mean *removal*' (emphasis in original).³⁹ As part of this, officials would 'consider whether each purpose provision continues to align with the substantive provisions in the Act following Cabinet's proposed changes' and '[f]urther advice and ministerial decisions will be required as to the appropriate treatment of such provisions'.⁴⁰

The Crown argued that, through its evidence in the urgent inquiry, it has 'acknowledged its "significant and enduring" Treaty duties in education' and it 'stands by those comments'. In its submission, the Crown's 'understanding' of its treaty duties is 'not grounded . . . in the wording of particular provisions' in the ETA.⁴¹ The Crown submitted further that MOE 'has communicated its understanding that the Crown remains subject' to its treaty duties 'regardless of the precise statutory wording' and the 'nature and significance of Māori interests in education . . . are highly likely to influence the approach decision-makers and Courts take to interpreting the ETA'. These factors would 'continue to guide' MOE's 'interpretation and administration of the ETA'.⁴² In the Crown's submission, '[t]hese points

33. Submission 3.3.13(a), p 6

34. Ibid, p 7

35. Ibid, p 22

36. Ibid, p 26

37. Submission 3.3.21, p 7

38. Ibid, p 8

39. Ibid

40. Ibid

41. Ibid, p 12

42. Ibid

of context will continue to guide the interpretation of the relevant provisions, even if they are amended (including to the “take account” standard).⁴³

The Crown acknowledged, however, that its decisions regarding the ETA provisions ‘have not been the product of a fully conventional policy process led by officials’ and that it did not ‘undertake a formal consultation process with Māori before taking’ its decisions.⁴⁴ The Crown noted that, since the *Ngā Mātāpono: Part III* findings and recommendations on the treaty clause review, it ‘has not taken steps to substantively change the direction or the process of the review’.⁴⁵ The Crown noted officials’ advice also ‘alludes to the risks in Treaty terms of proceeding with the proposed legislation under the current policy direction (as a matter of substance and process)’.⁴⁶ The Crown further acknowledged ‘that, on a conventional assessment of impact and importance, and drawing on the Tribunal’s jurisprudence’, ‘the decisions associated with the proposed legislation may result in negative comment by the Tribunal’.⁴⁷

The Crown also made submissions on the potential implications of the proposals for specific provisions in the ETA, namely section 127 and section 90 (relevant to the stage two issues in the urgent inquiry). In its submission, ‘[c]hanges to a purpose provision, depending on the precise amendments and the relevant context, can have knock-on implications for the interpretation of all sections of an enactment and for all decisions taken under an enactment (and any relevant secondary legislation)’.⁴⁸ Changes to the ETA purpose provisions may therefore, ‘in principle’, ‘impact on the correct interpretation of, and effect of’ section 127, ‘and have implications for the correct interpretation of’ section 90.⁴⁹

Regarding the ‘general impact’ of the proposed reforms, the Crown acknowledged officials’ ‘advice addressing the Treaty consistency of the policy direction associated with the proposed legislation, and that this is on the Record of Inquiry’.⁵⁰ Beyond that, however, the Crown submitted:

the extent to which Treaty interests are upheld generally across the entire education system (ie beyond the matters that are the subject of the first two Inquiry issues), and whether or how the proposed legislation may impact on this, is a line of inquiry better suited for the Education Kaupapa Inquiry, as it raises issues which the Crown cannot address within the confines of this Urgent Inquiry.⁵¹

43. Submission 3.3.21, p 12

44. Ibid, p 13

45. Ibid

46. Ibid

47. Ibid, p 15

48. Ibid, p 11

49. Ibid

50. Ibid, p 14

51. Ibid

The Crown submitted further that potential prejudice arising from the reforms is 'unclear at this stage' and argued the Tribunal 'is not well placed to inquire into the impact or prejudice' of the reforms without a stronger evidential basis.⁵²

3.2.3 Reply submissions

Ms Lessels and Ms Hotereni argued the Crown's submissions 'are, in essence, a holding position'.⁵³ They submitted the uncertainty that exists regarding the likely impacts of the reforms is not a valid defence, but 'part of the prejudice'.⁵⁴ That the Crown is advancing legislative amendments 'without having determined the effect of its own obligations', they argued, 'is evidence of a failure to self-inform before acting'.⁵⁵ They submitted that kaiako and school boards are already operating with uncertainty 'when the Crown has publicly confirmed it intends to reduce' its treaty obligations in the ETA, but with regards to the purpose provisions, 'has not yet determined how'.⁵⁶ Ngā Kura ā Iwi similarly argued that the prejudice of uncertainty arising from the proposed reforms 'is present and accumulating'.⁵⁷ They argued the Crown's concession 'that prejudice may arise from the process adopted to date . . . should be given its full weight'.⁵⁸

Ms Lessels and Ms Hotereni further argued the Crown's own account of the reforms acknowledges it had breached treaty principles in the process it followed, including the lack of engagement with Māori and proceeding despite the findings and recommendations of the *Ngā Mātāpono* Tribunal, the RIS advice, and the Māori Education Ministerial Advisory Group's feedback.⁵⁹ They submitted findings of breach regarding these decisions would not be 'contingent on the passage of further legislation'.⁶⁰

NZMC argued Māori will be most affected by changes to treaty provisions which, by their nature, provide for their rights and interests. In these circumstances, and in response to the Crown's argument its obligations are tempered by what is reasonable in the circumstances, NZMC submitted it would not be 'unreasonable to expect the Crown to follow [its] Te Tiriti obligations'.⁶¹ NZMC also rejected 'the dichotomy the Crown has set up between Māori and the public interest', arguing 'the Crown does not have to operate in bad faith to Māori in order to serve the public interest'.⁶² It submitted further that the Crown's compliance with good government is a general good for society and not just for Māori.⁶³

52. Ibid, p 15

53. Submission 3.3.22, p 1

54. Ibid

55. Ibid

56. Ibid, p 2

57. Submission 3.3.23, p 2

58. Ibid, p 3

59. Submission 3.3.22, pp 1, 3

60. Ibid, p 3

61. Submission 3.3.26, pp 2, 3

62. Ibid, pp 4–5

63. Ibid, p 5

Ms Lessels and Ms Hotereni emphatically rejected the argument that matters can be addressed in the wider Education Kaupapa Inquiry when this ‘is not expected to be completed until 2034,’ during which time ‘almost a full generation of tamariki Māori’ will have experienced schooling ‘without Te Tiriti protections in their education.’⁶⁴ Delay in addressing the issues would also compound prejudice to ‘[k]aiako who have spent careers building Treaty-compliant practice’ and ‘are facing professional and cultural dislocation.’ These kaiako ‘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.’⁶⁵

Ms Lessels and Ms Hotereni submitted the Crown’s argument that the Crown’s treaty obligations ‘persist regardless of their statutory expression . . . is an attempt to minimise the significance’ of their removal without engaging with the treaty consequences.⁶⁶ They argued the ‘risk from purpose provision amendment is live, not speculative.’⁶⁷ Further, they contended that the Crown’s acceptance that amending sections 4(d) and 32(h) can have ‘knock-on interpretive effects across the ETA’ but that the ‘nature and extent of those effects is “unclear”’ is a ‘more significant’ concession ‘than the Crown allows.’⁶⁸

NZMC similarly submitted the Crown’s argument that Māori interests and treaty principles would likely influence the courts’ and decision-makers’ approach ‘glosse[d] over that these duties will now be discretionary.’⁶⁹ It submitted further that it was ‘difficult to reconcile the Crown’s assertion, that the significance of Māori interests will continue to be an influence and guide’ when the ‘entire purpose’ of the reforms is to ‘provide greater certainty to decision-makers.’⁷⁰

Te Whakakitenga o Waikato similarly criticised the ‘ambiguity’ in the Crown’s submissions regarding amending purpose provisions as ‘rais[ing] serious concern.’⁷¹ It argued the Crown’s submissions provide no assurance to ‘Maaori that removal will not occur’ and asked why purpose provisions cannot be ruled out of the reforms entirely when the Crown itself stated ‘no standard at all is likely required in purpose provisions.’⁷²

Specifically, Ms Lessels and Ms Hotereni submitted that sections 4(d) and 32(h) ‘anchor the Treaty architecture of the entire Act.’ Therefore, if the Crown ‘cannot yet determine what the amendments will do to the Act’s foundational Treaty obligations’ then it is ‘reason for the Tribunal to act now, while the legislative programme can still be redirected’ and not for it to defer.⁷³ They also questioned how amendment of the purpose provisions will progress when Minister Goldsmith

64. Submission 3.3.22, pp 1, 3–4; see also submission 3.3.24, pp 29–30.

65. Submission 3.3.22, p 5

66. Ibid, pp 5, 6

67. Ibid, p 1

68. Ibid, p 6

69. Submission 3.3.26, p 8

70. Ibid

71. Submission 3.3.24, p 27

72. Ibid, p 28; see also submission 3.3.26, p 7

73. Submission 3.3.22, pp 6–7

has already issued drafting instructions to PCO and only 'retains authority to make decisions on minor and technical matters as drafting progresses'.⁷⁴ In their submission, '[i]f drafting instructions have been issued and the remaining matters are minor and technical, then the major decisions [regarding purpose provisions] have already been made', and therefore, 'the Crown's claim that outcomes remain uncertain is not candid'.⁷⁵ Ms Lessels and Ms Hoterani submitted the Crown's actions should also be measured against its obligations under the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Convention on the Rights of the Child, both of which New Zealand has signed and ratified.⁷⁶

Ngā Kura ā Iwi asserted the Crown's submissions failed to address Te Kawa Whakapumau, the memorandum of understanding between MOE and Ngā Kura ā Iwi, or that 'the ETA was understood by NKA I and its members as a Treaty settlement'.⁷⁷ In its submission, the ETA 'represented the most significant rewrite of New Zealand's education legislation in decades', 'created a new framework for Māori-medium education and enabled greater self-determination for iwi', and 'aimed to give effect to Te Tiriti o Waitangi within the education system, providing a more supportive environment for kura a-iwi to operate according to their own character, values, and localised curriculum'.⁷⁸ It argued the ETA could be understood as forming 'part of a long sought reconciliation process' due to past treaty breaches.⁷⁹ Ngā Kura ā Iwi argued 'the words "honour" and "give effect to" in [sections] 4(d) and 32(h) must be understood against the historical context of the Crown's [treaty] breaches in the education system . . . and the ongoing education inequalities experienced by ākongā Māori'.⁸⁰ Sections 9 and 535B(a), that are to be amended to the 'take into account standard', are how the ETA gives statutory expression to the Crown's 'duty to actively promote and protect Treaty rights and to develop education settings in a way that reflects the Māori-Crown relationship'.⁸¹

Te Whakakitenga o Waikato argued the treaty standard proposal is 'purely politically motivated'.⁸² While the Crown had submitted the proposal arose from 'a series of discussions and exchanges of advice' between Minister Goldsmith and officials, Te Whakakitenga o Waikato argued the Crown had provided no evidence the proposal arose in this way. Moreover, the Crown's statement was inconsistent with Ms Greaney's evidence (Deputy Secretary, Policy at MOJ) that the proposal arose 'as a result of ministerial discussion' after receipt of the Advisory Group's report.⁸³

74. Ibid, p 7

75. Ibid; see also submission 3.3.23, pp 5-6

76. Submission 3.3.22, pp 7-8

77. Submission 3.3.23, p 6; see also submission 3.3.23(a)

78. Submission 3.3.23, p 7

79. Ibid, p 8

80. Ibid, p 9

81. Ibid

82. Submission 3.3.24, p 26

83. Ibid, pp 26-27

Te Whakakitenga o Waikato rejected the Crown’s argument that the Tribunal is not well placed to assess prejudice, noting the Tribunal ‘is expressly empowered to assess likely prejudice.’⁸⁴ In its submission, ‘[t]he record discloses a consistent pattern of dishonourable conduct which, when viewed cumulatively, establishes a real and reasonable likelihood of prejudice to Māori.’⁸⁵ NZMC similarly argued ‘[t]he resulting uncertainty, regression from established protections, and erosion of adequate provisions that can enforce Treaty compliance, constitute prejudice’ themselves and also ‘sit within a wider historical context of breach within the education system.’⁸⁶

3.3 IS THERE A TREATY DUTY ON THE CROWN TO ENGAGE WITH MĀORI ON THE PROPOSED CHANGES TO THE EDUCATION AND TRAINING ACT 2020?

3.3.1 The constitutional nature of the changes

As described above, on 23 February 2026, Cabinet agreed ‘that references within scope of this review should be amended so that in situations where a “Treaty standard” is needed’ ‘no higher standard than “take into account” is used.’⁸⁷ The Cabinet paper elaborated that ‘Treaty standards’ are ‘words used in a provision that indicate the strength or nature of the Treaty obligation.’⁸⁸ In the context of the ETA, this change affects sections 9(1) and 535B(a).⁸⁹ As of writing, Minister Goldsmith is still considering whether this altered standard should apply to purpose provisions in the Act – namely, sections 4(d), 32(h), and 398B.⁹⁰

The changes agreed to by Cabinet have constitutional significance, as they alter the way the strength and nature of the Crown’s treaty obligations are reflected in statute. The Right Honourable Sir Kenneth Keith explained in the preface to the Cabinet Manual that ‘the Treaty of Waitangi is regarded as a founding document of government in New Zealand’ and is one of the major sources of our unwritten constitution.⁹¹ In 2024, the *Ngā Mātāpono* Tribunal observed that ‘it is more correct to say that the Treaty/te Tiriti is *the* founding document of Aotearoa New Zealand’s governing arrangements, and not just a founding source’ (emphasis in original).⁹²

There is a decades-long history of Parliament recognising the Treaty’s constitutional significance by incorporating it into statutes governing a multitude of policy areas, beginning in the late 1980s. These provisions, sometimes referred to

84. Submission 3.3.24, p 29

85. Ibid

86. Submission 3.3.26, p 9

87. Document A52, p 144

88. Ibid, p 5

89. Memorandum 3.2.19, p 2

90. Ibid, pp 3–4

91. Cabinet Office, *Cabinet Manual 2023* (Wellington: Department of Prime Minister and Cabinet, 2023), p 1

92. Waitangi Tribunal, *Ngā Mātāpono: The Interim Report*, p 33

as 'treaty clauses', are not new, nor are they unusual.⁹³ As the MOJ officials stated in the RIS, 'the incorporation of the Treaty and its principles into legislation has become a common method by which Parliament has given legal effect to the responsibilities of the Crown under the Treaty.'⁹⁴ Treaty clauses exist in statutes concerning a range of kaupapa, including environmental planning, health and, of course, education.⁹⁵ The *Ngā Mātāpono* Tribunal observed '[i]t is very clear to us that the Treaty/te Tiriti clauses have constitutional significance' and agreed with the advice MOJ officials had given Minister Goldsmith that 'Treaty clauses are part of an ongoing constitutional dialogue' and 'have implications for the way the Treaty of Waitangi is reflected, understood and applied in New Zealand's legal system.'⁹⁶ MOJ officials advising Minister Goldsmith on this treaty standard proposal similarly emphasised that:

The development of Treaty provisions draws from and contributes to the broader Māori-Crown relationship and inherently touches on legal and constitutional matters. Treaty provisions are significant because they impact understanding of the Treaty and its place in the legal system.⁹⁷

The constitutional nature of the treaty standard changes give rise to a treaty obligation upon the Crown to engage with Māori on the matter, and to engage meaningfully, transparently and in good faith. Recently, the Tribunal considered the treaty consistency of the proposed Regulatory Standards Bill and found that where proposed legislation is constitutional in nature, it is inherently relevant to Māori and requires the Crown engage with its treaty partner.⁹⁸ The *Ngā Mātāpono* Tribunal, when considering the potential impact of the treaty clause review, commented that a treaty-consistent approach to the policy process would require, at a minimum, 'extensive engagement and involvement of Māori in decision making.'⁹⁹

Cabinet in February 2026 also agreed to amend or repeal section 536A(1) to remove treaty obligations from DRS operators.¹⁰⁰ In the Cabinet paper, Minister Goldsmith explained that since DRS operators are private entities he and Minister Stanford did not consider it 'appropriate' for them to have 'this type of Treaty requirement'.¹⁰¹ The decision to remove DRS operators' treaty obligations is a decision that concerns the appropriate locus for Crown obligations – that is, whether treaty obligations should be borne solely by core Crown bodies or also bind Crown delegates. As with the treaty standard reforms, this decision has constitutional

93. Document A52, p 95; Waitangi Tribunal, *Ngā Mātāpono: The Interim Report*, p 143

94. Document A52, p 95

95. Ibid

96. Waitangi Tribunal, *Ngā Mātāpono: The Interim Report*, p 178

97. Document A52, p 97

98. Waitangi Tribunal, *Interim Regulatory Standards Bill Urgent Report – Pre-publication Version* (Wellington: Waitangi Tribunal, 2025), p 25

99. Waitangi Tribunal, *Ngā Mātāpono: Part III*, p 46

100. Document A52, p 144

101. Ibid, p 4

implications because it bears on the operationalisation of the Crown's treaty obligations and therefore practical compliance. As such, it gives rise to a duty on the Crown to engage with Māori.

In sum, therefore, a decision to amend or repeal treaty references in the ETA has obvious constitutional implications, and these give rise to a treaty duty to engage with Māori.

3.3.2 Reducing the treaty standard

The treaty standard change proposed by Minister Goldsmith is not neutral, nor does it merely act to standardise language across the statute book. It is a reform that intends to *reduce* the treaty standard to be no higher than 'take into account'.¹⁰² For the affected provisions of the ETA, this would result in the higher standards of 'give effect to' and 'honours' being downgraded to 'take into account'.

Minister Goldsmith advised Cabinet, before it made its decision, that this 'take into account' standard was lower than that provided for in alternate wording like 'give effect to'. In the Cabinet paper, he stated that 'a Treaty provision might require someone to "give effect" to the Treaty principles, and this standard is considered stronger than one that requires someone to "take into account"' treaty principles.¹⁰³

Indeed, Mr Kibblewhite (Secretary of Justice and Chief Executive of MOJ) acknowledged at hearing that 'take into account' is the *lowest* standard in terms of legal weighting.¹⁰⁴ This was a sentiment echoed in the advice of the Advisory Group, which noted the onus of the standard was higher in 'give effect to' than 'take appropriate account of' and deciding between the standards was a political decision for Ministers and ultimately for Parliament.¹⁰⁵ Recently, the *Ngā Mātāpono* Tribunal in its *Part III* report observed that 'take into account' and 'have regard to' are weaker clauses than to 'give effect to'.

In the following sections, we discuss what past Tribunals and the courts have said about the 'take into account' standard before providing our view of how the Crown's decision to downgrade treaty standards in the ETA informs its obligation to engage meaningfully with Māori.

3.3.2.1 Past Tribunal commentary on the 'take into account' standard

The merits of the lower, 'take into account' standard have been considered by past Tribunals. At a high-level, the Tribunal has found this legislative standard is inconsistent with the Crown's treaty obligation to guarantee the protection of taonga. Past Tribunals have recommended provisions with lower standards like 'take into account' be upgraded to stronger standards, like 'give effect to'.

In *The Ngawha Geothermal Resource Report 1993*, for example, the Tribunal considered section 8 of the Resource Management Act 1991 (RMA), which requires that:

102. Document A52, p144

103. *Ibid*, p5

104. Transcript 4.1.1, p357

105. Document A52, pp33, 34

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall *take into account* the principles of the Treaty of Waitangi (Te Tiriti o Waitangi). [Emphasis added.]

The Tribunal observed that inherent in the phrase 'take into account' is a requirement that the decision-maker weigh treaty principles and the other matters they are to consider.¹⁰⁶ Consequently, '[t]he role or significance of Treaty principles in the decision-making process under the Act is a comparatively modest one.'¹⁰⁷ It concluded the RMA was 'fatally flawed' because of this and did not oblige decision-makers to conform with or apply relevant principles. While they could do so, it did not require it.¹⁰⁸

The Tribunal's conclusions in *Ngawha* have been reiterated in subsequent Tribunal reports considering the compliance of section 8.¹⁰⁹ *The Whanganui River Report*, for example, cautioned the implicit balancing of interests required under the RMA could lead to rights guaranteed under the treaty being diminished.¹¹⁰ This was contrasted against the standard in the Conservation Act 1987 that required the Act to be interpreted and administered so as to 'give effect to' treaty principles.¹¹¹ As such, the RMA did not reflect the Crown's obligations under the treaty.¹¹² More recently, *The Stage 2 Report on the National Freshwater and Geothermal Resources Claims* found that section 8 of the Resource Management Act was 'entirely inadequate for the degree of recognition and protection of Māori interests that is required by the Treaty' and its required balancing exercise has enabled Māori interests to be 'balanced out' instead of protected.¹¹³

The Tribunal in *Ngawha* recommended the reference to treaty principles in the RMA be increased so those exercising functions and powers 'shall act in a manner that is consistent with the principles of the Treaty of Waitangi'.¹¹⁴ Later Tribunal reports have supported and built on this recommendation.¹¹⁵ In *The Whanganui River Report*, the Tribunal recommended the RMA be amended to require those exercising functions and powers under the Act 'shall act in a manner that is

106. Waitangi Tribunal, *The Ngawha Geothermal Resources Report 1993*, 2nd ed, (Wellington: Legislation Direct, 2006), pp 145, 147

107. *Ibid*, p 145

108. *Ibid*

109. See, for example, Waitangi Tribunal, *Preliminary Report on the Te Arawa Representative Geothermal Resource Claims* (Wellington: GP Publications, 1993), p 23; Waitangi Tribunal, *The Stage 2 Report on the National Freshwater and Geothermal Resources Claims* (Wellington: Waitangi Tribunal, 2019), p 66. See also Waitangi Tribunal, *The Stage 2 Report on the National Freshwater and Geothermal Resources Claims*, pp 49–50, for further Tribunal reports.

110. Waitangi Tribunal, *The Whanganui River Report* (Wellington: GP Publications, 1999), p 330

111. *Ibid*

112. *Ibid*, p 333

113. Waitangi Tribunal, *The Stage 2 Report on the National Freshwater and Geothermal Resources Claims*, pp 65–66

114. Waitangi Tribunal, *The Ngawha Geothermal Resources Report 1993*, p 147

115. See, for example, Waitangi Tribunal, *The Report on the Management of the Petroleum Resource* (Wellington: Legislation Direct, 2011), p 178

consistent with, and gives effect to, the principles of the Treaty of Waitangi.¹¹⁶ When considering the RMA and the Crown Minerals Act 2001, the *Petroleum Tribunal* found the stronger statutory language of ‘give effect to’ contained in the Conservation Act 1987 is ‘essential to “raise the bar” to the level required by the Treaty principles’, though this change alone would not ensure treaty consistency.¹¹⁷ The *He Maunga Rongo Tribunal* similarly recommended the RMA be amended in this way in 2008.¹¹⁸ In 2023, *Te Rohe Pōtae Tribunal* went as far as to find that the Crown’s failure to amend the RMA in line with previous Tribunal recommendations constituted a breach of the principle of good government.¹¹⁹

While much of this jurisprudence relates to environmental legislation, there has also been Tribunal commentary on the appropriate legislative standard in other policy areas. In 2019, the *Hauora Tribunal*, after considering the treaty compliance of the New Zealand Public Health and Disability Act 2000, recommended section 4 of that Act be amended from requiring recognition and respect for treaty principles to read ‘[t]his Act shall be interpreted and administered so as to give effect to the principles of the Treaty of Waitangi.’

In summary, the ‘take into account’ standard chosen by the Crown has been repeatedly criticised by the Tribunal for ‘balancing out’ treaty interests and understating the strength of the treaty obligations. Where lower standards have existed in the relevant legislation, the Tribunal has recommended treaty provisions be strengthened.

3.3.2.2 Interpretation of treaty standards by the courts

The ‘take into account’ standard has also been considered by the ordinary courts. In *Bleakley v Environmental Risk Management Authority*, the High Court considered the meaning of ‘take into account’ in relation to section 6(d) of the Hazardous Substances and New Organisms Act 1996 which required persons exercising functions, powers and duties under the Act to take into account ‘the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, valued flora and fauna, and other taonga’, amongst other factors.

In that case, the High Court interpreted ‘take into account’ as meaning ‘an obligation to consider the factor concerned in the course of making a decision – to weigh it up along with other factors – with the ability to give it considerable, moderate, little, or no weight at all as in the end in all the circumstances seemed appropriate.’¹²⁰ Citing *Bleakley*, the High Court in *Jackson v Te Rangī* reiterated

116. Waitangi Tribunal, *The Whanganui River Report*, p 334

117. Waitangi Tribunal, *The Report on the Management of the Petroleum Resource*, p 169

118. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, 4 vols (Wellington, Legislation Direct, 2008), vol 4, p 1593

119. Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*, 2nd ed, 6 vols (Lower Hutt: Legislation Direct, 2023), vol 4, p 2637

120. *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC), para 72. For a similar comment, see *Trustees of the Motiti Rohe Moana Trust v Bay of Plenty Regional Council* [2022] NZHC 1846, para 77(a), regarding section 8 of the RMA.

this view, referring to 'the well settled general principle that a requirement to take something into account is no more than an obligation to consider it, but having done so being free to discard it; and therefore under no obligation to act in accordance with it.'¹²¹

The High Court in *Bleakley* also observed that what the standard requires in the context of other statutes may differ, noting for other statutes 'the phrase has been held to require some actual provision to be made for the factor concerned.'¹²² Thus, what is appropriate turns on the context.¹²³ This suggests in certain circumstances giving no weight would not discharge the statutory requirement.

In their book, *Treaty Law: Principles of the Treaty of Waitangi in Law and Practice*, authors Damen Ward, Kevin Hille, and Carwyn Jones interpreted 'take into account' as requiring three things of the decision-maker. First, the relevant factor must be recognised and be weighed against the other factors to be considered.¹²⁴ Secondly, the decision-maker must be capable of demonstrating how the treaty has been taken into account.¹²⁵ This relates to the third requirement, that the decision-maker may be required to explain their approach, including how tikanga has been considered.¹²⁶

We note the Crown in its submission argued the Crown's understanding of its treaty obligations was not grounded in the wording of any particular statute, and that '[t]he nature and significance of Māori interests in education' and treaty principles 'are highly likely to influence the approach decision-makers and Courts take to interpreting the ETA.'¹²⁷ It submitted these factors would 'continue to guide' MOE's 'interpretation and administration of the ETA' and '[t]hese points of context will continue to guide the interpretation of the relevant provisions, even if they are amended (including to a 'take into account' standard).'¹²⁸

The Crown referred here in a footnote to the High Court decision in *Students for Climate Solutions Incorporated v Minister of Energy and Resources*.¹²⁹ That case concerned an application for judicial review regarding the granting of petroleum permits under the Crown Minerals Act 1991. The Act's treaty provision contains the 'have regard to' standard. The applicants claimed the decision failed to have proper regard to the principles of the treaty, alongside other concerns.

121. *Jackson v Te Rangi* [2015] 2 NZLR 351 (HC), para 79.

122. *Bleakley v Environmental Risk Management Authority*, para 72

123. *Ibid*

124. Kevin Hille, Carwyn Jones, and Damen Ward, *Treaty Law: Principles of the Treaty of Waitangi in Law and Practice*, (Wellington: Thomson Reuters New Zealand, 2023), p 153, citing *GE Free NZ in Food and Environment Inc v Environmental Risk Management Authority* [2011] NZRMA 45 (HC), para 78

125. Hille, Jones, and Ward, *Treaty Law*, p 154, citing *Klink v Environmental Protection Authority* [2019] NZHC 3161, [2020] 2 NZLR 466, para 64

126. Hille, Jones, and Ward, *Treaty Law*, p 154, citing *Trans-Tasman Resources Ltd v Taranaki Whanganui Conservation Board* [2020] NZCA 86, para 178

127. Submission 3.3.21, p 12

128. *Ibid*

129. *Ibid*, fn 55, citing *Students for Climate Solutions Incorporated v Minister of Energy and Resources* [2022] NZHC 2116, para 92

In his decision, Justice Cooke observed there should be a presumption that Parliament would not empower decision-makers to make decisions inconsistent with the treaty (the principle of legality). He also stated the precise wording (standard) of a treaty provision is not necessarily critical. Rather where the principles are to be taken into account, there is a positive inference that the treaty is to be honoured by decision-makers, unless Parliament permits otherwise:

Parliament is presumed not to empower statutory decision-makers to make decisions that are inconsistent with the rights in the New Zealand Bill of Rights Act 1990, other accepted fundamental common law principles, or New Zealand's international obligations. These requirements are collectively referred to as the principle of legality. Given the Treaty's constitutional significance, a similar presumption should arise in relation to its principles. They are also part of the principle of legality in New Zealand.

That should clearly be so in relation to legislation that contains a Treaty clause such as the CMA [Crown Minerals Act 1991]. Previous cases have focused on the particular verbal formulation used in such clauses, with differences turning on whether the clause has a strong injunction such as 'give effect to', or a weaker injunction such as 'have regard to'. But when Parliament requires the decision-maker to take into account the principles of the Treaty the natural inference is that it does so to ensure that the principles are not infringed. For that reason I do not agree that the particular verbal formulation is necessarily of decisive importance. What matters is the legislative indication that the principles need to be addressed, with the natural inference that they should be honoured unless Parliament provides otherwise. Anything less than this would fail to respect the constitutional significance of the Treaty.

This is not an onerous requirement. It should also be remembered that the Treaty principles themselves involve questions of evaluation, and of judgment. Issues may often involve an apparent contest between rangatiratanga and kāwanatanga. Respect for both concepts is necessary to give effect to the principles. But discretionary decision-makers only have statutory power to make decisions that are shown to be in conflict with the principles when Parliament has expressly provided for this.

We understand there have been no judicial decisions since 2022 that have considered Justice Cooke's disagreement that 'the particular verbal formulation is necessarily of decisive importance', and the authors Ward, Hille, and Jones indicate in their discussion of the case that it might be a space to watch.¹³⁰ Notably, the balance of Ward, Hille, and Jones' commentary on treaty standards concerns case law interpreting the different meanings of particular treaty standards.¹³¹ This may indicate Justice Cooke's approach advances beyond the general approach to case law to date, where specific wording has been analysed closely.

Another case regarding the interpretation of treaty provisions is the Supreme Court's 2021 decision in *Trans-Tasman Resources Ltd v Taranaki-Whanganui*

130. Hille, Jones, and Ward, *Treaty Law*, p 151

131. *Ibid*, pp 151–159

Conservation Board.¹³² In that case, the Supreme Court considered the wording of section 12 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, including changes that were made to this provision through the legislative process.¹³³ The Court noted section 12 was 'strengthened' during the legislative process from a requirement to 'take appropriate account' of the treaty, to a directive to 'to give effect to the principles of the Treaty of Waitangi'.¹³⁴ The Court noted that this language 'is a strong direction',¹³⁵ but when considering the different formulations of treaty provisions across different pieces of legislation (and a recent trend towards more specific formulations), also wrote:

But the move to more finely tuned subtle wording does not axiomatically give support to a narrow approach to the meaning of such clauses. Indeed, the contrary must be true given the constitutional significance of the Treaty to the modern New Zealand state. The courts will not easily read statutory language as excluding consideration of Treaty principles if a statute is silent on the question. It ought to follow therefore that Treaty clauses should not be narrowly construed. Rather, they must be given a broad and generous construction. An intention to constrain the ability of statutory decision-makers to respect Treaty principles should not be ascribed to Parliament unless that intention is made quite clear.¹³⁶

This decision, which was released before *Students for Climate Solutions*, appears to take a middle course that both acknowledges some treaty provisions may have a relative 'strength' in their wording, while cautioning that any of the different formulations should not be read as limiting the responsibility of decision-makers to respect treaty principles unless there is a clear intention to do so.

In sum, within the context of past jurisprudence, *Students for Climate Solutions* is a space to watch regarding the interpretation of treaty provisions. While it appears to advance beyond earlier case law, it should not be disregarded. Rather, the idea that the Crown's treaty obligations are not to be limited by the use of more restricted or constrained language is an important one and worthy of consideration.

In many ways, Justice Cooke's approach in *Students for Climate Solutions* could be understood as building on the approach earlier expressed in *Trans-Tasman Resources*. As noted above, the Supreme Court in that case acknowledged both that the wording of treaty provisions can have some impact, while also cautioning the courts would not readily ascribe to Parliament an intention to limit the ability of decision-makers to respect treaty principles without clear direction to the contrary.

132. *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127

133. See *ibid*, paras 146–151

134. *Ibid*, paras 147–148

135. *Ibid*, para 149

136. *Ibid*, para 151, see also para 150

While acknowledging some uncertainty exists regarding the interplay of judicial interpretation of treaty provisions and the Crown's reforms, our view is that the wording used in statutory treaty provisions is important. One of the reasons why the language matters is that it informs the practice of Crown agencies and other decision-makers who interpret the legislation. It also sends a signal regarding the Crown's position on the importance of the treaty within the specific context of that legislative regime.

The importance of the specific language used in treaty provisions is supported by the Crown's own guidance on legislative drafting. The 2021 Legislation Guidelines from the Legislation Design and Advisory Committee state that 'Even subtle differences in the wording of legislation (for example, the contrast between "give effect to" and "have regard to") may have significant effects and must be carefully considered with the benefit of legal advice.'¹³⁷

Similarly, in Minister Goldsmith's Cabinet paper, he stated that phrases like 'give effect to' and 'have regard to' 'can have big consequences, and can be interpreted very widely, both by government institutions and the courts.'¹³⁸

Therefore, if by reference to the *Students for Climate Solutions* case the Crown is insinuating that the wording of statutes is irrelevant, we cannot but ask why change the wording at all? Such an argument would also be irreconcilable with Minister Goldsmith's view (stated above).

3.3.2.3 *The signal sent by downgrading the treaty standard*

As noted above, our concern is that downgrading treaty standards in provisions across the ETA will impact what is done in practice. This concern was highlighted by MOJ officials in the RIS, who cautioned that reducing treaty standards could affect how decision-makers and other users regard the treaty in practice. Specifically, they warned the treaty standard proposal 'is likely to be seen to signal a shift in the Crown's position on the status and importance of the Treaty' which 'could reduce the importance decision-makers place on Treaty considerations.'¹³⁹ That is, their concern was for the influence the reform might have on what is done in practice. MOJ officials also advised that the impact of the treaty standard proposal 'on the interpretation' of ETA provisions and 'the Crown's ability to uphold its Treaty obligations is uncertain.'¹⁴⁰

The *Ko Aotearoa Tēnei* Tribunal shared a similar concern regarding agencies' practical compliance with the treaty. In that report, the Tribunal noted a 'certain unease' regarding the 'relatively weak Treaty clause' contained in the Public Records Act 2005 of 'take appropriate account' and considered it should have a higher standard.¹⁴¹ However, it took the view that the wording of legislation was

137. Wai 3300 ROI, paper 6.2.10, p 31

138. Document A52, p 1

139. Ibid, pp 133, 134

140. Ibid, p 132

141. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 596

less important than the practice of agencies.¹⁴² We share the *Ko Aotearoa Tēnei* Tribunal's concern regarding the importance of the practice of those acting under legislation containing treaty provisions. The onus should not rest with Māori to seek judicial review to ensure compliance; compliance should be the starting point.

Moreover, it is our view that practice is informed by the high-level direction that legislative provisions set. Similar feedback was provided by the Māori Education Ministerial Advisory Group which advised MOE that both specific and '[h]igh-level Te Tiriti clauses' have 'significant direction-setting effect' and are 'important as a signal to Māori of the Crowns' intentions.¹⁴³ This view was shared by the *Hauora* Tribunal, which commented that the commitment to treaty compliance in a legislative and policy framework 'starts with the relevant legislation'.¹⁴⁴

While we cannot be certain at this stage what the practical impact of the changes will be, we agree with officials that the legislative change 'could have a cooling effect on the importance decision-makers place on Treaty considerations'.¹⁴⁵ The signal sent by amending section 9(1) may be particularly far reaching as this serves as the descriptive treaty provision applicable to the Act as a whole. While section 4(d) remains intact as a purpose provision for the ETA at this stage, the change to section 9(1) has the potential to send a conflicting signal to decision-makers and other users of the Act about the Crown's position on the importance of the treaty as it applies in education.

In the case of section 535B(a), the signal sent to code administrators will also be much more explicit, with the standard of 'honours' reduced to 'take into account'. (See section 1.6.1.2 regarding the content of section 535B(a) and the role of the code administrator.) Since one of the purposes of the code is to 'contribut[e] to an education system that honours te Tiriti o Waitangi', the code administrator is effectively monitoring tertiary institutions to ensure they provide treaty-consistent education to Māori students.¹⁴⁶ It is also significant that code administrators, as part of their monitoring role, investigate student complaints that their university is in breach of these obligations.¹⁴⁷

The matters covered by the code – and therefore the matters monitored by the code administrator – have obvious implications for the Crown's active protection of taonga Māori, and of ākonga in their study of taonga Māori, in tertiary education settings. Code administrators therefore play a very meaningful role as a safeguard for the well-being of Māori learners in the tertiary education system, where the Crown exerts less regulatory control than it does in the compulsory schooling

142. Ibid, p 582

143. Document A43(a), p 205

144. Waitangi Tribunal, *Hauora: Report on Stage One of the Health Services and Outcomes Kaupapa Inquiry* (Lower Hutt: Legislation Direct, 2023), p 162

145. Document A52, p 134

146. New Zealand Qualifications Authority, *The Education (Pastoral Care of Tertiary and International Learners) Code of Practice* (Wellington: New Zealand Qualifications Authority, 2021), p 7

147. Ibid, p 15

sector. It is unclear whether requiring NZQA to ‘take into account’ the treaty, rather than ‘honour’ it in this context is appropriate or sufficient to discharge the Crown’s obligations of active protection. What is clear is that any signal that the Crown considers the treaty less integral to the work of code administrators would be material.

We also have significant concerns regarding the potential amendment or removal of the purpose provisions within the ETA, namely sections 4(d), 32(h) and 398B. Minister Goldsmith in his Cabinet paper stated that ‘[t]he “take into account” standard will not work in all instances and that ‘no standard at all is likely to be required . . . in purpose provisions.’¹⁴⁸ Crown counsel then later informed the Tribunal that, as purpose provisions, sections 4(d), 32(h), and 398B were ‘subject to further decision by the Minister of Justice.’¹⁴⁹ Crown counsel stated this reflected the framing in the Cabinet paper that the ‘take into account’ amendment would only apply ‘in situations where a “Treaty standard” is needed’ which, counsel noted, ‘may not be the case for purpose provisions, whose functions are to communicate the intended effect of legislation rather than to impose obligations on decision-makers.’¹⁵⁰ Finally, Crown counsel noted ‘officials would provide further advice to Minister Goldsmith on the appropriate treatment of the three purpose provisions.’¹⁵¹

As for our analysis of sections 9(1) and 535B(a), we would be deeply concerned about the legislative signal sent by the Crown if it were to downgrade the treaty standard across the purpose provisions of the ETA. To replace the language of ‘honours’ in section 4(d), ‘honouring’ in section 32(h), and ‘gives effect to’ in section 398B risks sending a negative signal regarding the Crown’s position on the importance of the treaty in education with potential implications for how decision-makers and others interpret the ETA.

Taking section 4(d) as an example, one must ask oneself what kind of purpose statement section 4(d) would be if it sought only to establish and regulate an education system that ‘takes into account’ the treaty. It would be a purpose statement that does not do justice to the significance and centrality of the treaty in the context of education, the Crown’s obligations to actively protect taonga Māori, or the Crown’s obligation to provide redress for past wrongs committed in the context of education, including the past suppression of te reo Māori.¹⁵²

The inclusion of purpose provisions in scope of the ‘take into account’ proposal also arguably lacks coherence. As Minister Goldsmith described in the Cabinet paper, the ‘take into account’ standard will not work in all instances.¹⁵³ MOJ officials when preparing the RIS did not include purpose provisions in their analysis of the treaty standard proposal, considering that it would not affect that type of

148. Document A52, p 5

149. Memorandum 3.6.19, pp 1–3

150. Memorandum 3.3.19, p 3

151. *Ibid*, p 4

152. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Maori Claim*, 2nd ed (Wellington: Waitangi Tribunal, 2013)

153. Document A52, p 5

provision. Specifically, the RIS stated that the proposal did 'not apply to purpose provisions, long titles, and appointment provisions as those provisions do not typically impose standards or obligations'.¹⁵⁴

Worse still, however, is the very real risk Minister Goldsmith decides to remove the treaty standards from these provisions entirely. Although we do not know what form such an amendment would take, we are concerned by the Minister's statement in the Cabinet paper that 'no standard at all is likely to be required . . . in purpose provisions'.¹⁵⁵ Our interpretation of this statement, combined with the Minister's further consideration of the purpose provisions, is that there is a risk 'honours' in section 4(d), 'honouring' in section 32(h), and 'gives effect to' in section 398B could be removed wholesale. The full impacts of such a drastic change are not known. It is also uncertain how the purpose sections would refer to the treaty without language that expresses how it is to be applied and understood in the interpretation of the ETA. What is clear, however, is that such a drastic change without any meaningful engagement with Māori would further exacerbate what is an already fractured Māori–Crown relationship.¹⁵⁶ Further, wholesale removal risks sending an even stronger legislative signal regarding the Crown's attitude towards the treaty in education. As the purpose provisions are an aid to interpretation, the signal that is sent will permeate the interpretation of the ETA as a whole.

3.3.2.4 Conclusion

To summarise, not only does the Crown's treaty standard decision have constitutional significance but it also seeks to unilaterally reduce the standard of the Crown's treaty obligation as expressed in specific provisions of the ETA. The 'take into account' standard chosen by the Crown to reflect its obligations has been repeatedly criticised by the Tribunal for 'balancing out' treaty interests and understating the strength of the Crown's treaty obligations. Moreover, the Crown's downgrading of treaty standards risks sending a negative signal to decision-makers and other users of the ETA regarding the Crown's position on the importance of the treaty in education. In these circumstances, there is an obvious obligation on the Crown to engage with Māori on the proposed changes as its treaty partner in this context.

3.3.3 Repealing a treaty provision

We note the Crown has agreed to remove treaty obligations entirely from section 536A(1), whether that be via an amendment to the section or via repeal.¹⁵⁷ Officials' advice indicated section 536A(1) acts as a safeguard for Māori interests in tertiary education and was 'intended to ensure that DRS operator processes are aligned' with section 4(d), which provides a purpose of the ETA 'is to establish and regulate an education system that honours Te Tiriti o Waitangi/the Treaty of Waitangi and

154. Ibid, p 89

155. Document A52(a), p 5

156. We note that MOJ officials had advised the Minister of Justice that the Māori–Crown relationship was in a 'fragile state' in November 2025, before the Cabinet decisions in February 2026 (doc A52, p 137).

157. Ibid, p 144

supports Māori–Crown relationships.’¹⁵⁸ The RIS stated repealing the subsection could create ‘a risk of lower protection for Māori interests’ and would reduce the ability of individuals to legally challenge Crown decisions that appear inconsistent with ‘its treaty obligations in the way it provides for the operation of a dispute resolution service.’¹⁵⁹ Clearly, a decision to remove those safeguards gives rise to an obligation to engage meaningfully with Māori. The *Ngā Mātāpono* Tribunal also recommended repealing treaty provisions be taken off the table for the treaty clause review.¹⁶⁰

3.3.4 The education context

The Crown’s obligation to consult on these amendments to the ETA is heightened by the specific context in which these legislative changes operate – education. Education is a sphere in which the Crown has a particular set of treaty obligations to Māori, as canvassed in the findings of prior Tribunals.

The education sector represents a marked overlap between the rangatiratanga and kāwanatanga sphere. The Tribunal has found the Crown has an important role to play in education, including in the regulation and provision of early childhood, compulsory, and tertiary education.¹⁶¹ Some responsibilities, however, are shared between the Crown and Māori, including the transmission of mātauranga Māori and the success of Māori in education.¹⁶² Within the tino rangatiratanga sphere, Māori also have their own obligations, including preserving te reo Māori in the home¹⁶³ and the education of Māori children in their own community, including kaupapa Māori education.¹⁶⁴ Where these spheres of authority overlap, consent is required and both parties must come together to determine policy – as was found by the *Kei Ahotea Te Aho Matua* Tribunal in relation to the Tomorrow’s Schools Reforms, and the *Matua Rautia* Tribunal in relation to a policy framework for te reo Māori in early childhood education.¹⁶⁵ The *Mokai School Report* Tribunal found the relationship between Māori and the Crown in the context of education is unlikely to be consistent with treaty principles where the Crown takes an approach that tilts the balance of kāwanatanga and tino rangatiratanga in its own favour.¹⁶⁶

These treaty obligations also arise, in no small part, because the education system deals directly with taonga Māori. For one, the Crown has acknowledged

158. Document A52, p 110

159. Ibid, pp 110–112

160. Waitangi Tribunal, *Ngā Mātāpono: Part III*, p 49

161. Waitangi Tribunal, *The Report on the Aotearoa Institute Claim concerning Te Wananga o Aotearoa* (Wellington: Legislation Direct, 2006), p 35; Waitangi Tribunal, *Matua Rautia* (Wellington: Waitangi Tribunal, 2012), p 65; Waitangi Tribunal, *Kei Ahotea Te Aho Matua*, pp 224, 253

162. Waitangi Tribunal, *Ko Aotearoa Tēnei*, vol 2, p 559

163. Waitangi Tribunal, *Matua Rautia*, p 64; Waitangi Tribunal, *Ko Aotearoa Tēnei*, vol 2, p 452

164. Waitangi Tribunal, *The Mokai School Report* (Wellington: Legislation Direct, 2000), p 11; Waitangi Tribunal, *Kei Ahotea Te Aho Matua*, p 225

165. Waitangi Tribunal, *Matua Rautia*, pp 68–70; Waitangi Tribunal, *Kei Ahotea Te Aho Matua*, pp 368–369

166. Waitangi Tribunal, *The Mokai School Report*, p 131

the nature of tamariki Māori as a taonga in the treaty context in the course of the Oranga Tamariki inquiry.¹⁶⁷ That tamariki are a taonga is also treated as a foundational value in aspects of MOE policy. For example, the MOE *Early Learning Action Plan 2019–2029* states: 'This action plan starts from the belief that every child is a precious taonga, born with inherent potential for growth and development and with enduring connections to their ancestors and heritage.'¹⁶⁸

The State education system is also a space in which other taonga – namely mātauranga Māori and te reo Māori – should be further fostered and protected.¹⁶⁹ The Crown has accepted both te reo Māori and mātauranga Māori are taonga.¹⁷⁰ There is a particular obligation on the Crown going forward that no fresh injustices occur, given the long and painful history of the oppression of te reo Māori and mātauranga Māori in education, especially through the native schools system.¹⁷¹

When parents and whānau entrust their tamariki to schools for education that shapes and moulds them, they rightly expect the Crown will comply with its treaty obligations in the schooling of their tamariki. This was evidenced in the response to the Crown's removal of treaty obligations from school boards in November 2025, as discussed further in section 1.4 below.

The Advisory Group advised a higher treaty standard may be appropriate when 'the Crown is dealing directly with a Treaty interest'.¹⁷² Minister Goldsmith acknowledged in the Cabinet paper that 'Treaty provisions can act as a safeguard for Māori rights and interests in the relevant legislative context', and '[t]he degree to which Māori will be affected depends on the nature and significance of Māori interests in the context of each Act, and the extent of legislative change proposed'.¹⁷³ In its advice, MOE officials summarised the relevance and application of 'te Tiriti' in the context of education, observing that '[t]here are multiple taonga in the education system' and referring to the Crown's obligations with respect to ākonga Māori, kaupapa Māori education, and the support of te reo Māori and mātauranga Māori through education more generally.¹⁷⁴

The treaty interests at stake when it comes to reform affecting the education system are significant. Taonga Māori are affected by the legislative and policy framework the Crown administers. Compulsory schooling in particular is an area in which the treaty partnership must be navigated with particular care and good faith, given the level of influence education policy has in the lives of tamariki and whānau Māori. Like health, education touches the lives of all Māori, not just

167. Waitangi Tribunal, *He Pāharakeke, he Rito Whakakikīnga Whāruarua: Oranga Tamariki Urgent Inquiry* (Lower Hutt: Legislation Direct, 2021), p 177

168. Ministry of Education, *He Taonga te Tamaiti/Every Child a Taonga* (2019), p 9

169. See Waitangi Tribunal, *Report on the Te Reo Maori Claim*, p 23; Waitangi Tribunal, *The Mokai School Report*, p 11; Waitangi Tribunal, *The Wananga Capital Establishment Report* (Wellington: GP Publications, 1999), p 48; Waitangi Tribunal, *Ko Aotearoa Tēnei*, vol 2, pp 555–556

170. Wai 1718 ROI, submission 3.3.4, p 40

171. See particularly the discussion of the history of Māori education in New Zealand in Waitangi Tribunal, *The Wananga Capital Establishment Report*, pp 3–10.

172. Document A52, p 34

173. *Ibid*, p 10

174. Document A43(a), pp 203, 205

specific groups. Its success (or lack thereof) has widespread generational implications as has been found in numerous Tribunal reports.¹⁷⁵ It is therefore not a policy area in which legislative decisions relating to treaty obligations are to be taken lightly. They certainly are not to be made in the absence of meaningful, considered and robust engagement with Māori.

In the context of the Crown's proposed reforms, it is our understanding that the ETA is distinctive in that it refers to 'Te Tiriti o Waitangi' (and not the Treaty of Waitangi), often without mentioning its principles. As noted above, this distinctiveness meant that initially not all provisions of the ETA were included in scope of the treaty clause review, as Cabinet's agreed scope only included statutory references to the *principles* of the treaty.¹⁷⁶ Those ETA provisions that refer exclusively to Te Tiriti o Waitangi (and not its principles) were then only added later, on the agreement of Minister Stanford and Minister Goldsmith.¹⁷⁷ We know relatively little about this decision, except that it was done 'for consistency'.¹⁷⁸ However, having been provided no evidence of analysis justifying the expansion of the review's scope with regards to the ETA, we can only infer it was a matter of Ministerial preference.

Subsequently, in February 2026, Cabinet formally agreed that 'provisions referring to the Treaty itself' in the ETA be included in the review and to standardise references to the treaty in those provisions so that both the Treaty of Waitangi and te Tiriti o Waitangi are mentioned in all instances.¹⁷⁹ We do not know how many other provisions in other statutes are affected by this change, but note that Ministers' intentional expansion of the treaty clause review with regards to the ETA (in addition to those provisions that were already in scope) means eight provisions of the ETA will be amended. Specifically, sections 3(2)(e), 4(d), 6(2), 9, 32(h), 398B, 476(4)(b)(v), and 535B(a) of the ETA.¹⁸⁰

MOE in its September 2025 report to education Ministers indicated the treaty provisions introduced with the ETA were significant to kaimahi in the education sector and recommended against a narrow approach to consultation for this reason.¹⁸¹ As summarised above, MOE officials noted the draft Cabinet paper proposed targeted consultation on changes to 'honour Te Tiriti' in section 4(d), 'give effect to Te Tiriti' in section 9, and 'on changing references throughout the Act from "Te Tiriti" to an alternative formulation'.¹⁸² MOE officials later set out three reasons for not supporting the proposed engagement, including that '[m]any leaders and practitioners within the education system are strongly attached to the 2020

175. See, for example, Waitangi Tribunal, *Ko Aotearoa Tēnei*, vol 2, pp 398–399; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Maori Claim*, pp 9–10; Waitangi Tribunal, *The Wananga Capital Establishment Report*, p 9

176. Wai 3300 ROI, doc A30, pp 32, 34

177. Document A52, p 6

178. *Ibid*

179. *Ibid*, pp 144, 145

180. Memorandum 3.2.19, pp 1–2

181. Document A43(a), p 202

182. *Ibid*

changes to the Education and Training Act that introduced this formulation.¹⁸³ While it is not clear whether 'this formulation' referred to the 'honour' and 'give effect to' treaty standards in sections 4(d) and 9, the references to 'te Tiriti', or both, we agree with officials that broader engagement with Māori on amending treaty provisions is required, including with Māori in the education sector. This is underscored by MOE's advice that amending 'Te Tiriti references' within the ETA 'is a significant and controversial task' that they considered would 'lead to widespread public debate and potential conflict within the education system.'¹⁸⁴ We note similar public discord subsequently did occur with regard to the Crown's removal of school boards' statutory obligations to give effect to the treaty, with teachers and school leaders alike voicing their objections to the repeal.¹⁸⁵

To summarise, in the context of the Cabinet's decision to amend the ETA in February 2026, there is an obvious treaty duty upon the Crown to engage with Māori. Understanding the views of Māori, including Māori in the education sector, on these matters is an essential prerequisite before the Crown can proceed to amend the legislation. We turn now to discuss what the consultation standard in this context is, and whether or not the Crown has met this standard through its existing and proposed consultation processes.

3.4 HAS THE CROWN'S ENGAGEMENT PROCESS AND PROPOSED APPROACH TO SEEKING INPUT FROM MĀORI ON THE CHANGES BEEN TREATY COMPLIANT?

Having established there is a treaty obligation on the Crown to engage with Māori on the ETA amendments, we now consider whether the Crown's proposed engagement processes meet the required standards of consultation in this context.

The Crown undertook no targeted or general engagement with Māori before Cabinet agreed to reduce treaty standards in the ETA. This was acknowledged by the Crown in its closing submissions.¹⁸⁶ Instead of engagement prior to policy decisions, Minister Goldsmith considered the opportunity to provide input during the select committee stage of the Bill and targeted engagement with NICF during the Bill's drafting would (as noted) 'be sufficient to ensure any views are considered before enactment.'¹⁸⁷ While acknowledging the Tribunal's findings and recommendations in *Ngā Mātāpono*, it will be recalled that Minister Goldsmith did 'not consider it necessary to make changes to the review in line with the Tribunal's recommendations.'¹⁸⁸

183. Ibid

184. Ibid, p 201

185. Layla Bailey-McDowell, 'Schools across Aotearoa Reaffirm Commitment to Te Tiriti o Waitangi after Changes to Education Act', Radio New Zealand, 14 November 2025, <https://www.rnz.co.nz/news/te-manu-korihi/578823/schools-across-aotearoa-reaffirm-commitment-to-te-tiriti-o-waitangi-after-changes-to-education-act>, accessed 24 April 2026; doc A30(a)

186. Submission 3.3.21, p 13

187. Document A52, p 7

188. Ibid, p 8

The approach agreed by Cabinet to receive feedback from Māori through direct consultation with the NICF only, and at select committee stage falls woefully short of treaty-compliant standard of engagement for two main reasons. The first is that both forms of consultation occur too late in the policy development process. In *Ngā Mātāpono*, the Tribunal found that in order for the treaty clause review process to be treaty compliant, there must be (among other things) ‘full engagement with and inclusion of Māori in decision-making.’¹⁸⁹ It stressed that making preliminary decisions about the clauses, on the advice of the Advisory Group, without engagement with Māori, and then rapidly progressing the review without time for sufficient engagement with, or the full involvement of, Māori would be inconsistent with the principle of partnership.¹⁹⁰ A number of past Tribunals have also commented on the importance of early and fulsome engagement with Māori in policy co-design in the education sector, particularly where policy impacts on *kōhanga reo* and *Kura Kaupapa Māori*.¹⁹¹ Indeed, the Advisory Group explicitly approached their advice to Ministers ‘on the basis that genuine engagement with Māori will take place once preliminary decisions have been agreed by Ministers.’¹⁹²

MOJ officials also advised Minister Goldsmith and Cabinet of the need for early engagement. The RIS clearly cautioned there was a ‘a strong argument that the Treaty and Treaty relationship gives rise to an obligation to consult Māori early on this review, including as part of the policy development process’ and cited the Tribunal’s *Ngā Mātāpono* report findings and recommendations regarding engagement on the review.¹⁹³ MOJ officials explained that ‘[t]he Minister of Justice directed a process that has not included engagement with *iwi* and *hapū* (as Treaty partners) or relevant stakeholders to understand their views and shape policy options.’¹⁹⁴ MOJ officials highlighted thorough testing of the Cabinet paper’s assumption that ‘take into account’ was the preferable treaty standard had been limited by the lack of consultation.¹⁹⁵ The Crown’s lack of consultation, especially with *iwi* and *hapū* as treaty partners, was then cited as a material factor in the QA Panel finding that the RIS failed to meet quality assurance criteria.¹⁹⁶

As we noted, the *Ngā Mātāpono* Tribunal in October 2025 advised the Crown it was pursuing a treaty-inconsistent approach to engagement on the treaty clause review. Astonishingly, with the benefit of that advice, the process the Crown then adopted was far worse. Not only has the Ministerial Oversight Group which includes the Minister of Māori–Crown Relations made in-principle decisions without the input of Māori, Cabinet has also made specific legislative decisions

189. Waitangi Tribunal, *Ngā Mātāpono: The Interim Report*, p 48

190. Waitangi Tribunal, *Ngā Mātāpono: Part III*, p 46

191. Waitangi Tribunal, *Kei Ahotea Te Aho Matua*, pp 253, 359; Waitangi Tribunal, *Matua Rautia*, p 64

192. Document A52, p 22

193. *Ibid*, p 100

194. *Ibid*, p 92

195. *Ibid*, pp 92, 98

196. *Ibid*, p 93

in the absence of any engagement and approved drafting instructions to PCO.¹⁹⁷ Belated, time-pressured consultation with the NICF during the drafting process is far from sufficient to rectify this deliberate attempt to avoid meaningful engagement with Māori. Although self-evident, the Crown's obligations to engage with Māori meaningfully are also not discharged by the opportunity for Māori to provide feedback at the select committee stage.¹⁹⁸ The *Ngā Mātāpono* Tribunal recommended amendments resulting from the treaty clause review be 'co-designed' with full consideration of Māori views. Co-design does not mean Cabinet making decisions on what amendments it wants, and then asking the NICF what it thinks at the eleventh hour. Cabinet was on notice of the Tribunal's views on this from October 2025 and proceeded anyway.¹⁹⁹

Indeed, the approach adopted by the Crown to not engage with Māori on the proposals before Cabinet agreed to the amendments could be seen as another attempt by the Crown as treaty partner to unilaterally determine the nature or strength of its treaty obligations as expressed in statute. To this end, the *Ngā Mātāpono* Tribunal was unequivocal that on matters of constitutional significance regarding the expression and status of the treaty in statute, the Crown cannot act unilaterally without its treaty partner.²⁰⁰ The significance of this was similarly expressed in the Toitū Te Tiriti protests in November 2024 that can be understood as a groundswell of opposition to the idea that the Crown could unilaterally determine for itself the extent and content of its obligations under the treaty.

More specifically, the Crown could not help but have been aware of the education sector's views of the importance of the treaty in education. Beginning in November 2025, a growing list of schools raised alarm at the Crown's decision to remove school boards' statutory Te Tiriti o Waitangi duties (section 127(1)(d)) and issued statements 'reaffirming their obligations to honour Te Tiriti'.²⁰¹ This momentum was reflected in the applications for urgency filed with the Tribunal in November and December 2025 that raised particular concern with the Crown's decision to repeal a treaty provision unilaterally without engagement with Māori.²⁰² On 8 December 2025, the Crown received a petition from the NICF with almost 24,000 signatures calling for the reinstatement of school boards' treaty obligations.²⁰³

Although we reserve this matter for consideration in our stage two report, it is important to record that Cabinet, in agreeing to amend the ETA provisions in the absence of adequate engagement, was well aware of the strain that had already been placed on the Māori Crowni relationship by its rapid removal of section

197. Ibid, p 4

198. See the Tribunal's commentary on the inadequacies of the select committee process in the context of the Treaty Principles Bill in Waitangi Tribunal, *Ngā Mātāpono: The Interim Report*, p 136.

199. Document A52, pp 7–8

200. Waitangi Tribunal, *Ngā Mātāpono: The Interim Report*, pp 127, 134

201. Bailey-McDowell, 'Schools across Aotearoa'. For a full list of schools as at 24 March 2026, see doc A30(a).

202. Statement 1.1.1, p 9; statement 1.1.3, p 7

203. Document A1, pp 415–416

127(1)(d) months earlier. Moreover, as noted by MOJ officials in the RIS, following the Toitū Te Tiriti protests, the Māori–Crown relationship was in a ‘fragile state’.²⁰⁴ Yet the Minister of Justice and later Cabinet went ahead regardless.

Another significant issue to consider here is how limited the scope of engagement is during the drafting phase for the legislation. It is widely acknowledged that, although the NICF is an important group in te ao Māori, it is not representative of all hapū, the groups whom the text of Article 2 specifically identifies. Treaty-consistent engagement must go further. Although the Advisory Group identified the NICF as one of the groups the Crown could engage with as part of its general engagement, they also recommended both general and targeted engagement, including with groups relevant to particular Acts.²⁰⁵ As we have noted, Minister Goldsmith himself accepted that the degree to which Māori will be affected by the proposed changes ‘depends on the nature and significance of Māori interests in the context of each Act, and the extent of legislative change proposed’.²⁰⁶

If the Crown does not know the specific impacts of a legislative change on Māori and acknowledges that any such impacts are highly context dependent, then it must engage in targeted consultation with the Māori groups most closely involved with and impacted by the legislation in issue. For education, that group is not the NICF, though they will undoubtedly have valuable kōrero to share. There are a range of Māori bodies which are significant stakeholders in education who would be more appropriate to consult with as they could provide the sector-specific and meaningful feedback the Crown itself has accepted it needs to fully understand the impacts of the contemplated changes. Indeed, the Crown’s own internal analysis has already identified groups relevant to specific provisions of the ETA. For section 398B, a provision within scope of the text proposal, the Assessment Framework that was prepared by MOJ with MOE input identified (among other groups) the Māori Education Ministerial Advisory Group, Te Matakahuki, and the Mātauranga Iwi Leaders Forum.²⁰⁷

We note the Crown’s shallow approach to consultation was not lost on the NICF which itself ‘rejected entirely’ the Crown’s process for engagement, including the ‘extraordinarily short timeframe provided’, the ‘circumstances where Cabinet has already made substantive decisions and drafting instructions have gone to the PCO’, the ‘complete failure to engage with iwi and hapū in any meaningful way prior to decisions being made’, and the ‘frankly offensive suggestion’ that input to the select committee would be sufficient opportunity for interested parties to have their say.²⁰⁸ The failure to engage with iwi and hapū, the NICF stated, was a ‘direct breach of the Crown’s te Tiriti obligations’.²⁰⁹

204. Document A52, pp 136–137

205. Ibid, p 38

206. Ibid, p 10

207. Document A54(b), p 110

208. Memorandum 3.2.24(b), pp 2–3

209. Ibid, p 2

We pause here to comment that the Crown has placed the NICF in an impossible position. There was no way that consulting with the NICF exclusively at this late stage in the process would have resulted in a treaty-compliant outcome. The NICF has been forced to consider a raft of legislative amendments at speed that cover a wide range of different kaupapa when the Advisory Group advised that sector-specific consultation should be undertaken.²¹⁰ The NICF reiterated to the Crown the obligations it owes Māori under the treaty, which the Crown already knew from official advice and the *Ngā Mātāpono* report that it was pursuing a treaty-inconsistent course.²¹¹ In that context, presenting the NICF with decisions Cabinet had already made falls well short of the mutual respect and good faith owed to one's treaty partner. In fact, the approach taken was disrespectful.

It is clear the Crown's process for engagement on the ETA amendments as decided by Cabinet falls well short of the treaty-compliant standard of engagement required.

3.5 IN THE ABSENCE OF MEANINGFUL ENGAGEMENT WITH MĀORI, HAS THE CROWN ADEQUATELY INFORMED ITSELF THROUGH INTERNAL POLICY PROCESSES OF THE POTENTIAL IMPLICATIONS OF THE PROPOSED CHANGES, INCLUDING THEIR IMPACT ON MĀORI INTERESTS?

Having found the Crown had a duty to engage with Māori but that it has not fulfilled the standards required of its duty, we now turn to consider whether, in the absence of appropriate engagement, the Crown adequately informed itself of the proposed legislative changes' impacts upon Māori. In this regard, Cabinet had three key pieces of information before it when it made its February 2026 decisions, namely:

- ▶ the Ministerial Advisory Group's report from August 2025;
- ▶ the Regulatory Impact Statement from November 2025; and
- ▶ the Cabinet paper, which went to the Social Outcomes Committee in December and Cabinet in February 2026.²¹²

Minister Stanford, Minister Simmonds, and Minister Reti also had the benefit of MOE officials' education report in September 2025.²¹³

The Ministerial Advisory Group's report of August 2025, as noted above, was informed by a range of materials including consideration of the texts of the Acts, a briefing from a senior MOE official, and the Assessment Framework prepared by MOJ officials with input from MOE.²¹⁴ However, in the context of the ETA, the Advisory Group noted it had not received 'the benefit of full contributions' from MOE officials on the additional ETA provisions included in the review beyond its initial scope, and 'specifically on how they are operationalised in practice.'²¹⁵ Two

210. Document A52, p 38

211. *Ibid*, pp 7, 8, 13

212. *Ibid*, pp 1–142

213. Document A43(a), pp 200–213

214. Document A52, pp 23, 22; doc A54(b)

215. Document A52, p 51

of the additional provisions included later in the review were sections 9(1) and 535B(a) that are slated to be downgraded to the ‘take into account’ standard.²¹⁶ The purpose sections 4(d) and 32(h) were similarly only added after MOJ’s Assessment Framework was completed.²¹⁷

Therefore, the Advisory Group’s advice and recommendations concerning sections 4(d), 9(1), 32(h), and 535B(a) were not informed by officials’ advice on how the provisions are operationalised in practice. A contributing factor that likely precluded fuller contributions from MOE was the fact that it was only on 14 July 2025, nearly one month after it first met, and just three weeks before its report was issued, that the Advisory Group was asked to include any provisions referring to Te Tiriti o Waitangi (that is, not just those referring to treaty principles) in the ETA.²¹⁸

Although the Secretary of Justice and Chief Executive of MOJ, Mr Kibblewhite, was complimentary of the work done on the report in such a condensed timeframe, we note that MOJ officials were concerned about the limited timeframe for the treaty clause review more generally, including the timeframe for the Advisory Group.²¹⁹ The Advisory Group anticipated that after its report was concluded, broader policy analysis would take place. Regarding the ETA specifically, it stated that it saw ‘a need for a coherent policy analysis as to what is being sought to be achieved through each of these sections, and the reasons for the inconsistencies between them.’²²⁰

Some further analysis did take place, with MOE advising education Ministers of the treaty’s application and significance in the context of education in September 2025 in light of Minister Goldsmith’s draft Cabinet paper.²²¹ As explained in section 2.5, a copy of this iteration of the Cabinet paper was not provided in evidence, however at this point in time it appears that the draft Cabinet paper did not specify *how* treaty standards would be amended, only that they would be standardised across in-scope statutes.²²² MOE’s advice therefore could not at this juncture have engaged with or advised on the specific implications of reducing the standard in section 9(1) from ‘give effect to’ Te Tiriti o Waitangi to ‘take into account’. Indeed, at that point in time, although section 9(1) was noted as one of the sections potentially to be affected by the amendments, it appears the ‘give effect to’ standard was still on the table.²²³ The MOE report did not mention section 535B(a) at all. We note Minister Goldsmith later explicitly confirmed that agency feedback on the proposal to lower the treaty standard to ‘take into account’ in the relevant provisions had not been sought from MOE.²²⁴

216. Document A52, p 51

217. Ibid

218. Document A54(a), p 1

219. Document A52, p 92; transcript 4.1.1, p 343

220. Document A52, p 52

221. Document A43(a), pp 200–213

222. Ibid, p 202

223. Ibid

224. Document A52, p 10

MOE officials justifiably anticipated that any amendment affecting treaty provisions would be hugely consequential within the context of the ETA and education more broadly. They advised against 'changes to Te Tiriti provisions in the Act without further engagement and design with Māori' and highlighted four policy questions that 'Cabinet needs to form a position on' before amending the ETA within the context of mainstream schools.²²⁵ As outlined in section 2.5, these questions asked Cabinet to form a position on a range of matters concerning the codification of the Crown's treaty obligations in the context of education.²²⁶

From the evidence available to us, it does not appear the education Ministers requested any specific advice analysing MOE's policy questions to inform Ministerial decisions on the ETA amendments.²²⁷ Ministers therefore did not have the benefit of this information when agreeing to amend sections 9(1) and 535B(a) to lower the treaty standard to 'take into account'. That said, we acknowledge the advice provided by MOE officials on the limited information and short timeframe they had.

Next, MOJ officials provided their RIS, albeit within a constrained timeframe and without information considered pertinent and material by officials to inform their advice.²²⁸ Specifically, in November 2025, MOJ officials finalised their RIS with analysis of the treaty standard proposal. MOJ officials cautioned that the assumptions underpinning the policy problem envisioned by the Government (uncertainty and unintended variability) and the proposed reform of the treaty standard had not been adequately tested within the time available.²²⁹ They also emphasised the impact of the proposal on the Crown's ability to uphold its treaty obligations and on the interpretation of affected provisions was uncertain and 'would be context specific and depend on the nature of the Treaty interest(s) and the provision type'.²³⁰ For all of these factors, MOJ officials considered consultation was vital, including consultation with Māori as treaty partners.²³¹ Due to the late addition of the treaty standard proposal, MOJ officials also noted it had not been possible to consult with impacted agencies.²³² Consultation, MOJ officials advised, was a 'principal mechanism' through which the Crown discharged its responsibility to make informed decisions.²³³

In addition to the shortcomings of the policy process identified by MOJ officials, they also highlighted it had 'not been possible to undertake a first principles Treaty analysis' to determine whether the treaty was being appropriately provided for in

225. Document A43(a), p204

226. *Ibid*

227. In addition to the questions posed by MOE in its report to education Ministers, Cabinet also appears to have overlooked the questions in its own 'Te Tiriti o Waitangi/Treaty of Waitangi Guidance' Cabinet circular, CO(19)5, 22 October 2019. See Wai 3300 ROI, paper 6.2.4.

228. Document A52, pp92, 98

229. *Ibid*, p92

230. *Ibid*, p132

231. *Ibid*, p98

232. *Ibid*, p92

233. *Ibid*, p89

all relevant Acts.²³⁴ Instead, MOJ officials' approach had been to identify available information about the reasoning behind the provision at the time of its introduction 'alongside some basic Treaty analysis.'²³⁵ Due to the 'late addition' of Minister Goldsmith's treaty standards proposal, officials confirmed it had 'not been possible' 'to undertake in-depth analysis of the impacts of the change for each provision affected.'²³⁶ We share MOJ officials' view that provision-specific understanding and analysis was critical. As MOJ officials cautioned, '[w]hat is required to achieve consistency with the Treaty and its principles or prevent inconsistency is a fact-specific exercise based on the specific context of each legislative regime.'²³⁷ The absence of this type of careful case-by-case analysis is significant, and is the exact type of process the Advisory Group anticipated would follow from its advice and properly inform Ministerial decision-making.

Despite MOJ officials advising the need for more robust, context-specific analysis, we saw no evidence that further such analysis was completed to advise Cabinet before its decision in February 2026. In our view, the time constraints imposed on MOJ officials to complete their analysis was not justified, nor the decision to forego consultation and case-by-case analysis to inform Ministerial decision-making. The QA Panel considered the analysis was 'not sufficiently developed to form a basis for Ministers to make informed decisions' on the proposals.²³⁸ We agree and note this also echoes the concerns of the *Ngā Mātāpono* Tribunal about the rushed timeframes for the review, as approved by Cabinet in May 2025.²³⁹

It bears emphasis that even with the constraints on the ability of MOJ officials to thoroughly analyse the proposed changes, MOJ officials advised there was information to hand that contradicted Minister Goldsmith's view of the problem and undermined the validity of his proposed response. They noted engagement with public sector agencies

highlighted that those who make decisions under or administer Acts broadly understand how to implement existing provisions and that in most cases the weightings of different Treaty standards are supported by well-established practice approaches and a significant body of case law.²⁴⁰

Quite apart from being confusing, MOJ officials noted that '[h]aving some treaty directions impose more onerous obligations than others can also helpfully indicate where Parliament considers Treaty obligations to be most strongly engaged.'²⁴¹ Indeed, MOJ officials were dubious that amending treaty standards would improve

234. Document A52, p 92

235. Ibid

236. Ibid

237. Ibid, pp 96–97

238. Ibid, p 93

239. Waitangi Tribunal, *Ngā Mātāpono/The Principles: Part III*, p 46

240. Document A52, p 133

241. Ibid

compliance and questioned if the proposals would not have the converse impact of increasing uncertainty.²⁴²

Moreover, Minister Goldsmith's proposal to uniformly lower the treaty standards in provisions did not engage with the considerations posed by the Advisory Group that a range of standards might be appropriate depending on the decision-making context for the provision.²⁴³ Specifically, the Advisory Group noted that 'give effect to' indicated a higher standard and suggested it be used 'where those acting under the Act are part of the Crown, and must give effect to the Treaty', or 'when the Crown is dealing directly with a Treaty interest'.²⁴⁴ In contrast, the Advisory Group stated that 'take appropriate account of' was 'a lesser standard and suggests there may be countervailing considerations'.²⁴⁵ As above, the Advisory Group did not appear to have any concerns with the clarity of the 'give effect' standard, as exists in section 9(1), and did not recommend the use of a flat standard in all cases. Despite this, and against advice, Minister Goldsmith recommended a blanket downgrading of the treaty standard in section 9(1) (amongst several other provisions in the statute book) on the basis the 'requirements to "give effect" to the Treaty principles do not promote the balanced consideration of all relevant factors in decision-making'.²⁴⁶

We have not been provided with any advice or analysis that informed Minister Goldsmith's conclusion that the 'give effect to' standard was inappropriate within the decision-making context of the ETA. Nor do we have any evidence the Minister requested analysis of the specific factors identified by the Advisory Group that might inform where the standard is set. For example, analysis of whether in the ETA the 'Crown is dealing directly with a Treaty interest', and analysis showing whether it is appropriate in the context of education for the Crown's obligations under the treaty to be weighed up against other considerations. As we have already emphasised, numerous treaty interests are at play in the education sector governed by the ETA, including significant taonga like te reo Māori and mātauranga Māori. The suggestion that the treaty is only *one* of a number of competing considerations is therefore a baseless reading down of the Crown's treaty obligations. Considering the above, the only conclusion we can draw is the treaty standard proposal represented the direction Minister Goldsmith wished to take (informed by discussion with the other members of the Ministerial Oversight Group) irrespective of any advice to the contrary.

MOJ officials also advised that implications of the proposal were uncertain but carried 'significant risk to the Māori-Crown relationship, including because it is likely to be seen as intended to reduce the legislative Treaty protections available to Māori'.²⁴⁷ The Cabinet paper similarly highlighted numerous potential harms and impacts on Māori posed by the reforms, including that the proposals would

242. Ibid, pp 133, 134

243. Ibid, p 25

244. Ibid, pp 24, 33-34, 36

245. Ibid, p 33

246. Ibid, p 5

247. Ibid, p 91

‘disproportionately affect Māori’ when treaty provisions ‘can act as a safeguard for Māori rights and interests in the relevant legislative context’; that the amendment could ‘lead to a narrower interpretation of Māori rights in the context of specific legislation’; and that there might be ‘financial and other resource implications for iwi, hapū, and other Māori groups and stakeholders in obtaining expert advice on the potential implications.’²⁴⁸

In these circumstances where the impact of the proposals was uncertain but risked detrimentally impacting Māori and the Māori–Crown relationship, engagement, coupled with extensive and robust policy analysis, was vital before Cabinet made firm decisions on amendments. This was needed to inform the Crown of the specific implications of the proposals, including potential harm that might befall Māori, so it could consider whether the amendment justified running the risk of that harm. Despite these risks and concerns clearly identified by MOJ officials, and the limitations inherent in the advice provided to him, Minister Goldsmith still chose to pursue the proposal to Cabinet.

Past Tribunals have been clear the Crown has a treaty duty to adequately inform itself *before* it makes policy decisions as to the way Māori interests may be impacted. The main way in which the Crown does so is obviously through meaningful engagement.²⁴⁹ That has not happened in regard to Cabinet’s February 2026 decision. Significantly, there is also a treaty obligation to develop sound policy, linked to the principle of good government.²⁵⁰ This principle applies to the Crown’s exercise of kāwanatanga when proposing legislation which affects Māori.²⁵¹ In the context of education (with respect to Kura Kaupapa Māori), the *Kei Ahotea Te Aho Matua* Tribunal found the exercise of kāwanatanga requires the Crown to fully engage with the impacts of the policy on Māori when making decisions, and work to create targeted and effective policy.²⁵²

Contrary to the Crown’s responsibility to make informed decisions and exercise its kāwanatanga powers in accordance with the tenets of good government, Cabinet made the decision to downgrade the standard of ‘give effect to’ in section 9(1) and ‘honours’ in section 535B(a) of the ETA in the dark. It had no analysis before it on the likely provision-specific implications of the proposal, no information gathered from meaningful engagement on how Māori viewed the problem definition or the prospects of the proposal, and no analysis of the questions MOE officials advised that Cabinet needed to consider before amending the ETA.

248. Document A52, pp9, 10

249. Waitangi Tribunal, *Kei Ahotea Te Aho Matua*, p279; Waitangi Tribunal, *The Offender Assessment Policies Report* (Wellington: Waitangi Tribunal, 2005), p10; Waitangi Tribunal, *Report of the Waitangi Tribunal on Claims concerning the Allocation of Radio Frequencies* (Wellington: Waitangi Tribunal, 2013), p42; Waitangi Tribunal, *Hautupua: Te Aka Whai Ora (Māori Health Authority) Priority Report, Part 1 – Pre-publication Version* (Wellington: Waitangi Tribunal, 2024), p21

250. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p429; Waitangi Tribunal, *Taku Reo Kura Taku Reo Kahurangi – Pre-publication Version* (Wellington: Waitangi Tribunal, 2025), p52; Waitangi Tribunal, *Te Mana Whatu Ahuru*, vol 1, p216

251. Waitangi Tribunal, *Ngā Mātāpono: The Interim Report*, p73

252. Waitangi Tribunal, *Kei Ahotea Te Aho Matua*, p224

Finally, we turn to consider the information and analysis the Crown had regarding its proposal to amend or repeal section 536A(1) of the ETA so that DRS operators no longer have treaty requirements. Unlike sections 9(1) and 535B(a), the MOJ Assessment Framework did analyse section 536A(1). The Advisory Group's report was therefore informed by commentary regarding the treaty interests relevant to, and policy objective for, the provision as well as the potential options for, and implications of, reform.²⁵³

However, even with this additional analysis, the RIS noted that repealing section 536A(1): would cause uncertainty in the Act regarding how section 4 related to the functions of DRS operators; would reduce the ability to legally challenge decisions made by the Crown that 'do not appear to meet its treaty obligations in the way it provides for the operation of a dispute resolution service'; and 'could increase the risk of regulatory churn by creating legal uncertainty and a risk of lower protection for Māori interests.'²⁵⁴ Despite these concerns and uncertainties, the RIS noted there had been no consultation with Māori, the public or DRS operators on the proposed reform and that the 'legal effects of the repeal' were unclear.²⁵⁵ In these circumstances, especially having failed to consult Māori and DRS operators themselves, our view is that the Crown had insufficient information to hand regarding the proposal when it agreed to repeal or amend section 536A(1) in February 2026.

We consider the speed imposed by Minister Goldsmith on the policy development process was unjustified and severely compromised the rigour and depth of analysis MOJ officials could provide. This view was shared by officials, including the QA Panel in its comments on the RIS. When Minister Goldsmith received this advice, he should have delayed taking a paper to Cabinet and allowed more time for deeper analysis of the issues as well as genuine engagement with Māori. Instead, he pushed on.

In sum, in the absence of meaningful engagement with Māori, and detailed analysis, the Crown failed to adequately inform itself of the implications of the legislative changes to the ETA, including their impact on Māori interests.

253. Document A54(b), pp 81–83

254. Document A52, pp 110–112

255. *Ibid*, pp 113, 114

CHAPTER 4

FINDINGS AND RECOMMENDATIONS / NGĀ WHAKAKITENGA ME NGĀ TŪTOHUNGA

4.1 FINDINGS

In this final section, we set out our findings on whether Cabinet's 23 February 2026 decision to amend the provisions of the ETA breached the principles of the treaty. Several treaty principles are relevant when assessing the treaty-compliance of the Crown's conduct in this instance. We consider the principles of partnership, active protection, and good government to be particularly pertinent.

The treaty principle of partnership is at the heart of the claim issue here, as it concerns the appropriate navigation of the overlap between the spheres of *kāwanatanga* and *tino rangatiratanga* – an intersection which features prominently in the education sector, where the Crown's exercise of *kāwanatanga* impacts upon taonga Māori directly, as we discuss above. In this instance, we consider the principle of partnership required early and meaningful engagement with Māori on potential changes to the ETA before Cabinet took a decision, so Māori could have meaningful influence over the legislative options presented to Cabinet and inform the Government's understanding of the perceived problem it was seeking to address. We also consider that for the Crown to properly inform itself of the impacts of the legislative changes proposed, it had to engage more broadly with Māori – including with sector-specific groups and hapū.

The principle of active protection is also engaged in terms of the taonga Māori that are fostered and protected in the education system, including *te reo Māori* and *mātauranga Māori*. The principle of active protection requires the Crown to be proactive in ensuring the rights and interests of Māori are protected in its policies.¹ This is not a passive obligation.² It 'requires honourable conduct by, and fair processes from, the Crown, and full consultation with – and, where appropriate, decision-making by – those whose interests are to be protected.'³ When treaty provisions are regarded as safeguards for Māori interests in legislation, decisions affecting the strength or nature of the Crown's obligations as expressed in statute have implications for the fulfilment of the Crown's active protection obligations.

1. Waitangi Tribunal, *Ngā Mātāpono / The Principles: The Interim Report of the Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown's Treaty Principles Bill and Treaty Clause Review Policies – Pre-publication Version* (Wellington: Waitangi Tribunal, 2024), p 77

2. Waitangi Tribunal, *Kei Ahotea Te Aho Matua* (Petone: Blue Star Group (New Zealand) Ltd, 2025), p 228

3. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 1, p 4

Indeed, treaty provisions can be understood as one of the main legislative levers for active protection.

The principle of good government is also highly relevant here, given we are considering the treaty-compliance of a policy and legislative decision taken by Cabinet. Good government obliges the Crown to act within its own laws, rules and standards, and develop sound policy.⁴ Under this principle, the Crown must fully engage with the impacts of the policy on Māori when making decisions.⁵ It also requires the Crown to act in a way that is just and fair. This involves producing transparent and well-designed policies forged through the treaty partnership, especially where taonga are at stake.⁶ Where treaty interests are so clearly at issue, as is the case here, the principle of good government requires the Crown to hold itself to the highest standards of good policy making. In this instance, it obliges the Crown to undertake specific and contextual analysis of the amendments proposed and to ensure they meet its own internal standards for good policy making. Informed decision-making, as required by good government, also has obvious overlaps with the Crown's obligation to engage with Māori, as we have just described.

In our analysis above, we concluded the Crown had a duty to engage with Māori on the proposed changes as they had constitutional significance. This duty was heightened by the fact the Crown's proposed changes were not neutral – it agreed to a downgrading of the treaty standard in ETA provisions and the repeal or amendment of section 536A(1)(a)(ii) to remove DRS operators' treaty obligations entirely. The obligation to engage with Māori was also self-evident given what we have said about the Crown's treaty obligations in the field of education. This required the Crown to engage with Māori on all the changes, including the decision to replace references to 'Te Tiriti o Waitangi' in the ETA with a reference to both texts.

We concluded the Crown's approach to engagement was both narrow and shallow. It proposed to consult a singular national Māori body, the NICEF, instead of engaging with sector groups or hapū. The Crown also approached the NICEF at such a late stage, only after the substantive decisions regarding reform had been made and drafting instructions had been sent to PCO. The Crown considered that opportunity to provide input to the select committee was sufficient opportunity for other interested parties to provide input, when this suggestion was ill-conceived and, in the words of the NICEF, 'offensive'.⁷

4. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, 4 vols (Wellington, Legislation Direct, 2008), vol 2, p 429; Waitangi Tribunal, *Taku Reo Kura Taku Reo Kahurangi – Pre-publication Version* (Wellington: Waitangi Tribunal, 2025), p 52; Waitangi Tribunal, *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*, 2nd ed, 6 vols (Lower Hutt: Legislation Direct, 2023), vol 1, p 216; Waitangi Tribunal, *He Whiritaunoka: The Whanganui Land Report*, 3 vols (Wellington: Legislation Direct, 2015), vol 1, p 158

5. Waitangi Tribunal, *Kei Ahotae Te Aho Matua*, p 224

6. Waitangi Tribunal, *Ngā Mātāpono: The Interim Report*, pp 73–74

7. Memorandum 3.2.24(b), p 3

Further, we concluded the Crown pursued a narrow approach to consultation despite the findings and recommendations of the *Ngā Mātāpono* Tribunal, the advice of MOJ and MOE officials, recommendations from the Advisory Group for broader engagement, the Toitū Te Tiriti hikoi, the petitions following the removal of school boards' treaty obligations, and the applications for this urgent inquiry. Cumulatively, this makes it difficult to escape the conclusion the Crown acted with calculated disregard for the treaty consequences of its course of action and the likely (and advised) impact on the Māori–Crown relationship.

We acknowledge the MOE and MOJ officials who repeatedly emphasised the importance of treaty-compliant engagement in their advice to their Ministers. This advice was ignored. Officials also highlighted the relevant *Ngā Mātāpono* report findings and recommendations. These were acknowledged but ultimately disregarded.

Next, we considered whether the Crown, in the absence of meaningful engagement with Māori, had adequately informed itself through internal policy processes of the potential implications of the proposed changes, including their impact on Māori interests. We concluded that Cabinet agreed to the proposals despite clear and repeated advice from officials that constrained timeframes precluded in-depth analysis, that not enough was known about the potential impact of the proposals, and that the RIS was insufficiently developed to form the basis for Ministers to make an informed decision.

What was known, however, was that the proposals carried risk of harm to the Māori–Crown relationship and that, as treaty provisions can act as safeguards for Māori interests, reducing or repealing obligations therein could disproportionately impact Māori. We agree with officials that downgrading treaty standards in the ETA to as low a standard as 'take into account' signals a shift in the Crown's commitment to the treaty as it applies to education.

In light of the above, we find the Crown:

- ▶ breached the principle of partnership by failing to engage appropriately with Māori before making substantive decisions regarding the amendment of the ETA; and
- ▶ breached the principles of good government and active protection by deciding to amend the ETA in the absence of the information or internal policy analysis required for the Crown to understand the specific implications of the legislative proposals for Māori.

4.2 PREJUDICE

Ms Lessels and Ms Hotereni posited 'the prejudice arising from the proposed Bill compounds the breaches created by earlier reforms'.⁸ Based on the submissions of claimants and interested parties, we consider three strains of prejudice arise from the Crown's treaty breaches: harm to the Māori–Crown relationship; the creation of uncertainty for Māori; and potential prejudice to Māori interests arising

8. Submission 3.3.24, p 26

from the Crown's failure to ensure it had sufficient information to hand to make informed decisions on the reforms.

First, the Crown has caused harm to the relationship between Māori and the Crown by failing to engage adequately with Māori before taking substantive decisions on the ETA reforms.⁹ We note that this harm is particularly bruising and egregious when the Crown had prior advice that its approach to engagement risked harm to a Māori–Crown relationship that was already in a 'fragile state'.¹⁰ We agree with Te Whakakitenga o Waikato that the 'truncated' consultation process chosen by the Crown has resulted in 'Maaori being disempowered through limited and inadequate engagement'.¹¹ Moreover, the narrow approach to engagement with the NICF also failed to demonstrate the respect due to Māori as the Crown's treaty partner.

In many ways, we see parallels between the Crown's approach to reforming the ETA in this case, and the rapid removal of school boards' obligations to give effect to Te Tiriti o Waitangi in 2025. Speaking of those reforms, Kara George, kaumātua of Te Kapotai, described the repeal as a 'demotion of te Tiriti' and stated the Crown had not engaged with Te Kapotai on removing the obligations.¹² Speaking of the impact of the Crown's failure to engage with Te Kapotai, Mr George stated: 'These decisions have been made in Wellington, away from our people. The first we hear of it is on the news. That is not partnership and that undermines our mana and rangatiratanga'.¹³

Mr George described that Te Kapotai applied for urgency in 2025 regarding the Crown's removal of schools' treaty obligations because Te Kapotai itself owed obligations to its people.¹⁴ He was concerned about the educational achievement of tamariki Māori in his rohe and the impacts systemic bias and being 'worse off in the education system' have on the lives of tamariki as a whole.¹⁵ In this context, it was his view that '[a] change by the Government which seeks to demote the treaty, is a demotion of our people' and a removal of 'the commitment and mechanism' that requires the Government to do 'what our people need, in the way that our people need it'.¹⁶

We believe Mr George's kōrero would resonate with many hapū and iwi, kaimahi Māori in the education sector, and whānau Māori who want to be meaningfully involved in decisions affecting tamariki Māori in the education system. The Crown's failure to engage with Māori has neither respected that desire nor the obligations iwi and hapū also owe to their own people. Although the removal of section 127(1)(d) is a matter for our stage two report, we believe Mr George's words apply equally to the matter before us in this stage one report, and have chosen

9. See submission 3.3.17, pp 33, 34

10. Document A52, pp 7, 137

11. Submission 3.3.24, p 14

12. Document A3, p 3

13. Ibid

14. Ibid, p 1

15. Ibid

16. Ibid, p 2

to cite them here. The Crown's failure to engage meaningfully with Māori on the reforms represents an affront to the mana of Māori.

Secondly, the Crown's approach to the reforms, including the lack of input from Māori, has generated uncertainty for Māori. As a result of the Crown's decisions, Māori in the education sector are left with uncertainty regarding the security of safeguards for treaty interests in the ETA.¹⁷ As noted above, claimants and interested parties submitted the Crown has provided no assurance to Māori that purpose provisions will not be repealed as part of the reforms, did not state in the Cabinet paper how risks to Māori would be mitigated, and has 'left unaddressed' the uncertainty the reforms create for ākonga Māori and their whānau regarding what 'concrete measures' remain to ensure their te Tiriti interests are upheld.¹⁸

While the Crown submitted the 'analysis of potential prejudice cannot be taken very far given the degree of uncertainty about the proposed Bill's content', it also acknowledged 'prejudice may arise from the process adopted to date'.¹⁹ We agree with Ngā Kura ā Iwi that this Crown acknowledgement 'should be given its full weight'.²⁰ Te Whakakitenga o Waikato is also correct that '[c]laimants are prejudiced not only by enacted amendments, but by the uncertainty generated through an ongoing reform process concerning core statutory protections in education'.²¹

Finally, we consider the Crown's agreement to progress the reforms without sufficient information to hand to make informed decisions has demonstrated a reckless disregard for the potential impact on Māori and Māori interests in education, prejudicing Māori. Specifically, the Crown's approach has placed Māori in a position of vulnerability, and we agree with the NZMC that this 'creates substantial prejudice for Māori, where there can be no reliance on legislative checks and balances' or the Crown's observance of its 'duties based in good faith to protect Māori interests'.²²

4.3 RECOMMENDATIONS

As stated above, we have determined the Crown has breached the treaty principles of partnership, active protection, and good government, and prejudicially affected Māori.

In order to mitigate the prejudice identified, and to avoid causing future potential prejudice, we recommend the Crown:

- ▶ immediately halt the advancement of the amending legislation intended to effect the changes to the ETA;
- ▶ engage meaningfully with Māori in the co-design of treaty provisions if the Crown intends to pursue amendments to the ETA treaty provisions; and
- ▶ take immediate steps to repair the Māori–Crown relationship.

17. See submission 3.3.19, pp 10–12.

18. Ibid, pp 10–12; submission 3.3.24, p 28; see also submission 3.3.14(a), p 16

19. Submission 3.3.21, p 15

20. Submission 3.3.23, p 3

21. Submission 3.3.24, p 27

22. Submission 3.3.19, pp 20, 21

4.4 CONCLUDING OBSERVATIONS

We note that, although our jurisdiction is limited to the proposed amendments to the ETA, we would be surprised if our findings and recommendations did not apply equally to other legislation affected by Cabinet's February 2026 decision. Reducing the strength and nature of the Crown's treaty obligations as expressed in statute unilaterally and without genuine engagement with Māori is inherently inconsistent with the partnership forged in 1840 and an attempt by the Crown to takahi the mana of the treaty and its place in the laws of Aotearoa.

The *Ngā Mātāpono* Tribunal reporting on the Treaty Principles Bill found that, considered as a whole, the Bill's 'principles' were inconsistent with the texts and principles of the treaty, discriminated against Māori, abrogated rights that were guaranteed to Māori in 1840 (unless specified in legislation or an agreement), and extinguished tino rangatiratanga in a legal sense.²³ If enacted, the Tribunal found the Treaty Principles Bill:

would be the worst, most comprehensive breach of the Treaty/te Tiriti in modern times. The Crown would be turning the clock back to 1877 and the decision in *Wi Parata* that the Treaty/te Tiriti is a 'simple nullity'. If the Bill remained on the statute book for a considerable time or was never repealed, it could mean the end of the Treaty/te Tiriti.²⁴

What is being proposed here has a similar purpose, in that it seeks to dilute and potentially remove from various pieces of legislation statutory expressions of the Crown's treaty obligations to Māori. While less of a blatant attempt to redefine the Crown's treaty obligations, what Cabinet has agreed to unilaterally is similarly unjust and belies the solemn obligations the Crown agreed to when it signed the treaty. Moreover, while the Treaty Principles Bill was not enacted, and was arguably never going to be enacted given the National Party's clear indication it would support it to the first reading only, there is a real and concerning possibility that this amending legislation will pass into law in this parliamentary term making the approach by the Crown even more disquieting.

We wish it were possible to say that these Crown reforms following the treaty clause review are without precedent. However, the pattern of reforms advanced by the coalition Government, including the Treaty Principles Bill, the repeal of section 7AA of the Oranga Tamariki Act 1989, the Marine and Coastal Area (Takutai Moana) Act 2011 reforms, the amendment to the Local Electoral (Māori Wards and Māori Constituencies) Amendment Act 2021 regarding Māori wards referenda, and the Regulatory Standards Bill show a pattern of lawmaking where

23. Waitangi Tribunal, *Ngā Mātāpono/The Principles: Part 11 of the Interim Report of the Tomokia Ngā Tatau o Matangireia – the Constitutional Kaupapa Inquiry Panel on the Crown's Treaty Principles Bill and Treaty Clause Review Policies – Pre-publication Version* (Wellington: Waitangi Tribunal, 2024) p109

24. *Ibid*

treaty-inconsistency is common, and not exceptional. We would go so far as to say it is calculated.

The words of *The Oranga Tamariki (Section 7AA) Urgent Inquiry Report*, in particular, bear repeating. That Tribunal stated:

It is not for us to comment on the coalition agreement between the National party and the ACT party but, once Ministers are sworn in and the government is formed, the executive so constituted are responsible for meeting the Crown's obligations to Māori under the Treaty of Waitangi. It is a Treaty of Waitangi, not a proclamation of Waitangi, and the Crown does not have a unilateral right to redefine or breach its terms. The obligation is to honour the Treaty and act in good faith towards the Treaty partner.²⁵

The proposed reforms to treaty provisions are out of step with the forward momentum demonstrated by successive Governments in Aotearoa New Zealand in the last 50 years. This momentum has generally been characterised by a desire to honour Aotearoa New Zealand's founding document, not denigrate it, and to work to perfect the treaty partnership. This was evident in steps taken to include treaty provisions in statute; the passage of treaty settlement legislation; the introduction of legislative safeguards to protect taonga Māori, such as *Te Ture mō Te Reo Māori* 2016; and Government support for te reo Māori within schools, television and radio broadcasting, and the public service.

The Government instead appears to want to relegate the treaty from being central to Aotearoa New Zealand's identity, history, and public life, to a place where it must only be taken 'into account'.

In closing, we return to the whakataūākī or waiata tangi of Meri Ngāroto that we drew upon in framing this report. As described on page vii, the name of this report is inspired by the beginning of her whakataūākī: *Hūtia te rito o te harakeke – kei hea te kōmako e kō? Pluck out the heart of the harakeke – where will the bellbird sing?*

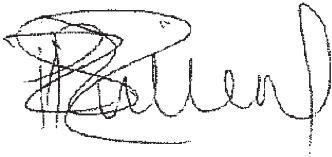
In the next line, Meri Ngāroto answers: *Whakataerangitia, rere ki uta, rere ki tai – It will fly aimlessly inland and seaward.* We understand this to be an expression of the concern of Meri Ngāroto for her people, wandering aimlessly into the future – *rere ki uta, rere ki tai.*

In the final lines of the whakataūākī, Meri Ngāroto then asks: *He aha te mea nui o te ao? Māku e kī atu he tāngata, he tāngata, he tāngata.* What is the most important thing in the world? I would say it is people, it is people, it is people. This is the lament of an ariki tapairu over her inability to have children and her concern for the future survival of her people; her concern for whakapapa.

25. Waitangi Tribunal, *The Oranga Tamariki (Section 7AA) Urgent Inquiry Report* (Waitangi Tribunal: Wellington, 2024), p13

In the context of this inquiry, we see the rito as representative of the treaty in the ETA. Thus, to weaken the rito, is to risk the future educational wellbeing of Māori and taonga Māori. It is therefore critical the Crown heed our advice and recommendations so that in years to come Māori are not left to lament but rather retain the firm foundation of the treaty in their education.

Dated at *Wellington* this *14th* day of *May* 20*26*



Kaiwhakawā Rachel Mullins, presiding officer



Gerrard Albert, member



Derek Fox, member



Dr Paul Hamer, member



Kevin Prime, member



APPENDIX I

FINAL AMENDED STATEMENT OF ISSUES FOR THE URGENT INQUIRY

Section 127(1)(d) legislative amendments

- (a) What was the purpose and effect of section 127(1)(d) in the Education and Training Act 2020, and how did it operate to recognise and provide for te Tiriti o Waitangi (te Tiriti) obligations within school governance?
- (b) In the absence of consultation with Māori on removing section 127(1)(d), did the Crown adequately inform itself of potential risks, if any, to te Tiriti interests of Māori created by removing the section?
- (c) Was official advice on this matter consistent when Parliament passed both the Education and Training Act 2020 and its 2025 amendments?
- (d) In removing section 127(1)(d), what, if any, measures did the Crown take to ensure te Tiriti interests of Māori are upheld in the daily operations of schools?
- (e) To what extent, if at all, was the removal of section 127(1)(d), including the process followed by the Crown to remove the section, inconsistent with the principles of te Tiriti?
- (f) What prejudice, if any, arises for Māori as a result of the removal of section 127(1)(d)?

National Curriculum

- (g) In what ways will the proposed curriculum amendments and learning areas change the significance of te Tiriti as a foundational or directive principle in schools?
 - (i) More specifically, in what ways will the proposed curriculum amendments and learning areas change the way te reo Māori, tikanga Māori, mātauranga Māori, and Aotearoa histories are taught?
- (h) Does the timeframe for the public submissions process to provide feedback on the draft curriculum allow for any meaningful change to be implemented in relation to the final curriculum? If not, why not?
- (i) Has the Crown's engagement with Māori over the changes to the curriculum, including via the Māori Education Ministerial Advisory Group, been te Tiriti-compliant?
- (j) What prejudice, if any, arises for Māori as a result of the proposed curriculum changes?

Inclusion of the Education and Training Act within the proposed Bill regarding statutory references to the Treaty of Waitangi

- (k) What is the impact on issues (a)–(j) above of the Crown’s decisions in relation to the inclusion of the Education and Training Act within the proposed Bill regarding statutory references to the Treaty of Waitangi (‘Proposed Bill’)?
- (l) Did the Crown adequately inform itself of potential risks, if any, to te Tiriti interests of Māori created by amending those provisions?
- (m) In determining to amend those provisions, what, if any, measures did the Crown take to ensure te Tiriti interests of Māori are upheld within the education system?
- (n) To what extent, if at all, were the proposed amendments, including the process followed by the Crown to include those amendments within the Proposed Bill, inconsistent with the principles of te Tiriti?
- (o) What prejudice, if any, arises for Māori as a result of the inclusion of the Education and Training Act within the Proposed Bill?

APPENDIX II

FULL TEXT OF PROVISIONS IN THE EDUCATION AND TRAINING ACT 2020 AFFECTED BY CABINET'S FEBRUARY 2026 DECISION

3 Outline of Act

- (1) This Act, which sets out New Zealand's education and training system (the **system**), is divided into 6 Parts.
- (2) This Part (Part 1) covers the following preliminary matters:
 - (a) the purposes of this Act:
 - (b) [*Repealed*]
 - (c) the statement of expectations for agencies serving the system:
 - (d) the strategies for tertiary education and international education:
 - (e) Te Tiriti o Waitangi:
 - (f) the defined terms used in this Act:
 - (g) the transitional and savings provisions needed for this Act:
 - (h) the extent to which this Act binds the Crown.
- (3) Part 2 sets out provisions regarding early childhood education, which is the initial stage of the system.
- (4) Part 3 sets out provisions regarding primary and secondary education, which are the stages of the system that follow early childhood education.
- (5) Part 4 sets out provisions regarding tertiary education and vocational education and training, which are the stages of the system that follow secondary education.
- (6) Part 5 sets out provisions relating to performance, funding, and support of the system.
- (7) Part 6 sets out provisions relating to the administration of the system.

4 Purpose of Act

The purpose of this Act is to establish and regulate an education system that—

- (a) provides New Zealanders and those studying in New Zealand with the skills, knowledge, and capabilities that they need to fully participate in the labour market, society, and their communities; and
- (b) supports their health, safety, and well-being; and
- (c) assures the quality of the education provided and the institutions and educators that provide and support it; and
- (d) honours Te Tiriti o Waitangi and supports Māori–Crown relationships.

6 Statement of expectations

- (1) The Minister and the Minister for Māori Crown Relations: Te Arawhiti may, for the purposes of providing equitable outcomes for all students, jointly issue a statement that sets out expectations for the following agencies:
 - (a) the Ministry:
 - (b) TEC:
 - (c) NZQA:
 - (d) the Education Review Office:
 - (e) Education New Zealand.
- (2) The statement must specify what those agencies must do to give effect to public service objectives (set out in any enactment) that relate to Te Tiriti o Waitangi.
- (3) Before issuing the statement, the Ministers must consult Māori.
- (4) The statement must be issued to each agency specified in the statement and published in the *Gazette*.
- (5) [*Repealed*]

9 Te Tiriti o Waitangi

- (1) The main provisions of this Act that recognise and respect the Crown's responsibility to give effect to Te Tiriti o Waitangi are—
 - (a) section 4, which states that the purpose of this Act includes establishing and regulating an education system that honours Te Tiriti o Waitangi and supports Māori–Crown relationships; and
 - (b) [*Repealed*]
 - (c) section 6, which provides that the Minister and the Minister for Māori Crown Relations: Te Arawhiti may, for the purpose of providing equitable outcomes for all students, and after consulting with Māori, jointly issue and publish a statement that specifies what the Ministry, TEC, NZQA, the Education Review Office, and Education New Zealand must do to give effect to public service objectives (set out in any enactment) that relate to Te Tiriti o Waitangi; and
 - (d) [*Repealed*]
 - (e) subpart 6 of Part 3, which provides for the establishment and operation of Kura Kaupapa Māori, Te Aho Matua, and te kaitiaki o Te Aho Matua; and
 - (f) subpart 3 of Part 4 and Part 4A, which provide for the establishment and operation of wānanga; and
 - (g) section 321(c), which provides that the council of a polytechnic must ensure that the polytechnic operates in a way that allows the polytechnic to develop meaningful relationships and engage with communities at a local level, including with Māori employers and hapū and iwi.
- (2) Other provisions related to Te Tiriti o Waitangi in the context of the regulation of the education system include—

- (a) the definition of **school community** in section 10(1), which includes a Māori community associated with a school; and
- (b) section 17(2)(a), which provides that before the Minister may grant approval to apply for an early childhood service, the Minister must take into account the availability of services in the area with different offerings, for example, the provision of te reo Māori; and
- (ba) section 127(2)(e), which provides that, when meeting its paramount objective in governing a school, the board must ensure that it—
 - (i) seeks to achieve equitable outcomes for Māori students; and
 - (ii) takes all reasonable steps to provide for students to be taught, and to learn, in te reo Māori on request of their parents or immediate caregivers; and
 - (iii) takes reasonable steps to ensure that the policies and practices for the school reflect New Zealand's cultural diversity; and
- (c) section 278(2)(a), which provides for Māori contribution to decision making in tertiary education and vocational education and training; and
- (d) section 281(1)(b), which provides that councils of institutions have a duty, in the performance of their functions and the exercise of their powers, to acknowledge the principles of Te Tiriti o Waitangi; and
- (e) section 314(d), which provides that one of the characteristics of polytechnics is that they improve outcomes for Māori students and trainees and Māori communities in collaboration with Māori and iwi and interested persons or bodies; and
- (f) section 402, which provides that TEC comprises members appointed in accordance with section 28(1)(a) of the Crown Entities Act 2004 after consultation with the Minister for Māori Development; and
- (g) section 476(4)(b)(v), which provides that when considering whether to appoint a person as a member of the Teaching Council, the Minister must have regard to the collective skills, experience, and knowledge making up the overall composition of the Teaching Council, including understanding of the partnership principles of Te Tiriti o Waitangi; and
- (ga) section 535B, which provides for how a code administrator must exercise and perform its functions, powers, and duties in relation to Te Tiriti o Waitangi; and
- (gb) section 536A(1), which provides for how a DRS operator must exercise and perform its functions, powers, and duties in relation to Te Tiriti o Waitangi; and
- (h) section 597(2)(d), which provides that a good employer in the education service is an employer who operates an employment policy containing provisions requiring recognition of the aims and aspirations of Māori, the employment requirements of Māori, and the need for greater involvement of Māori in the education service.

32 Purpose of Part 3

The purpose of this Part is to establish a schooling system that supports all learners/ākonga to gain the skills and knowledge they need to be lifelong learners/ākonga and fully participate in the labour market, society, and their communities by—

- (a) ensuring that all children and young people are present in the schooling system to be able to exercise their right to an education, including setting up fair and consistent processes when students are excluded from the system that aim to return them to education as soon as possible; and
- (b) supporting the health, safety, and well-being of students; and
- (c) providing for what is to be taught in schools; and
- (d) establishing governing bodies for State and State integrated schools, and providing for their elections, duties, powers, administration, and accountabilities; and
- (da) providing for the approval of governing bodies for charter schools/kura hourua and their duties, powers, administration, and accountabilities; and
- (e) establishing and managing a network of State schools and charter schools that allows every student to access quality schooling and provides choice about the types of education they receive; and
- (f) regulating the teaching profession to ensure the quality of teaching in the schooling system, including (without limitation) setting standards for the registration of teachers; and
- (g) providing for the efficient and effective administration of the schooling system; and
- (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 the schooling system.

398B Purpose of Part 4A

The purpose of this Part is to provide for the establishment, modification, and administration of wānanga in a manner that gives effect to the principles of Te Tiriti o Waitangi and supports Māori–Crown relationships and, in particular, that—

- (a) better reflects the unique characteristics, functions, and purposes of wānanga in the tertiary education system for delivering the best possible education outcomes for ākonga; and
- (b) recognises the interests of iwi or Māori in ensuring the effective governance and administration of wānanga; and
- (c) enables direct accountability to iwi or Māori for the performance of wānanga.

476 Ministerial appointment as member

- (1) The members of the Teaching Council appointed by the Minister must be persons nominated after notification of the Teaching Council vacancy in the *Gazette* and consultation by the Minister undertaken in accordance with subsection (3).
- (2) A *Gazette* notice must specify the appointment process and must list the criteria for appointment specified in subsections (3) and (4).
- (3) At least 1 of the appointed members must be appointed after the Minister consults, as the Minister thinks fit, representatives of parent and community interest groups in relation to schools and early childhood services.
- (4) When considering whether to appoint a member of the Teaching Council, the Minister must—
 - (a) take into account each candidate's ability to carry out the duties of a member of the Teaching Council and represent the public interest; and
 - (b) have regard to the collective skills, experience, and knowledge of members of the Teaching Council, including (without limitation) the candidate's knowledge and experience in any of the following areas:
 - (i) education:
 - (ii) governance:
 - (iii) leadership experience and skills:
 - (iv) financial skills:
 - (v) understanding of the partnership principles of Te Tiriti o Waitangi.

535B Further obligations of code administrator

A code administrator must—

- (a) exercise and perform all of its functions, powers, and duties in a manner that honours Te Tiriti o Waitangi and supports Māori–Crown relationships; and
- (b) report annually to the Minister on the exercise and performance of its functions, powers, and duties, including the extent to which providers and signatory providers are giving effect to their obligations under the codes, and publish the report on an Internet site maintained by or on behalf of the code administrator; and
- (c) provide information to the Minister, at the request and in the form specified by the Minister, relating to—
 - (i) the performance of its duties and functions; and
 - (ii) the performance of providers and signatory providers in meeting the requirements of a code.

536A How DRS operator must perform role

- (1) A DRS operator must perform and exercise its functions, powers, and duties in a manner that contributes to an education system that honours Te Tiriti o Waitangi and supports Māori–Crown relationships by—
 - (a) resolving disputes in a way that—
 - (i) has regard to tikanga Māori; and
 - (ii) is consistent with the principles of Te Tiriti o Waitangi; and
 - (b) responding to the concerns and interests of Māori in the administration and operation of the scheme.
- (2) A DRS operator must perform and exercise its functions, duties, and powers—
 - (a) in a manner that is fair and reasonable in the relevant circumstances; and
 - (b) having regard to—
 - (i) the general law; and
 - (ii) best practice for dispute resolution; and
 - (iii) in the case of a particular dispute, the provisions of a code issued under section 534 that is relevant to the dispute.
- (3) In the adjudication of any dispute, a DRS operator, or a person appointed as an adjudicator, must determine the dispute according to the substantial merits of the case and—
 - (a) is not bound by the rules of evidence or by previous decisions; and
 - (b) is not required to give effect to strict legal obligations, or to legal forms or technicalities.

APPENDIX III

GLOSSARY OF PROVISIONS IN THE EDUCATION AND TRAINING ACT 2020 AFFECTED BY CABINET'S FEBRUARY 2026 DECISION AND THE AGREED CHANGES

Section 3 provides an outline of the Act and its parts. *Section 3(2)(e)* notes that Part 1 of the Act covers 'Te Tiriti o Waitangi', among other preliminary matters. Cabinet agreed to standardise the reference to the treaty in this subsection, so it instead refers to both the Treaty of Waitangi and te Tiriti o Waitangi.¹

Section 4 sets out the purposes of the Act. *Section 4(d)* states that one of the purposes of the Act is to 'establish and regulate an education system that', among other purposes, 'honours te Tiriti o Waitangi and supports Māori–Crown relationships.' Cabinet agreed to standardise the reference to the treaty in this subsection, so it instead refers to both the Treaty of Waitangi and te Tiriti o Waitangi.² Amendment of the treaty standard of 'honours' in this section remains subject to a further decision by Minister Goldsmith.³

Section 6 concerns the 'statement of expectations' that may be jointly issued by the Minister of Education and the Minister for Māori Crown Relations: Te Arawhiti, for the purposes of providing equitable outcomes for all students. The statement sets expectations for MOE and NZQA, among other bodies. Before issuing the statement, the Ministers must consult Māori. Under *section 6(2)*, 'the statement must specify what those agencies must do to give effect to public service objectives (set out in any enactment) that relate to Te Tiriti o Waitangi.' Cabinet agreed to standardise the reference to the treaty in this subsection, so it instead refers to both the Treaty of Waitangi and te Tiriti o Waitangi.⁴

Section 9 is a descriptive treaty provision. *Section 9(1)* lists the 'main provisions of this Act that recognise and respect the Crown's responsibility to give effect to Te Tiriti o Waitangi', while *section 9(2)* lists '[o]ther provisions related to Te Tiriti o Waitangi in the context of the regulation of the education system.' Cabinet agreed to standardise the reference to the treaty in this section, so it instead refers to both the Treaty of Waitangi and te Tiriti o Waitangi.⁵ Cabinet also agreed that the treaty standard of 'give effect to' in *section 9(1)* be amended to 'take into account'.⁶

1. Document A52, p 144; memo 3.2.19, p 1

2. Document A52, p 144; memo 3.2.19, p 1

3. Memorandum 3.2.19, pp 1, 4

4. Document A52, p 144; memo 3.2.19, p 2

5. Document A52, p 144; memo 3.2.19, p 2

6. Memorandum 3.2.19, p 2

Section 32 sets out the purpose of the Part 3 of the Act, which covers primary and secondary education. *Section 32(h)* states that the purpose of Part 3 is to ‘establish a schooling system that supports all learners/ākonga to gain the skills and knowledge they need to be lifelong learners/ākonga and fully participate in the labour market, society, and their communities’ by, among other things, ‘honouring Te Tiriti o Waitangi and supporting Māori–Crown relationships that make a difference to learning’. Cabinet agreed to standardise the reference to the treaty in this section, so it instead refers to both the Treaty of Waitangi and te Tiriti o Waitangi.⁷ Amendment of the treaty standard of ‘honouring’ remains subject to a further decision by Minister Goldsmith.⁸

Section 398B sets out the purpose of the Part 4A of the Act, which covers wānanga. It states that the purpose of Part 4A is to ‘provide for the establishment, modification, and administration of wānanga in a manner that gives effect to the principles of Te Tiriti o Waitangi and supports Māori–Crown relationships’. Cabinet agreed to standardise the reference to the treaty in this section, so it instead refers to both the Treaty of Waitangi and te Tiriti o Waitangi.⁹ Amendment of the treaty standard of ‘gives effect to’ remains subject to a further decision by Minister Goldsmith.¹⁰

Section 476 sets out the process for Ministerial appointment of members to the Teaching Council of Aotearoa New Zealand. The Teaching Council is the professional body responsible for ensuring that teachers are qualified, and maintain behaviour and performance standards.¹¹ *Section 476(4)(b)(v)* requires Ministers, when considering whether to appoint a member, to have regard to the skills and knowledge of the candidate, including in ‘understanding of the partnership principles of Te Tiriti o Waitangi’. Cabinet agreed to standardise the reference to the treaty in this section, so it instead refers to both the Treaty of Waitangi and te Tiriti o Waitangi.¹²

Section 535B sets out the obligations of a code administrator. Currently, NZQA fulfils this role.¹³ They administer the code issued by the Minister of Education, which ‘provide[s] a framework for the well-being and safety of’ domestic tertiary students, including those attending wānanga.¹⁴ The code administrator monitors the tertiary providers for compliance with the code, including the extent to which the purposes of the code are being met. Significantly, one of the purposes of the current code is to ‘contribut[e] to an education system that honours Te Tiriti o

7. Document A52, p 144; memo 3.2.19, p 2

8. Memorandum 3.2.19, pp 2, 4

9. Document A52, p 144; memo 3.2.19, p 2

10. Memorandum 3.2.19, pp 2, 4

11. ‘Our Role’, Teaching Council of Aotearoa New Zealand, <https://teachingcouncil.nz/en/about-us/what-we-do/our-role>, accessed 30 April 2026

12. Document A52, p 144; memo 3.2.19, p 2

13. ‘NZQA as Code Administrator’, New Zealand Qualifications Authority, <https://www2.nzqa.govt.nz/tertiary/the-code/nzqa-as-code-administrator>, accessed 30 April 2026

14. Education and Training Act 2020, s 11, s 534

Waitangi.¹⁵ The code requires tertiary providers to have strategic goals in place for supporting the well-being of learners through (among other things) contributing to an education system that ‘honours Te Tiriti o Waitangi’. The code also requires tertiary providers to provide staff with training on te Tiriti, and learners with opportunities to use te reo and tikanga Māori.¹⁶ *Section 535B(a)* requires a code administrator to, among other things, ‘perform all of its functions, powers, and duties in a manner that honours Te Tiriti o Waitangi and supports Māori–Crown relationships’. Cabinet agreed to standardise the reference to the treaty in this section, so it instead refers to both the Treaty of Waitangi and te Tiriti o Waitangi.¹⁷ Cabinet also agreed that the treaty standard of ‘honours’ be amended to ‘take into account’.¹⁸

Section 536A sets out how a dispute resolution scheme operator must perform their role. The scheme is intended to resolve disputes between students and tertiary education providers regarding contractual and financial matters, or a claim for redress as a result of the breach of the well-being and safety code referred to above.¹⁹ DRS operators are also required, under current applicable rules, to take any action necessary to address concerns relating to the application of tikanga or treaty-inconsistency in the resolution of disputes.²⁰ *Section 536A(1)(a)(ii)* requires a DRS operator to perform its functions ‘in a manner that contributes to an education system that honours Te Tiriti o Waitangi and supports Māori–Crown relationships’, including by resolving disputes in a way ‘consistent with the principles of Te Tiriti o Waitangi’. Cabinet agreed to amend or repeal this section so that DRS operators, which are private entities, do not have Treaty requirements.²¹

15. New Zealand Qualifications Authority, *The Education (Pastoral Care of Tertiary and International Learners) Code of Practice* (Wellington: New Zealand Qualifications Authority, 2021), p 7

16. *Ibid.*, pp 12–13, 17

17. Document A52, p 144; memo 3.2.19, p 2

18. Memorandum 3.2.19, p 2

19. Education and Training Act 2020, s 536

20. Education (Domestic Tertiary Student and International Student Contract Dispute Resolution Scheme) Rules 2023, r 36(e)

21. Document A52, p 144; memo 3.2.19, p 2

