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

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

The Stage Two, Part 11 Report of the Education and Training Amendment Act and Te Mātaiaho Urgent Inquiry

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Pre-publication Version

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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.

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WELLINGTON

29 October 2026

Kei te mana o Niu Tireni he tukunga tēnei i te wāhanga whakamutunga mō Wai 3553, he ruku tātari ohotata mō te mātauranga te take. Kua rohi atu ngā mate o te tau, te kirikaiahi nā rātou te kupu i whakairo mō te noho a ngā iwi katoa ki raro i te mana o te Tiriti o Waitangi. Kāti ki ngā mate.

Ahakoa unuhia ai te Kāwanatanga i te wā nei, ā, e tū ana te motu ki te aroaro o te kōwhiringa pōti, e pono ana tā mātou mahi kia tutuki i tā te ture tohu mai ai, arā, kia wawe te putanga o ngā whakatau a Te Rōpū Whakamana i Te Tiriti o Waitangi. Nō reira, nō te roanga o tēnei tau i pupuke te hihiri, te mahara, te wānanga mō te take nei kia tae rawa atu ki tōna otinga. Ko tōna whakatau e puta mai ai hei whakaarotanga mā te iti me te rahi.

We enclose our stage two, part II report concerning statutory changes to school boards' obligations under the Education and Training Act 2020. Specifically, our report addresses the November 2025 removal of the explicit statutory obligation requiring school boards to ensure schools give effect to Te Tiriti o Waitangi. This obligation was contained in the former section 127(1)(d), which has since been replaced with altered

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requirements in section 127(2)(e). This is the third report we have released in this urgent inquiry. In May 2026, we released our stage one interim report concerning proposed changes to Tiriti provisions in the Act following the treaty clause review. In September 2026, we released our stage two, part I report concerning the Crown's changes to the national curriculum.

In 2017, Parliament introduced a statutory treaty obligation requiring school boards to 'take all reasonable steps to act in a manner that is consistent with the principles of the Treaty of Waitangi'. In 2020, Parliament strengthened the obligation by introducing section 127(1)(d), which required school boards to ensure schools 'give effect to Te Tiriti o Waitangi'. This provision was aligned with the Act's purpose in section 4(d) to establish an education system that 'honours Te Tiriti o Waitangi and supports Māori–Crown relationships'. Section 127(1)(d) also provided school boards with direction on how te Tiriti was to be given effect, including requirements related to te reo, mātauranga, and tikanga Māori, and achieving equitable outcomes for ākonga Māori.

In our report, we first consider the Crown's process in removing section 127(1)(d). Despite the Act's express purpose, the Crown adopted a process that excluded its treaty partner altogether. We found that process fell short of the standard of honour required of the Crown, breached its treaty obligations, and harmed the Māori–Crown relationship. In October 2025, the Crown abruptly proposed to remove section 127(1)(d), introducing the amendment at the Committee of the Whole House stage. This process blindsided Māori and bypassed any engagement on the reforms. Māori were not even afforded the opportunity to make a submission to the select committee about the changes. The Crown's failure to engage with Māori on something so significant was inconsistent with the Crown's own internal policy guidelines and official advice. It also failed to take account of views expressed by Māori educators just months earlier about the provision's importance when consulted on other reforms.

As a result, the Crown lacked feedback from whānau, hapū, iwi, school board members, and the wider education sector on the implications of its specific statutory changes. Compounding these deficiencies, there is no evidence the Crown sought official advice regarding its proposal. The rushed process carried out by the Crown also left no time for a Regulatory Impact Statement to inform Cabinet's decision to introduce the amendment. The time constraints on the Crown's process were ultimately self-imposed and, alongside the failure to consult Māori, meant the Crown proceeded without adequate information about the impacts of the statutory changes for ākonga Māori and Māori interests in schooling.

The Crown justified its removal of school boards' Tiriti obligation on the basis that schools are not part of the core Crown and it was inappropriate for boards, who are made up of parents and volunteers, to hold and discharge legal treaty responsibilities. We disagree with the Crown's reasoning here. School boards already bear significant statutory responsibilities, including responsibilities related to student and staff safety, human rights, and the appointment and dismissal of school staff. Since 2017, Parliament has considered it appropriate for school boards to hold and discharge treaty responsibilities. Indeed, in 2020, Parliament strengthened school boards' Tiriti obligation. School board members we heard from during our hearings thought it was entirely appropriate for them to hold this obligation. They explained how their school boards had been working to ensure schools give effect to te Tiriti in practice, actioning their section 127(1)(d) obligation capably and successfully. We consider it particularly noteworthy that after the provision's formal removal in November 2025, over 1,800 schools publicly committed to continuing to give effect to te Tiriti. That widespread response speaks powerfully to both the significance attached to the obligation within the education sector and the willingness of school boards to continue carrying it.

School boards are not part of the core Crown, and we do not suggest otherwise. But that does not resolve the issue. They are statutory entities established to govern schools within a compulsory, State-funded education system. Their statutory whakapapa to the Crown is undeniable. It is through school boards that many of the Crown's responsibilities for education are given practical effect in local communities. The Crown's treaty responsibilities cannot be severed from the exercise of those functions merely because Parliament has entrusted their local exercise to bodies outside the core Crown.

Indeed, the devolved nature of our schooling system makes an appropriate statutory mechanism for securing the observance of the Crown's treaty obligations more, not less, important. Section 127(1)(d) provided such a mechanism. The independent Ministerial Advisory Group appointed to consider section 127(1)(d) as part of the broader treaty clause review did not recommend its removal. It merely advised that whether school boards ought to be treated as 'the Crown' in treaty terms was 'worthy of analysis'. The Crown did not undertake that analysis and instead removed the obligation wholesale.

Having concluded that the Crown was not justified in its removal of school boards' explicit Tiriti obligation, we turned to consider the substantive content of the new section 127(2)(e). This replacement was deficient in several key respects. School boards still bear treaty-related

requirements – this is clear from section 9(2)(ba) of the Act, which lists section 127(2)(e) as one of the provisions in the Act 'related to Te Tiriti o Waitangi'. School boards must also have regard to the purpose provisions of the Act, including sections 4(d) and 32(h), which refer to honouring te Tiriti and strengthening Māori–Crown relationships. However, this is primarily a legal matter of statutory interpretation and is unlikely to be obvious to school boards. When school boards are looking to section 127 to understand their statutory responsibilities, they no longer see te Tiriti. In doing this, the Crown has created unnecessary ambiguity and sends an incorrect signal to school boards that the treaty is no longer important or relevant in their work. It introduces risk that the Crown's treaty obligations in the everyday schooling context will not be realised.

There are treaty-related requirements within the new section 127(2)(e), though they are not explicitly described as such in the section. After analysing the new provision, we determined that it does not adequately support treaty compliance in schooling, especially when compared with the strength of the prior section 127(1)(d). There is now no reference to ensuring boards' plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori, and te ao Māori. Instead, there is a general requirement to cater for 'New Zealand's cultural diversity'. In our view, subsuming Māori within that broader concept fails to recognise their distinct status as tangata whenua. Māori are not simply one cultural group among many. With regard to te reo Māori, the provision also shifted the onus from schools onto parents and caregivers to request instruction before school boards are required to act to ensure that instruction is provided. School boards are now only required to take action to ensure schools provide tuition in te reo Māori when it is requested by a parent or caregiver. This is a regression from the prior expectation and is a step back in the journey towards the normalisation of te reo Māori in schools. Rather than an obligation on school boards to ensure schools are 'achieving' equitable outcomes for Māori students, section 127(2)(e) now also contains a watered-down requirement for schools to 'seek to achieve' this. Given the longstanding and known educational inequities facing Māori, we wonder why the Crown would explicitly lessen this obligation.

Overall, we found that both the process followed by the Crown and the substance of its reforms breached the principles of the treaty. The Crown's process breached the principles of partnership, good government, and active protection. The substance of the statutory changes further breached the principles of active protection, good government, and equity. These breaches caused prejudice to Māori, including harm to the Māori–Crown

relationship, diminished statutory protection for important Māori interests, and the creation of unnecessary uncertainty about the place and relevance of te Tiriti in the everyday operation of schools. To mitigate this prejudice, we make the following recommendations.

First, we recommend that the Crown formally apologise to Māori for its breaches of the treaty arising from the removal of section 127(1)(d). An apology is necessary to acknowledge both the manner in which the Crown acted and the harm its actions have caused to the Māori–Crown relationship. The Crown removed a significant statutory Tiriti obligation abruptly, unilaterally, and without engagement with Māori, despite knowing both the importance of the provision to Māori and its obligation to engage with its treaty partner. That conduct was fundamentally at odds with the Act's stated purpose of establishing an education system that honours te Tiriti and supports Māori–Crown relationships. Acknowledging that failure is a necessary first step towards repairing the harm caused and rebuilding trust in the Māori–Crown relationship in education.

Secondly, we recommend that the Crown restore section 127(1)(d) to the Education and Training Act 2020 in its entirety. Restoration is necessary to remedy the substantive effects of the Crown's breaches. The provisions that replaced section 127(1)(d) do not provide equivalent statutory recognition of te Tiriti, and protection for te reo Māori, tikanga Māori, mātauranga Māori, or equitable outcomes for Māori students. Reinstatement would remove the ambiguity created by the reforms and, importantly, restore an express and substantive statutory Tiriti obligation on school boards.

We further recommend that, given the new section 127 now includes a paramount objective and essential supporting objectives (rather than the objectives being co-equal as originally enacted), the Crown work with Māori in the education sector to determine how the provision is to be reinstated within the present statutory framework, while preserving its full substance and effect.

Nāku noa nā

Kaiwhakawā Rachel Mullins
Presiding Officer

ABBREVIATIONS

ACT	Association of Consumers and Taxpayers
cl	clause
doc	document
ed	edition
fn	footnote
ltd	limited
NZSC	*Supreme Court of New Zealand*
p, pp	page, pages
para	paragraph
s, ss	section, sections (of an Act of Parliament)
sch	schedule
reg	regulation
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 full copy of the index to the record is available on request from the Waitangi Tribunal. All URLs were current at the time of publication.

CHAPTER 1

INTRODUCTION AND BACKGROUND / KUPU WHAKATAKI ME TE WHAKAMĀRAMA

1.1 What is at Issue in Part II

This stage two, part II report concerns the Crown's statutory changes to section 127 of the Education and Training Act 2020 – specifically, its removal of school boards' explicit Tiriti obligation in section 127(1)(d) and its replacement with new requirements in section 127(2)(e). Our report considers both the process the Crown followed in amending the section as well as the substantive content of the revised provision. Our part II report follows our stage two, part I report concerning the Crown's changes to Aotearoa New Zealand's national curriculum and, earlier, our stage one interim report concerning proposed changes to broader Tiriti provisions in the Education and Training Act 2020.

The claimants and interested parties submitted the process undertaken by the Crown to remove section 127(1)(d) was in breach of treaty principles as it lacked both engagement with Māori and 'a sufficient evidential basis to support the removal' of school boards' Tiriti obligation.[1] They submitted the removal of the explicit Tiriti obligation created a vacuum.[2] Claimants and interested parties also argued the replacement provision, section 127(2)(e), was an inadequate substitute for section 127(1)(d) and risked treaty interests not being honoured.[3] We discuss these submissions in more detail in chapter 3.

In response, the Crown acknowledged there was no consultation on the removal of section 127(1)(d) but submitted that officials provided 'robust advice' on impacts to treaty interests 'in the time available'.[4] To the Crown, the statutory amendments had to be considered in the context of the Education and Training Act 2020 as a whole.[5] It submitted the replacement provision and the rest of the Education and Training Act 2020 would continue to protect the treaty interests of ākonga Māori, especially as section 127(2)(e) contained obligations about seeking to achieve equitable outcomes for ākonga Māori, accessing te reo Māori, and recognising New Zealand's cultural diversity.[6]

1. Submission 3.3.31, p 13; see also submission 3.3.17, pp 16–17; submission 3.3.28, pp 23, 32, 34; submission 3.3.3, p 8; submission 3.3.27, p [7]
2. Submission 3.3.28, p 14; submission 3.3.17, p 21
3. See submission 3.3.31, pp 8–12; submission 3.3.8, p 9; submission 3.3.13, p 5; submission 3.3.28, p 13; submission 3.3.14(a), p 16; submission 3.3.27, p [12]
4. Submission 3.3.32, p 32
5. Ibid, p 25
6. Submission 3.3.32, pp 28–30, 32

1.1.1 The structure of this part II report

This report comprises three chapters. In chapter 1, we provide a contextual background on the role and function of school boards and outline the introduction (and later strengthening) of school boards' statutory treaty obligation. We then explain the process the Crown followed to reform section 127, including the incorporation of the provision in the Crown's treaty clause review, the introduction of an amendment paper to remove and replace section 127(1)(d) at the Committee of the Whole House stage of the relevant Bill, and the enactment of section 127(2)(e) in November 2025. In chapter 2, we then provide our analysis of four issues for determination, before setting out our findings and recommendations in chapter 3.

1.1.2 A note on terminology

In this report, we use the term 'obligation' to refer to the statutory requirement in section 127(1)(d) for school boards to ensure schools give effect to te Tiriti (now removed). While section 127 itself used the language of 'objective', a school board was required to have a strategy 'for achieving (or making progress towards achieving) its objectives' and an annual implementation plan for how the board intended to implement its strategy.[7] A board was also obliged to monitor and evaluate its performance 'in achieving (or making progress towards achieving) its objectives in accordance with its strategic plan' and its implementation of 'its strategy in accordance with its annual implementation plan'.[8] The expectations in section 127 were therefore obligatory in nature and we use 'obligation' to reflect this.

In addition, as with our stage one interim report, this stage two 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 Paparahi o Te Raki Inquiry* report (2014); 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'.[9] However, as the Education and Training Act 2020 refers to 'Te Tiriti o Waitangi' (and not the 'Treaty of Waitangi'), we use 'te Tiriti' or 'Tiriti' when discussing relevant requirements under the Act.

1.2 Background Context

In this section, we address how school boards acquired a statutory treaty obligation. First, we set out the role and functions of school boards, including their reporting requirements, composition, and relationship with the Crown. Next, we outline the introduction of a statutory treaty obligation for school boards in

7. Education and Training Act 2020, s 138(1)(a), (b) (version as at 22 October 2025). We note that these requirements remain in sections 138 and 145 of the Act (version as at 1 October 2026).

8. Ibid, s 145(1)(a), (b) (version as at 22 October 2025)

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

2017. We then discuss how the Crown strengthened this obligation through the introduction of section 127(1)(d) in 2020.

1.2.1 The role and functions of school boards

School boards were first created in 1989 as a result of the Tomorrow's Schools reforms. These reforms, effected by the Education Act 1989, significantly altered the management and regulation of the education system. The reforms shifted responsibility for the management of schools from the Department of Education and regional education boards to school boards, thereby decentralising school governance.[10] At this time, the Ministry of Education was established to serve as the steward of the education system, while the Education Review Office and the New Zealand Qualifications Authority were established to monitor schools and student assessment, respectively.[11] School boards are categorised as Crown entities under the Crown Entities Act 2004.[12]

In 2020, the Education Act 1989 was repealed and replaced by the Education and Training Act 2020, which sets out a range of responsibilities, powers, and functions for school boards.[13] These include 'setting the policies by which the school is to be controlled and managed', and its strategic direction.[14] School boards are responsible for employing staff, including the school principal, and can suspend or dismiss staff.[15] School boards must ensure the principal and staff implement the national curriculum.[16] Kura Kaupapa Māori school boards have additional powers and responsibilities, such as ensuring te reo Māori is the principal language of instruction and 'the school operates in accordance with Te Aho Matua'. Te Aho Matua is the statement that sets out the approach to teaching and learning for Kura Kaupapa Māori, prepared by Te Rūnanga Nui o Nga Kura Kaupapa Māori o Aotearoa as te kaitiaki o Te Aho Matua and gazetted by the Minister of Education.[17]

Alongside these roles and responsibilities, school boards have planning and reporting requirements. School boards must develop strategic plans, annual implementation plans, and annual reports.[18] Strategic plans are three-yearly plans that outline the board's strategy to achieve, or make progress towards achieving, its statutory obligations in section 127 of the Education and Training Act 2020.[19] Annual implementation plans correspond to strategic plans and outline how the

10. Document A42, p 4
11. Ibid; '1989 – Key Events', 23 September 2025, NZ History, Manatū Taonga – Ministry for Culture and Heritage, https://tinyurl.com/29f75vuw, accessed 28 October 2026
12. Document A42, p 3; see also Education and Training Act 2020, s 153; Crown Entities Act 2004, s 7
13. See Education and Training Act 2020, ss 118–137 (version as at 1 October 2026); doc A43, p 2
14. Education and Training Act 2020, s 125(2) (version as at 1 October 2026); doc A42, p 3
15. Education and Training Act 2020, ss 128–129 (version as at 1 October 2026)
16. Ibid, ss 127(2)(f), 164(a) (version as at 1 October 2026); see also doc A42, p 5
17. Education and Training Act 2020, ss 10, 201(8), (9), 202 (version as at 1 October 2026)
18. See ibid, ss 134, 138 (version as at 1 October 2026)
19. Ibid, s 138(1)(a) (version as at 1 October 2026)

strategy will be implemented.[20] School boards must monitor and evaluate their performance in achieving or progressing their obligations and annual goals.[21] The annual report must specify any variation from these plans and report on the school's performance.[22]

A school board is typically comprised of three to seven parent representatives elected from within the school community, alongside the principal, a staff representative, and, in the case of schools with students in Year 9 or above, a student representative.[23] Elections for parent and staff representatives are typically held triennially.[24] The size of the board depends on the size and structure of the school.[25] Boards can 'co-opt' additional members to improve gender, skill, or ethnic balance. The Ministry of Education can also appoint extra members.[26] The principal is the chief executive of the school board.[27] Board membership 'is not a paid position', but members can be compensated by the board for travel costs and receive attendance fees, the amount of which is set by the board.[28]

As a consequence of the schooling sector being fully funded and compulsory, state and state-integrated schools have a higher level of accountability to the Crown compared to other sectors of the education system and other types of schools, such as charter schools and private schools.[29] Accordingly, the Ministry of Education monitors and evaluates the performance of school boards and is empowered alongside the Minister of Education and Secretary for Education to make certain interventions when concerns are raised about a school.[30] For example, the Minister of Education can dissolve the board and appoint a commissioner where the Minister has 'concern about the operation of the school or the welfare or educational performance of its students'.[31]

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20. Education and Training Act 2020, s 138(1)(b) (version as at 1 October 2026)

21. Ibid, s 145 (version as at 1 October 2026)

22. Ibid, ss 134(1), (8), 145 (version as at 1 October 2026)

23. Document A43, p 2; see also Education and Training Act 2020, s 119 (version as at 1 October 2026)

24. Document A43, p 2; 'What Is a School Board', 25 August 2026, Ministry of Education, https://tinyurl.com/3wum33y4, accessed 28 October 2026; 'The Role of the School Board', 13 March 2026, Ministry of Education, https://tinyurl.com/4b6dmr98, accessed 28 October 2026

25. Document A43, p 2. For example, State-integrated schools must also include at least one proprietor representative: see doc A42, p 3.

26. Document A43, p 2

27. Education and Training Act 2020, ss 125(3), 130(1) (version as at 1 October 2026)

28. 'The Role of the School Board', 13 March 2026, Ministry of Education, https://tinyurl.com/4b6dmr98, accessed 28 October 2026; Education (School Boards) Regulations 2020, reg 19 (version as at 6 July 2026)

29. Document A42, pp 3–4, see also fn 6

30. Document A43(a), p 94; doc A42, p 4; see also Education and Training Act 2020, s 171 (version as at 1 October 2026). The Education Review Office also regularly reviews school boards' performance and legislative and regulatory compliance: see doc A43(a), p 94. In the case of Kura Kaupapa Māori, 'the Secretary must consult with te kaitiaki o Te Aho Matua' before intervening: Education and Training Act 2020, s 188 (version as at 1 October 2026).

31. Education and Training Act 2020, s 171(1), (3), see also s 183 (version as at 1 October 2026)

1.2.2 The introduction of a statutory treaty obligation for school boards in 2017

Prior to 2017, school boards did not have a statutory treaty obligation. Instead, from 1993, school boards were required to consider the treaty as part of the national education goal of increasing participation and achievement for Māori by progressing Māori education initiatives, such as education in te reo Māori, and education consistent with treaty principles.[32] Schools boards were further required to consider how they could contribute to each goal, in their particular circumstances, and to show how they had done so.[33]

In 2001, the Education Act 1989 was amended to require that school charters (equivalent to strategic and implementation plans today) contain a section that includes 'the aim of developing, for the school, policies and practices that reflect New Zealand's cultural diversity and the unique position of the Maori culture'.[34] School charters were also expected to contain a section specifying 'the aim of ensuring that all reasonable steps are taken to provide instruction in tikanga Maori (Maori culture) and te reo Maori (the Maori language) for full-time students whose parents ask for it'.[35]

In 2017, the then National-led Government revised and consolidated the existing statutory requirements for school boards and established a statutory treaty obligation.[36] Schedule 6, clause 16, titled 'Cultural diversity, Treaty of Waitangi, tikanga Māori, and te reo Māori', was inserted to the Education Act 1989. This required that:

> (1) A board must take all reasonable steps to ensure that the policies and practices for its school reflect New Zealand's cultural diversity and the unique position of the Māori culture.
> (2) In performing its functions and exercising its powers, a board must take all reasonable steps to act in a manner that is consistent with the principles of the Treaty of Waitangi.
> (3) Without limiting subclauses (1) and (2), a board must take all reasonable steps to provide instruction in tikanga Māori (Māori culture) and te reo Māori (the Māori language) for full-time students whose parents ask for it.[37]

32. Submission 3.3.32(a), pp 67, 75

33. Waitangi Tribunal, *The Mokai School Report* (Wellington: Legislation Direct, 2000), p 67; 'The National Education Guidelines', 26 March 1993, *New Zealand Gazette*, 1993, no 58, https://tinyurl.com/2s43zfbe, p 1086

34. Education Standards Act 2001, s 14; submission 3.3.32, pp 14–15

35. Education Standards Act 2001, s 14; submission 3.3.32, p 15; submission 3.3.32(a), p 1. Official advice from October 2016 in advance of these changes also noted then guidance from the New Zealand School Trustees Association (now Te Whakarōputanga Kaitiaki Kura o Aotearoa – the New Zealand School Boards Association) recommended governing in a manner that fulfils the intent of the treaty 'by valuing and reflecting New Zealand's dual cultural heritage': see submission 3.3.32(a), p 75.

36. These changes were introduced through the Education (Update) Amendment Act 2017, which amended the Education Act 1989.

37. Education Act 1989, sch 6, cl 16; Education (Update) Amendment Act 2017, s 158(1), sch 2

Thus, the treaty obligation in 2017 was built upon the earlier requirements on school boards to recognise Māori culture, as captured in school charters since 2001.[38] Progressing further, in 2017, clause 16(2) required school boards to take all reasonable steps to act consistently with the principles of the treaty when performing and exercising their functions and powers.

In addition to introducing a statutory treaty obligation for school boards, the 2017 amendment also established that the primary objective for school boards would be to ensure 'every student at the school is able to attain his or her highest possible standard in educational achievement'.[39] To support this primary objective, the amendment to the Education Act 1989 outlined several actions the school board had to satisfy, such as ensuring the school is physically and emotionally safe for all students and staff and 'is inclusive of and caters for students with differing needs.'[40]

1.2.3 Strengthening the treaty obligation: section 127(1)(d)

In 2018, the then Labour-led Government established the Tomorrow's Schools Independent Taskforce to 'review the provision of compulsory schooling . . . with a focus on developing a schooling system that promotes equity and excellence for all young people, and prepares them for the challenges and opportunities they will face in the future.'[41] Following a consultation process on its interim report with 5,000 submitters, the Taskforce provided its final report in September 2019. It advised that the treaty and the rights of the child must be the foundation of the system.[42]

On 30 August 2019, Ministry of Education officials advised the then Minister of Education, the Honourable Chris Hipkins, and the then Associate Minister of Education and Minister of Māori–Crown Relations: Te Arawhiti, the Honourable Kelvin Davis about how the Education and Training Bill could 'reflect Te Tiriti o Waitangi'.[43] As referred to, officials' advice followed the Tomorrow's Schools review, and the Tomorrow's Schools Independent Taskforce's emphasis on the importance of biculturalism and the treaty in the schooling system.[44]

In their report to ministers, Ministry of Education officials advised that the education system was not delivering on the rights guaranteed to Māori under the treaty.[45] In officials' view, these rights included the right to education opportunities 'based in tikanga, matauranga, and te ao Māori and to be taught in te reo māori'

38. Submission 3.3.32(a), p 2
39. Education Act 1989, sch 6, cl 5(1); Education (Update) Amendment Act 2017, s 158(1), sch 2
40. Education Act 1989, sch 6, cl 5(2); Education (Update) Amendment Act 2017, s 158(1), sch 2
41. Document A43(e)(i), p 45, fn 3; Tomorrow's Schools Independent Taskforce, 'Our Schooling Futures: Stronger Together / Whiria Ngā Kura Tūātinitini' (Wellington: Ministry of Education, 2019), p 4
42. Tomorrow's Schools Independent Taskforce, 'Our Schooling Futures', pp 4, 5, 8; see also submission 3.3.32(a), p 47
43. Submission 3.3.32(a), p 43
44. See ibid, p 44
45. Ibid, p 43

and the right to education that supports their identity, language, and culture.[46] Officials further advised the absence of these rights resulted in inequitable outcomes for ākonga Māori.[47] In response to the Tomorrow's Schools Independent Taskforce report and following advice from officials, Minister Hipkins agreed to strengthen school boards' obligations with respect to the treaty.[48]

In August 2020, the Labour-led Government repealed the Education Act 1989 and replaced it with the Education and Training Act 2020. The reform intended to strengthen the Crown's obligations to the treaty in the education system, including by establishing a treaty provision (section 4(d)), which was absent from the Education Act 1989, and by requiring school boards to ensure schools give effect to te Tiriti. In the new statute, school board obligations were outlined in section 127, which read as follows:

> (1) A board's primary objectives in governing a school are to ensure that
> (a) every student at the school is able to attain their highest possible standard in educational achievement; and
> (b) the school—
> (i) is a physically and emotionally safe place for all students and staff; and
> (ii) gives effect to relevant student rights set out in this Act, the New Zealand Bill of Rights Act 1990, and the Human Rights Act 1993; and
> (iii) takes all reasonable steps to eliminate racism, stigma, bullying, and any other forms of discrimination within the school; and
> (c) the school is inclusive of, and caters for, students with differing needs; and
> (d) the school gives effect to Te Tiriti o Waitangi, including by—
> (i) working to ensure that its plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori, and te ao Māori; and
> (ii) taking all reasonable steps to make instruction available in tikanga Māori and te reo Māori; and
> (iii) achieving equitable outcomes for Māori students.[49]

The regulatory impact statement accompanying the Education and Training Bill stated, in relation to equity, '[t]here is strong and consistent evidence that education outcomes for Māori students are inequitable and that that situation often leads to negative life outcomes'.[50] However, it added, it was well documented that education outcomes improved when whānau had a decision-making role and a student's

46. Ibid
47. Ibid, pp 43–44
48. Ibid, pp 44–45
49. Education and Training Act 2020, s 127(1)(d) (as enacted). The school boards requirements came into force 1 August 2020 with te Tiriti requirements in section 127(1)(d) being effective from 1 January 2021 to allow schools to prepare for the changes. See also Education and Training Act 2020, s 2(3) (version as at 1 October 2026); submission 3.3.15(a), p 21.
50. Submission 3.3.15(a), p 3

culture, identity, and language were incorporated into education.[51] Furthermore, it explained, the requirement for school boards' to ensure their plans, policies, and local curriculum 'reflect local tikanga, mātauranga Māori, and te ao Māori recognise[d] the importance of reflecting all students' culture, identity and values within school life'.[52] It also recognised that 'te reo, tikanga, mātauranga Māori, and te ao Māori are taonga and that the Crown has a duty to actively protect Māori tino rangatiratanga rights in respect of taonga'.[53]

Section 127 of the Education and Training Act 2020, as outlined above, expanded the primary objectives for school boards. Alongside educational achievement, previously contained in the Education Act 1989,[54] sat three additional primary objectives, all with equal weighting. Section 127(1)(d), the fourth primary objective, required school boards to ensure schools give effect to te Tiriti and specified ways in which they were required to do so. As stated in the new provision, this included working to ensure its plans and policies reflected local tikanga Māori, mātauranga Māori, and te ao Māori, making instruction available in tikanga and te reo Māori, and achieving equitable outcomes for Māori students.[55] According to Ministry of Education officials' advice to education ministers in September 2025, the intention of requiring boards to make available instruction in te reo Māori and tikanga Māori, generally, and not just for students whose parents requested it (as was contained in the Education Act 1989 and described above) was to support the revitalisation of te reo Māori and to respond to Te Ture mō Te Reo Māori Act 2016 (the Māori Language Act), which expressed the Crown's commitment to partner with Māori to promote and protect te reo Māori.[56]

The section 127 obligations also came with planning and reporting requirements for school boards, including a three-yearly strategic plan outlining how the obligations in section 127 would be achieved, a corresponding annual implementation plan, and an annual report, as set out in section 1.2.1.[57] The Education (School Planning and Reporting) Regulations 2023 were introduced to specify the contents of these plans and required a school board's strategic plan include the board's strategy for giving effect to te Tiriti. This included its strategies for:

(i) working to ensure that its plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori, and te ao Māori; and
(ii) achieving equitable outcomes for Māori students; and

51. Submission 3.3.15(a), pp 3, 6
52. Ibid, p 11
53. Ibid
54. Under the Education Act 1989, the primary objective for school boards was 'to ensure every student at the school is able to attain his or her highest possible standard in educational achievement' with requirements to satisfy this. This was added through the 2017 amendments outlined above. See Education (Update) Amendment Act 2017, s 158, sch 2; Education Act 1989, sch 6, cl 5.
55. Education and Training Act 2020, s 127(1)(d)(i)–(iii) (as enacted)
56. Document A43(a), pp 208, 210, see also p 212
57. See Education and Training Act 2020, ss 138–146 (as enacted)

(iii) taking all reasonable steps to make instruction available in tikanga Māori and te reo Māori.[58]

These requirements did not apply to specified kura boards, who instead were to 'include a general statement about how the kaupapa of the board's school reflects Te Tiriti o Waitangi'.[59] Boards of Kura Kaupapa Māori could also 'develop strategic goals that reflect Te Aho Matua and local tikanga'.[60]

Annual implementation plans had to include, among other things, targets for meeting the strategic goals, actions the board would undertake to meet these goals, and 'information describing how annual targets and intended actions will support the board to give effect to Te Tiriti o Waitangi'.[61] This last requirement did not apply to specified kura boards, which were instead to 'include a general description of how the kaupapa of the kura reflects Te Tiriti o Waitangi'.[62] Relatedly, annual reports were to report 'on how the board has given effect to Te Tiriti o Waitangi, including the progress and achievement of Māori students and the progress made towards making instruction available in tikanga and te reo Māori'.[63] These regulations were amended as part of the removal of section 127(1)(d), as set out below in section 2.4.1, and will form part of our analysis.

58. Education (School Planning and Reporting) Regulations 2023, reg 7(1)(f) (version as at 26 June 2023)

59. Ibid, reg 7(3) (version as at 26 June 2023). A 'specified kura board' is defined as 'the board of any of the following: a Kura Kaupapa Māori'; 'a designated character school with a character that is hapū- or iwi-based or that affiliated with Ngā Kura ā Iwi o Aotearoa'; 'a State integrated school with a special character that is hapū- or iwi-based': ibid, reg 3 (version as at 26 June 2023).

60. Ibid, reg 7(2)(a) (version as at 26 June 2023)

61. Ibid, reg 9(1) (version as at 26 June 2023)

62. Ibid, reg 9(2) (version as at 26 June 2023)

63. Ibid, reg 10(1)(b) (version as at 26 June 2023)

CHAPTER 2

THE CROWN'S REFORM PROCESS / TE KŌKIRI WHAKAHOU A TE KARAUNA

2.1 Introduction

In this chapter, we outline the policy process that led to the removal of section 127(1)(d) of the Education and Training Act 2020 in November 2025. The Crown's reform of section 127(1)(d) evolved through two separate, but overlapping, policy processes. The first process, which we outline in section 2.2, was the Crown's proposal to amend section 127 to make educational achievement the 'paramount objective' for school boards and to make the requirement to give effect to te Tiriti an 'essential supporting objective'. This amendment would be introduced through the Education and Training Amendment Bill (No 2). The second process, which we set out in section 2.3, was the Crown's inclusion of section 127(1)(d) in its treaty clause review. As we explain in section 2.4, while both processes were advanced in parallel, the Crown agreed to remove school boards' explicit Tiriti obligation through the introduction of an Amendment Paper introduced to the Committee of the Whole House stage of the Education and Training Amendment Bill (No 2).

2.2 The Paramount Objective for School Boards

In this section, we outline the Crown's reform of section 127 of the Education and Training Act 2020 to make educational achievement the 'paramount objective' for school boards. As noted above, a related implication of this change would be to demote school boards' Tiriti obligation to an essential supporting objective. We begin with the relevant November 2023 coalition agreement commitment, before summarising feedback received during consultation on the proposed amendment. We also explain how the wording of the amendment changed during the course of the policy process, and we conclude with the introduction of the Education and Training Amendment Bill (No 2) to Parliament.

2.2.1 Initial proposals to promote educational achievement

On 24 November 2023, the New Zealand National Party (National) and ACT New Zealand (ACT) coalition agreement committed to '[a]mend the Education and Training Act 2020 to enshrine educational attainment as the paramount objective for state schools'.[1]

1. Christopher Luxon and Winston Peters, *Coalition Agreement: New Zealand National Party & New Zealand First* (Wellington: New Zealand House of Representatives, 24 November 2023), p 8

In May 2024, the new Minister of Education, the Honourable Erica Stanford, received advice on possible mechanisms to embed her schooling priorities in schools' work programmes.[2] Ministry of Education officials advised that section 127 was already 'broadly aligned with [her] priorities', but should she want to pursue a legislative intervention, amending school boards' duties would be the strongest lever to do so. This was because school boards' duties direct what schools must give effect to, compared to other statutory mechanisms, such as the National Education and Learning Priorities,[3] which schools are required only 'to consider when undertaking their functions'.[4]

Upon Minister Stanford's request, in June 2024 Ministry of Education officials advised her on potential formulations for promoting educational achievement in section 127, such as making 'educational achievement the *sole* primary objective for school boards with the other objectives becoming *essential* supporting objectives'.[5] Officials advised this formulation would mirror the obligations formerly contained in the Education Act 1989.[6] However, they cautioned promoting educational achievement to the top priority risked 'be[ing] seen as downgrading the importance of Te Tiriti/the Treaty objective for school boards' and, '[a]lthough not the intention, this could be seen as an act of bad faith and inconsistent with the principle of partnership'.[7]

Regarding consultation on the reforms, Ministry of Education officials recommended public engagement, including with Māori, as opposed to the options of targeted consultation or no consultation.[8] Officials advised that 'the Crown has a duty to actively protect Māori interests and taonga' and that the courts had 'determined the Crown must take reasonable steps to make informed decisions on matters that affect Māori interests under the principle of partnership'.[9] Officials explained that consultation was important to identify unintended consequences and facilitate 'a more informed decision-making process', particularly where Māori interests are affected.[10] They stated that carrying out no consultation at all on the reforms would fall well short of best practice.[11] To enable time for 'full and meaningful consultation', including with Māori, officials advised the reforms could form part of the Education and Training Amendment Bill (No 3) (then estimated to be introduced to the House in late December 2025).[12] If Minister Stanford decided to pursue the proposals through the earlier Education and Training Amendment Bill

2. Document A43(a), p 1
3. Section 5 of the Education and Training Act 2020 empowered the Minister of Education to issue a statement of National Education and Learning Priorities, which school boards were to have particular regard to: See Education and Training Act 2020, ss 5, 127 (as enacted).
4. Document A43(a), pp 1, 4–5
5. Ibid, p 12 (emphasis added)
6. Ibid, pp 18–19
7. Ibid, p 19
8. Ibid, pp 21–22
9. Ibid, p 22
10. Ibid, pp 21–22
11. Ibid, p 22
12. Ibid, pp 12–13, 23

(No 2), officials cautioned the public consultation period would be short and only allow for consultation with select stakeholders and Māori groups. Furthermore, since the intention was for the Education and Training Amendment Bill (No 2) to be introduced in March 2025 and enacted in November or December 2025, schools would be left with limited time to incorporate new objectives into strategic plans, which would come into effect on 1 January 2026. Consequently, the Ministry did not recommend progressing amendments through the earlier Education and Training Amendment Bill (No 2).[13]

Ultimately, in August 2024, Minister Stanford recommended Cabinet agree to public consultation on the proposals to amend the Education and Training Act 2020, including by 'amending section 127 of the Act to make educational achievement the primary objective for school boards with the achievement of the other objectives expressed as necessary to meet the primary one'.[14] Addressing the 'Case for Change', Minister Stanford noted '[t]he schooling sector alone [was] comprised of around 2,500 separate Crown entities i.e. school boards', and explained that '[t]o be successful, the Government 'need[ed] these entities to be working to support my vision, and our targets and priorities'.[15] Minister Stanford explained the rationale for reinstating educational achievement as the primary objective for schools was '[t]o create greater governance focus on lifting student achievement' and deliver 'clarity on the purpose and focus of the other objectives'.[16] Additionally, schools had many priorities and objectives which, in her view, affected their ability 'to focus on getting the basics right'.[17] Overall, Minister Stanford explained her desire 'to progress changes that will help schools and kura to focus on the right things so that every child gets the opportunity to achieve to the best of their ability'.[18]

In her Cabinet paper, Minister Stanford explained that promoting educational achievement to become the only 'primary objective' would, 'by implication', mean the existing primary objectives, including the explicit Tiriti obligation, would lose their 'primary status'.[19] She considered public consultation would help the Government to understand the extent of concerns regarding the change and, should the amendment be pursued, the Ministry of Education would 'work with the sector to ensure that schools continue to give effect to the other objectives in order to meet their primary one'.[20] Minister Stanford proposed the amendment be consulted on from September to October 2024 and be incorporated into the Education and Training Amendment Bill (No 2) (the earlier Bill).[21]

13. Ibid, pp 13, 22–23
14. Ibid, pp 36, 37, 49
15. Ibid, p 42
16. Ibid, pp 43, 45
17. Ibid, p 42
18. Ibid, p 43
19. Ibid, p 49
20. Ibid, p 47
21. Ibid, pp 49, 50

At this stage, we note Minister Stanford did not propose removing school boards' explicit Tiriti obligation. Instead, the Tiriti provision would be retained but as a 'supporting objective' to the primary objective.[22] Minister Stanford did, however, propose a minor amendment to section 127(1)(d), to relocate the requirement that schools achieve equitable outcomes for Māori students to the start of the Tiriti provision in section 127(1)(d), as opposed to its subparagraphs.[23] According to an illustrative example appended to the Cabinet paper, the new section would provide that:

> (2) To meet the primary objective, the board must—
>
> . . . . .
>
> (e) ensure that the school gives effect to Te Tiriti o Waitangi, and achieves equitable outcomes for Māori students, including by
>
> (i) working to ensure that its plans, policies, and teaching and learning programmes reflect local tikanga Māori, mātauranga Māori, and te ao Māori;
>
> (ii) taking all reasonable steps to make instruction available in tikanga Māori and te reo Māori.[24]

The Minister explained that this reordering 'would increase the visibility of this existing requirement and strengthen schools' focus on lifting the achievement of Māori students.'[25]

As we will discuss further in our analysis, Minister Stanford also proposed to remove the objective in section 127(1)(b)(ii) that school boards give effect to relevant student rights under the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. Minister Stanford considered this to be an 'unnecessary objective' that duplicated requirements on school boards already set out in those Acts.[26]

On 21 August 2024, the Cabinet Social Outcomes Committee agreed for the Ministry to publicly consult on the changes, as proposed by Minister Stanford.[27] Significant to our inquiry, the Committee also agreed for section 127(1)(d) to 'be considered for inclusion' in the Government's treaty clause review'.[28] This was not a recommendation in Minister Stanford's Cabinet paper, but something she supported in discussions during the Cabinet Social Outcomes Committee meeting.[29] On 26 August 2024, Cabinet confirmed the Cabinet Social Outcomes Committee decisions, including the release of the consultation document.[30]

22. Document A43(a), p 41
23. Ibid, p 44
24. Ibid, p 52
25. Ibid, p 44
26. Ibid, p 41; see Education and Training Act 2020, s 127(1)(b)(ii) (as enacted)
27. Document A43(a), pp 37, 38
28. Ibid, p 38
29. Ibid, p 134. As noted in Minister Stanford's letter to Minister Goldsmith in March 2025.
30. Document A43(a), p 60

2.2.2 Public consultation on making education achievement the paramount objective

From 2 September 2024 to 14 October 2024, the Ministry of Education publicly consulted on the proposals to amend section 127, as agreed to by Cabinet on the 26 August 2024.[31] Important for our purposes, the only items nominated for removal at the time of consultation were the objective that school boards give effect to relevant student rights under the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993 as well as specific provisions relating to the statement of National Education and Learning Priorities.[32] Section 5 of the Education and Training Act 2020 empowered the Minister of Education to issue a statement of National Education and Learning Priorities which was required to be consistent with objectives for early childhood, primary, and secondary education, as contained in section 5(4). These objectives included (among other things) 'to instil, in each child and young person, an appreciation of the importance of Te Tiriti o Waitangi and te reo Māori' and were to be retained, while the rest of section 5 was earmarked for removal.[33] These consultations, therefore, did not consider the removal of school boards' explicit obligation to ensure schools give effect to te Tiriti.[34]

In November 2024, the Ministry of Education reported to Minister Stanford and Associate Minister of Education, the Honourable David Seymour, on the public consultation and sought decisions on the proposals in response.[35] The Ministry of Education reported it received 1,381 submissions from a variety of stakeholders, including '435 form-submissions on behalf of the Green Party' of Aotearoa New Zealand.[36] Alongside the official submissions received, the Ministry of Education cited a survey undertaken by Te Whakarōpūtanga Kaitiaki Kura o Aotearoa – the New Zealand School Boards Association of its members on the proposed changes 'of their own volition', which had 511 respondents.[37]

Feedback from Māori stakeholders, as summarised by the Ministry of Education, showed mainly conditional support for the proposed reforms. The Mātauranga Iwi Leaders Group (delegated by the National Iwi Chairs Forum to represent iwi within the education sector) commented that any reforms to the Education and Training Act 2020 must be consistent with the treaty and that any changes to the education system 'must not diminish te reo me ōna tikanga, mātauranga-ā-iwi and mātauranga a-hapū, which the Crown is required to protect

31. Ibid, p 62. Feedback could be made through an online survey or via email to the Ministry of Education: doc A12, p 4; doc A12(a), pp 7–8; see also doc A43(a), p 62.
32. Document A43(a), p 49
33. At this juncture, Minister Stanford proposed to remove the provisions relating to the statement of National Education and Learning Priorities while retaining the education and learning objectives contained in section 5(4): doc A43(a), pp 45–46, 49; Education and Training Act 2020, s 5 (as enacted).
34. See doc A43(a), p 49
35. Document A43(a), p 61
36. Ibid, pp 61, 62
37. Ibid

and . . . should be made with ngā iwi, hapū and whānau views at the forefront to best deliver improved results for ākonga Māori.'[38]

Rangitāne Tū Mai Rā Trust (the post settlement governance entity for Rangitāne o Wairarapa and Rangitāne o Tamaki nui-ā-Rua) supported the Tiriti provision being retained, and recommended stronger planning and reporting obligations for schools on how they gave effect to te Tiriti.[39] However, Te Huarahi Māori Motuhake (the national Māori governing body of the New Zealand Post Primary Teachers' Association – Te Wehengarua (Te Wehengarua) differed, recommending the proposals be paused so that thorough consultation could be undertaken with stakeholders.[40] Notably, the support of both the Mātauranga Iwi Leaders Group and Rangitāne for the proposal was predicated on school boards retaining the requirement to ensure schools give effect to te Tiriti.[41] In particular, the Mātauranga Iwi Leaders Group said their support was based on the Crown, through its ministers and officials, upholding the treaty 'by engaging with iwi and hapū prior to any changes to the Act being proposed in a Bill', retaining sections 9 and 127(1)(d), and 'prioritis[ing] Te Tiriti objective amongst the other supporting objectives'.[42]

Regarding broader feedback received during consultation, the Ministry of Education noted 80.5 per cent of submitters opposed the proposal to amend section 127 to make educational achievement the primary objective of school boards, including '[a]lmost all peak bodies and organisations'.[43] However, 58.2 per cent of the New Zealand School Boards Association survey respondents supported it (with 41.8 per cent opposed).[44] Of the submitters opposed to the amendment, many raised concerns regarding the demotion of the Tiriti obligation.[45] For example, the Ministry summarised that '[m]any submitters expressed concern this would deprioritise the other objectives such as those relating to safety and wellbeing and [was] an attempt to undermine giving effect to te Tiriti', and while some considered educational achievement to already be a core responsibility and focus for schools.[46] In response to submitters' feedback, the Ministry advised Minister Stanford and Associate Minister Seymour that concerns raised by respondents about the deprioritisation of supporting objectives would be mitigated by clearly stating that these objectives are 'essential support objectives' or are 'required to support the primary objective'.[47]

Regarding the proposal to move the requirement to achieve equitable outcomes for Māori students to the main text of section 127(1)(d), the Ministry reported 49.4

38. Document A43(a), p 69
39. Ibid
40. Ibid
41. Ibid, pp 67, 69, 70
42. Ibid
43. Ibid, pp 64, 69
44. Ibid, p 64
45. Ibid, p 70
46. Ibid, p 64
47. Ibid

per cent of submitters disagreed with the proposal (43 per cent agreed), while 64 per cent of New Zealand School Boards Association survey respondents agreed (36 per cent disagreed).[48] Submitters who supported the proposal emphasised that additional actions were needed to support equitable outcomes for ākonga Māori.[49] However, others expressed concern that mātauranga Māori, tikanga Māori and te reo Māori would be deprioritised.[50] The majority of survey respondents were supportive of the proposal, provided its focus was on lifting educational achievement for ākonga Māori and was not intended to undermine the treaty.[51] Some respondents considered the order of objectives to be unimportant and posited that the changes were unnecessary.[52] In response to this feedback, the Ministry advised Minister Stanford and Associate Minister Seymour that the 'proposal elevates schools' focus on improving educational achievement for Māori students' and should proceed.[53]

At this juncture, officials also advised on the proposal to remove school boards' objective to give effect to relevant student rights under the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993. Officials advised Minister Stanford and Minister Seymour that most submitters opposed the proposal. Submitters considered these rights needed to be visible as school boards 'are made up of laypeople with variable experience of governing schools' and removal 'could lead to board practices that are not consistent with these rights'.[54] Officials also advised removal could send a message that these rights were not important and school boards no longer needed to address them. They, therefore, recommended that the proposal not proceed.[55] We return to this issue in our analysis in chapter 2.

2.2.3 Final proposals to confirm educational achievement as the paramount objective for school boards

In December 2024, following further policy advice from officials,[56] Minister Stanford sought approval from the Cabinet Social Outcomes Committee and, in turn, Cabinet to amend school board priorities. In her paper to the Cabinet Social Outcomes Committee, Minister Stanford provided a high-level overview of the consultation process and feedback received, noting the feedback was 'mixed'.[57] While members of the public and stakeholders did not support the proposals, she stated, the New Zealand School Boards Association survey was more 'balanced'.[58]

48. Ibid, p 65
49. Ibid
50. Ibid
51. Ibid
52. Ibid
53. Ibid
54. Ibid
55. Ibid, pp 63, 65
56. For example, a regulatory impact statement was prepared by the Ministry of Education in November 2024 to inform policy decisions. This was made publicly available upon the introduction of the Education and Training Amendment Bill (No 2) in April 2025: see doc A43(a), pp 75–96.
57. Document A43(a), p 99
58. Ibid

Minister Stanford stated that the level of disagreement about her proposal to make education the primary objective for school boards was 'hugely concerning', and that it only strengthened her 'resolve to proceed with these changes'.[59]

In relation to concerns about the Tiriti obligation being demoted, Minister Stanford stated 'this will not be the case' as the existing 'objectives will remain very high priorities for school boards, because students cannot achieve educationally without first being safe and engaged in their learning environment'.[60] Furthermore, she said that schools would need to 'focus on lifting the achievement of Māori learners as a key means of giving effect to Te Tiriti' and considered the existing objectives (student wellbeing and safety; being inclusive and catering to students with differing needs; and giving effect to te Tiriti) would be 'necessary prerequisites for student achievement'.[61]

In light of these considerations, Minister Stanford recommended section 127 be amended to establish educational achievement as the sole primary objective, with the existing objectives as 'essential supporting objectives that school boards must fulfil to achieve the primary objective'. She also recommended the relocation of the requirement to achieve equitable outcomes for Māori in section 127(1)(d)(iii) to the start of the Tiriti provision.[62]

The Cabinet Social Outcomes Committee and Cabinet agreed to Minister Stanford's recommendations on 4 and 9 December 2024 respectively.[63] They also agreed to necessary consequential amendments be made to education regulations, including the Education (School Planning and Reporting) Regulations 2023.[64] Alongside this, Cabinet directed officials to explore the implications of strengthening educational achievement from a 'primary' objective to the 'paramount' objective, with the amended wording to be potentially introduced as part of the Education and Training Amendment Bill (No 2) or via an Amendment Paper during the legislative process.[65] We note that 'paramount' was the wording used in the National–ACT coalition agreement.[66]

On 21 January 2025, in response to Cabinet's directive, Ministry of Education officials reported to Minister Stanford regarding 'the implications of strengthening the reference from "primary" objective . . . to one that is "paramount" (or equivalent)'.[67] Officials advised that, while the terms were 'very similar, "paramount" has a suggestion of supremacy and could be understood to override all other objectives'.[68] Officials therefore sought confirmation from the Minister

59. Document A43(a), p 101, see also p 99
60. Ibid, p 100
61. Ibid, p 101
62. Ibid, pp 106–107
63. Ibid, pp 97, 110–115
64. Ibid, pp 98, 111
65. Ibid, p 111
66. Luxon and Peters, *Coalition Agreement*, p 8
67. Document A43(a), p 113
68. Ibid

regarding the policy intent of the reform 'and the relationship between the educational achievement objective and the other objectives'.[69]

Officials considered there were three possible options for the policy intent: (1) the non-primary objectives remain as essentially supporting objectives (the policy intent articulated to date and recommended by officials); (2) the non-primary objectives become 'secondary' objectives (and not essential supporting objectives); and (3) the primary objective of educational achievement overrides the other legal obligations in section 127.[70] Officials also asked the Minister to confirm, on the basis of her desired policy intent, whether she preferred the term 'primary' or 'paramount'.[71] While officials noted either term could be used, they considered 'primary' better suited to the first two and 'paramount' to the last policy intent.[72] They also proposed, should the Minister decide to use the term 'paramount', it ought to be defined in the Act 'in line with the relevant policy intent'.[73] Officials preferred an approach where the non-primary objectives were not overridden, including the Tiriti obligation.[74] They advised the 'paramount' option where it superseded the other objectives to be 'unworkable', and as posing 'a significant risk that student safety, inclusion, wellbeing, and Tiriti rights become compromised'.[75] This 'paramount' policy intent was included among the options 'for completeness'.[76]

On 10 February 2025, responding to officials' advice, Minister Stanford agreed to retain the existing policy intent (option one), meaning the other objectives would be 'expressed as essential supporting objectives'. Minister Stanford further confirmed the language of 'paramount' objective would be used rather than 'primary' objective and agreed to the term being defined in the Education and Training Act 2020 'so it unambiguously reflects the agreed policy intent'.[77]

On 16 February, Minister Stanford agreed to the Ministry of Education's request to conduct agency and Ministerial consultation on a draft Cabinet Legislation Committee paper relating to approvals for the Education and Training Amendment Bill (No 2).[78] The draft paper reflected Minister Stanford's decision to use 'paramount', following Cabinet's invitation to consider using that wording.[79]

On 10 March 2025, the Ministry of Education reported to Minister Stanford on the feedback it received as part of this agency and Ministerial consultation, which occurred from 20 to 28 February 2025,[80] and outlined the final draft Cabinet

69. Ibid
70. Ibid, pp 113, 115–116
71. Ibid, p 113
72. Ibid
73. Ibid, p 116
74. Ibid, p 113
75. Ibid, pp 116, 118, see also p 114
76. Ibid
77. Ibid, p 122
78. Ibid, pp 123, 126
79. Ibid, p 126
80. Ibid, pp 127, 128

Legislation Committee paper, including its draft disclosure statement. The summary of feedback on amending school board objectives (and removing power to issue a statement of National Education and Learning Priorities) reported that, in relation to the treaty, 'Minister Seymour's office raised concerns about the Te Tiriti o Waitangi related provisions in clause 6 and 8 of the Bill'.[81] The paper does not specify the nature of the concern, and how this feedback was incorporated into the Cabinet Legislation Committee paper, as it has been redacted.[82] We were also not provided with the draft Cabinet Legislation Committee paper, which means we cannot confirm the clauses this related to. However, when introduced, clause 6 of the Bill concerned the overarching Tiriti provision in section 9 of the Education and Training Act 2020 and clause 8 outlined the changes to section 127.[83]

Minister Stanford subsequently sought Cabinet's approval to introduce the Education and Training Amendment Bill (No 2) with the revised 'paramount' amendments to section 127.[84] In her Cabinet Legislation Committee paper, Minister Stanford stated the Bill complied with the principles of the treaty.[85] The Cabinet Legislation Committee paper noted expectations on the Crown to act consistently with the treaty and its principles generally, and 'in the design, delivery and monitoring of the education system'.[86]

In her paper, Minister Stanford emphasised section 4(d), which specifies a purpose of the Act is 'to establish and regulate an education system that honours Te Tiriti o Waitangi and supports Māori–Crown relationships', noting that decision-makers who are to comply with the new proposals will be expected to comply with this purpose.[87] The Cabinet Legislation Committee paper also said the Bill 'supports this Government's commitment to closing the equity gap' and establishing educational achievement as the paramount objective 'reinforces this Government's focus on lifting achievement and improving outcomes for all learners'.[88]

Minister Stanford's Cabinet Legislation Committee paper identified that, during the drafting process, 'it became apparent that moving the reference to "achieving equitable outcomes for Māori students" into the substantive part of the Te Tiriti o Waitangi section risked it being overlooked' so it was moved to now be at the beginning of the list of how school boards were to give effect to te Tiriti.[89] Minister Stanford's paper considered this 'better reflect[ed] the original policy intent, which was to give equitable outcomes greater visibility in this subsection of the Act and reduce the risk of it being missed'.[90]

81. Document A43(a), p 132
82. Ibid
83. See Education and Training Amendment Bill No 2 (140—1), cls 6, 8
84. Document A43(a), pp 140–141
85. Ibid, p 145
86. Ibid, p 150
87. Ibid
88. Ibid
89. Ibid, p 141
90. Ibid

A related development was Minister Stanford's decision to pursue the removal of section 5(4) of the Education and Training Act 2020, relating to education and learning objectives for early childhood, primary and secondary education. Minister Stanford sought approval for this through at oral item at the Cabinet Social Outcomes Committee on 11 March 2025.[91] This decision was approved by Cabinet on 17 March 2025.[92] This meant section 5 would be removed entirely and, with it, the overarching objective that early childhood, primary, and secondary education 'instil, in each child and young person, an appreciation of the importance of Te Tiriti o Waitangi and te reo Māori'.[93]

On 3 April 2025, the Cabinet Legislation Committee approved the Education and Training Amendment Bill (No 2) be introduced as soon as possible and be referred to the Education and Workforce Committee for its consideration.[94] Cabinet confirmed the decision of the Cabinet Legislation Committee on 7 April 2025.[95]

2.2.4 The Education and Training Amendment Bill (No 2)

Minister Stanford introduced the Education and Training Amendment Bill (No 2) on 7 April 2025. The Bill was accompanied by a departmental disclosure statement, dated 18 March 2025, and a regulatory impact statement, dated November 2024.

The departmental disclosure statement accompanying the Bill declared, in terms of consistency with the Government's treaty obligations, public consultation had been undertaken on the school board changes and the Ministry of Education had 'proactively considered the Te Tiriti o Waitangi implications' when developing the proposals.[96] According to the departmental disclosure statement, the draft Cabinet papers seeking final policy decisions were shared with Te Puni Kōkiri, allowing the treaty implications and Treaty Impact Analysis to be quality assured.[97] The Cabinet paper on school board obligations was also shared with Te Tari Whakatau.[98] All feedback was considered when developing the final Cabinet papers for the Bill.[99] The departmental disclosure statement also recorded the external consultation undertaken and reiterated the public consultation from September to October 2024 and the nature of feedback outlined in the December 2024 Cabinet paper, alongside the New Zealand School Boards Association survey, discussed above.[100]

The Bill passed its first reading and was referred to the Education and Workforce Committee on 14 May 2025. The select committee invited submissions on the

91. Ibid, p 129
92. Ibid, p 141
93. Ibid; Education and Training Act 2020, s 5(4)(e)(iii) (as enacted)
94. Document A43(a), pp 137, 138
95. Ibid, p 152
96. Document A59, p 14
97. Ibid
98. Te Tari Whakatau: The Office of Treaty Settlements and Takutai Moana was formerly named the Office for Māori Crown Relations – Te Arawhiti.
99. Document A59, p 15
100. Ibid, p 22

following day, which remained open until 12 June 2025.[101] The committee received 749 submissions, and 42 submitters were heard orally. Minister Stanford made an oral submission on 18 June 2025.[102] Claimants and interested parties in this inquiry submitted on the Bill at this stage. For example, Te Riu Roa – New Zealand Educational Institute (Te Riu Roa) raised issues with the earlier consultation process in its written submission.[103] With reference to the 'limited consultation process', it said: '[g]iven the importance and potentially wide-reaching impact this bill may have on . . . tamariki mokopuna, stakeholders expect[ed] high levels of engagement'.[104] Te Riu Roa further submitted: '[a]s the changes to section 127 did not arise from the sector, genuine co-design of the proposal should have been undertaken with a variety of stakeholders, whānau, iwi, hapū and school boards'.[105] This was of particular importance, given the 'proposal to demote Te Tiriti o Waitangi from being a standalone objective to a "supporting objective"', according to Te Riu Roa.[106]

The Education and Workforce Committee reported back on the Bill on 11 September 2025. The select committee recommended, by majority, the Bill be passed and made recommendations unanimously.[107] It did not suggest amendments to the new school board objectives.[108] To support the new objective, however, the select committee recommended extending the deadline for school boards to revise their strategic plans from 1 January 2026 to 1 January 2027.[109] The Bill passed its second reading on 15 October 2025.[110]

During the policy development and parliamentary processes for the section 127 amendments, there were also developments in the parallel treaty clause review process, particularly the inclusion of section 127(1)(d) within the scope of the review and the release of the report by the Ministerial Advisory Group, which had been established to advise ministers on the review of statutory treaty references. We now turn to this process.

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101. Education and Training Amendment Bill (No 2) (140—2), p 7; 'Education and Training Amendment Bill (No 2)', New Zealand Parliament Pāremata Aotearoa, 15 May 2025, https://tinyurl.com/3kezcvb6, accessed 28 October 2026

102. Education and Training Amendment Bill (No 2) (140—2) (select committee report), p 7

103. Document A12, pp 7–8

104. Te Riu Roa, 'Submission to [the] Education and Workforce Committee [concerning the] Education and Training Amendment Bill No 2', 12 June 2025, https://tinyurl.com/58zwuk7j, p [3]

105. Ibid

106. Document A12, p 7

107. Education and Training Amendment Bill (No 2) (140—2) (select committee report), p 1

108. The Education and Workforce Committee suggested the wording for the consequential amendment to the Education (School Planning and Reporting) Regulations match the wording of the new treaty clause as the Bill originally included 'local curriculum' not 'teaching and learning programmes', contrary to the intended change: see Education and Training Amendment Bill (No 2) (140—2), sch 2.

109. Education and Training Amendment Bill (No 2) (140—2) (select committee report), p 2, cl 29B

110. Education and Training Amendment Bill (No 2) (140—3) (legislative history), p 17

2.3 The Treaty Clause Review of Section 127(1)(d)

In this section, we outline the treaty clause review policy process that preceded the removal of section 127(1)(d). First, we discuss how section 127(1)(d) came to be included in the treaty clause review. Then we set out relevant commentary from the advice pack the Ministry of Justice provided the treaty clause review Ministerial Advisory Group regarding section 127(1)(d), after which we discuss the Ministerial Advisory Group's report. Lastly, we consider the Ministry of Education's response to this report. Where relevant, and to avoid duplication, we refer readers to our stage one interim report concerning wider amendments to the Education and Training Act 2020 in the context of the treaty clause review.

2.3.1 The inclusion of section 127(1)(d) in the treaty clause review

As noted in our stage one interim report, the treaty clause review stemmed from the coalition agreement between National and New Zealand First, which committed to review legislation referring to '[t]he Principles of the Treaty of Waitangi' and either make the references more specific or repeal them.[111]

After the coalition Government was sworn in, Cabinet determined the scope, process, and objectives for the review.[112] As part of the review, Cabinet agreed to establish a Ministerial Advisory Group to advise the Minister of Justice, the Attorney-General, the Minister for Regional Development, and the Minister for Māori–Crown Relations on proposals to retain, amend, or repeal treaty references.[113] As initially conceived, the review would consider only references to treaty principles. Accordingly, provisions of the Education and Training Act 2020 that referred specifically to 'te Tiriti' itself (and not its principles) were not originally within scope. Section 127(1)(d) is one such provision.

On 24 March 2025, however, Minister Stanford wrote to the Minister of Justice, the Honourable Paul Goldsmith, seeking confirmation that section 127(1)(d) had been included in the review.[114] Minister Stanford explained this issue was previously discussed at a Cabinet Social Outcomes Committee meeting on 21 August 2024, where she had advocated for it to be included.[115] As we noted in section 2.2.1, in this meeting the Cabinet Social Outcomes Committee agreed for section 127(1)(d) to 'be considered for inclusion' in the review.[116] Minister Stanford also acknowledged Cabinet had already agreed to several amendments to section 127(1)(d) as part of the Education and Training Amendment Bill (No 2). Despite this, Minister Stanford reiterated her desire for section 127(1)(d) to be included in the treaty clause review.[117] Minister Stanford also recognised 'this provision does

111. Luxon and Peters, *Coalition Agreement*, p 10
112. Waitangi Tribunal, *Hūtia te Rito o te Harakeke, kei Hea te Kōmako e Kō? The Interim Stage One Report of the Education and Training Amendment Act and Te Mātaiaho Urgent Inquiry – Pre-publication Version* (Wellington: Waitangi Tribunal, 2026), pp 19–25
113. See ibid, p 14
114. Document A43(a), pp 134, 138
115. Ibid, p 134
116. Ibid
117. Ibid

not refer to Treaty principles', and therefore, was not within the intended scope of the review. However, she posited it was 'a fundamental provision for school boards and we need to ensure boards are clear on their legal requirements, that they are achievable, and meet their communities' needs and aspirations.'[118] On 27 March 2025, Minister Goldsmith confirmed he had directed his officials to add section 127(1)(d) to the review and that it would be included in the Cabinet paper to be reviewed by the Cabinet Social Outcomes Committee on 2 April 2025 and Cabinet on 14 April 2025.[119]

As outlined in our stage one interim report, Ministry of Justice officials prepared an assessment framework for responsible agencies to use in a preliminary analysis of in-scope provisions as part of the treaty clause review.[120] The framework asked officials to consider how the provisions worked and had been applied in practice, what the intent of the provisions were, whether there was any relevant Waitangi Tribunal or other commentary, and what the potential consequences were of amending or repealing the provisions.[121] A summary of agencies' analysis was then prepared by the Ministry of Justice (which we refer to as the 'advice pack') to inform the Ministerial Advisory Group's report.[122] Next, we summarise the information the Ministry of Education provided to the Ministry of Justice to inform its advice pack.

The Ministry of Education provided its own preliminary assessment of relevant provisions in the Education and Training Act 2020 to the Ministry of Justice as part of the review's initial stages (due to the Ministry of Justice on 11 April 2025).[123] This paper did not represent the Ministry of Education's final advice,[124] but we include it here to show the development of officials' views on school board obligations in the course of the review. We note this assessment was undertaken around the time the Education and Training Amendment Bill (No 2) was introduced to the House.

As part of its analysis, the Ministry of Education articulated the intent and context of section 127(1)(d), consistent with its earlier advice on the Education and Training Amendment Bill (No 2) policy process. Officials explained a treaty obligation for school boards was originally introduced in 2017 to clarify their roles and responsibilities.[125] Section 127(1)(d), they noted, was intended to support section 4(d) by imposing relevant treaty responsibilities held by the Crown on school boards, and to address the persistent disadvantages facing Māori learners in the education system, following the Tomorrow's Schools Independent Taskforce report.[126] According to the Ministry of Education, the inclusion of 'give effect to' in

118. Document A43(a), p 134
119. Ibid, p 136
120. Document A54(b), pp 1–3
121. Ibid, pp 2–3
122. See Waitangi Tribunal, *Hūtia te Rito o te Harakeke, Interim Stage One*, p 14; doc A54(b), pp 3, 5
123. Document A43(e)(i), p 35
124. Document A43(e), p 1
125. Document A43(e)(i), p 44
126. Ibid

the Education and Training Act 2020 'was a response to help address the systemic issues that have resulted in inequitable outcomes for Māori learners.'[127] Policy decisions in relation to the introduction of section 127(1)(d) were made with the Tomorrow's Schools Independent Taskforce report and treaty obligations at the forefront.[128] The Ministry of Education said section 127(1)(d) 'recognises that the education system has not supported equitable outcomes for Māori learners and seeks to address this by placing an explicit obligation on school boards to address this.'[129] Officials explained the language used in the subparagraphs of section 127(1)(d) was intended to allow for flexibility.[130] For example, the words 'working to ensure' plans and policies reflected local tikanga, mātauranga Māori, and te ao Māori and 'taking all reasonable steps' to make instruction available in tikanga Māori and te reo Māori were intended to recognise that some schools would need to develop capacity and capability in these respects, including by forming relationships with local iwi and hapū.[131]

The Ministry of Education said '[s]chool boards are Crown entities with limited central control so regulatory levers are a critical intervention to achieve this outcome.'[132] Moreover, officials stated:

> State school boards are Crown entities established to deliver compulsory education in which the Crown has an ownership interest. As public education providers, it is appropriate that all school boards are required to operate in a manner which supports the Crown to meet its obligations under Te Tiriti, given schools are performing a core Crown/public function, and subject to reporting and monitoring requirements.[133]

The Ministry of Education explained how the provision had been applied in practice and said it was achieving its purpose. Officials identified strategic plans and reporting as the 'key lever to school boards to achieve their section 127 objectives', with boards' progress monitored by the Ministry of Education and the Education Review Office.[134]

As part of its initial assessment, the Ministry of Education analysed possible options for amending or repealing section 127(1)(d). Though these options did not represent developed policies, at this point, the Ministry of Education recommended section 127(1)(d) be retained as the provision was clear on treaty rights and what boards were to do to uphold these rights.[135] The Ministry of Education advised that section 127(1)(d) 'is critical to ensuring that the Crown upholds its Te

127. Ibid, p 45
128. Ibid
129. Ibid, p 46
130. Ibid, pp 46, 48, 49
131. Ibid, p 48
132. Ibid, p 46
133. Ibid
134. Ibid, p 47
135. Ibid, p 38

Tiriti obligations under section 4(d)'.[136] Accordingly, at this juncture, the Ministry of Education considered removing section 127(1)(d) would 'undermine the Crown's relationship with Māori'.[137] Officials considered removing the obligation was highly likely to 'be viewed as a breach of the Crown's Tiriti obligations' and give rise to a Waitangi Tribunal claim.[138] In their view, removing the obligation would 'not eliminate/remove Māori rights and interests' but 'it would remove clarity about the specific rights and interests within the context of the schooling system.'[139]

Thus, in the context of the initial stages of the treaty clause review, Ministry of Education officials recommended section 127(1)(d) be retained, and proposed a list of Māori and education stakeholders to be engaged with on any changes.[140]

2.3.2 Section 127(1)(d) and the Ministry of Justice's advice pack

On 3 June 2025, the Ministry of Justice provided its advice pack to the Ministerial Advisory Group, which explained the context for and intent of section 127(1)(d), consistent with the information provided by the Ministry of Education outlined above.[141] Officials noted the provision was to ensure the Crown upholds its treaty obligations in the education context by setting requirements on school boards consistent with the Crown's treaty obligations. Given this context, officials considered specific direction on school boards to be appropriate.[142]

Ministry of Justice officials advised the primary treaty principles relevant to section 127(1)(d) included: good governance, requiring the Crown 'to facilitate education that supports all ākonga Māori'; partnership, requiring school boards and Māori to act reasonably, honourably and in good faith; and active protection of tamariki Māori and Māori culture, including in relation to tikanga Māori, mātauranga Māori, and te ao Māori, and the 'protection of Māori rangatiratanga over those things'. Active protection also required the Crown to support equitable outcomes for Māori.[143]

With respect to retaining section 127(1)(d), Ministry of Justice officials acknowledged that some of the language used in the subparagraphs 'is inherently ambiguous', such as 'working to ensure' and 'taking all reasonable steps'. It noted, though, that the Ministry of Education had 'indicated that these provisions have been purposefully designed to enable the obligations' to be realistically met 'in the context of a particular school'.[144]

Officials advised it would be possible to amend section 127(1)(d) to include more consistent language in its subparagraphs. However, they also noted that

136. Document A43(e)(i), p 45
137. Ibid, p 49
138. Ibid
139. Ibid, p 50
140. Ibid, pp 38–39, 41–42
141. Document A54(b), pp 4, 5
142. Ibid, pp 75, 76
143. Ibid, p 75
144. Ibid, pp 30–31

the wording of the subparagraphs had been intentional and that the stronger wording in section 127(1)(d)(iii) to give effect to te Tiriti by 'achieving equitable outcomes for Māori students' was chosen to emphasise its importance. Amending the language to be 'more flexible would therefore signal a change in the degree of importance of this objective' and 'may be inconsistent with Cabinet decisions for the Education and Training Amendment Bill (No 2) that look to elevate the importance of equitable outcomes'.[145] Notably, officials did not advise on the possibility of amending section 127(1)(d) to lower school boards' commitment to the treaty below the existing 'give effect to' standard.

Most relevant for our inquiry, officials advised that repealing section 127(1)(d) would reduce the ability of the Minister of Education and Secretary for Education to intervene 'to ensure school boards take any action in respect of giving effect to the Treaty' and would likely lead to the removal of 'Treaty considerations from school boards' strategic and implementation plans'.[146] This would potentially 'result in less focus on Treaty considerations by schools' and create compliance issues in relation to section 4(d), whereby the education system is to honour te Tiriti and support Māori–Crown relationships.[147] Although school boards would still be subject to section 4(d) if section 127(1)(d) was repealed, in their view, repealing the provision 'would create confusion about how school boards are to give effect to the s[ection] 4 purpose'.[148]

2.3.3 The Ministerial Advisory Group's report

On 8 August 2025, the Ministerial Advisory Group delivered its report to the members of the Ministerial Oversight Group: Minister Goldsmith; the then Attorney-General, the Honourable Judith Collins; Minister for Māori Crown Relations: Te Arawhiti, the Honourable Tama Potaka; and Minister for Regional Development, the Honourable Shane Jones. The Ministerial Oversight Group was responsible for making in-principle decisions for the treaty clause review, subject to Cabinet approval, as described in our interim stage one report.[149]

The report identified inconsistencies in references to the treaty in the provisions of the Education and Training Act 2020. The Ministerial Advisory Group considered '[t]he policy intent for these inconsistencies is not clear', but noted they were 'not in a position to offer policy advice as that is outside our remit' and it was up to the Crown and Parliament to determine how, and the extent to which, the treaty was incorporated in the Education and Training Act 2020.[150]

In its report, the Ministerial Advisory Group stated the language of the provision was 'vague and subjective', such as 'equitable outcomes', 'working to ensure', and 'all reasonable steps'. It noted further specificity might not be possible 'given the discretion available to Boards', but greater certainty might be possible if the

145. Ibid, p 31
146. Ibid, pp 77–78
147. Ibid, pp 75, 77–78
148. Ibid, p 30
149. Waitangi Tribunal, *Hūtia te Rito o te Harakeke, Interim Stage One*, pp 13–14
150. Document A52, pp 51, 52

provision incorporated 'in the opinion of the Board'.[151] The report said the use of 'including by' in terms of how boards give effect to the treaty should be reviewed because 'it suggests more things are required but gives no hint as to what they might be'.[152] The report also considered the wider obligation of school boards giving effect to the treaty, suggesting that such an obligation 'may be too strong', noting that while they are Crown entities, they are 'at least partially elected at [the] local level'.[153] The report said '[w]hether it is appropriate to treat them as part of the Crown in the context of a Treaty partner is worthy of analysis', but was ultimately a policy question for the Crown and Parliament, as was establishing one paramount objective instead of four primary objectives.[154] It did not, however, suggest or recommend what this standard should be, or take a position on whether this duty was inappropriate for school boards. The Ministerial Advisory Group did recommend section 127(1)(d) be amended 'to standardise the reference to the Treaty', so it referred to both texts of the treaty.[155]

The Ministerial Advisory Group also made general observations regarding treaty standards that were relevant to section 127(1)(d). Regarding the strength and appropriateness of different standards, the Ministerial Advisory Group stated 'an official may be able to "give effect to" a Treaty principle'.[156] However, it commented, 'it may be more appropriate for a Crown entity or non-Crown organisation to "take account of" Treaty principles rather than "give effect to" them because there may be other relevant factors to be taken account of'.[157] Where the actor was not part of the Crown and Parliament intended to direct or delegate implementing some of the Crown's treaty obligations, to 'assist the Crown to give effect to its obligations under the Treaty' was suggested.[158] The Ministerial Advisory Group, however, intentionally did not address the question of who or what is the Crown.[159] Meanwhile, for Crown entities and non-Crown organisations which needed to weigh treaty considerations against other factors, 'have regard to' or 'take into account' could be used.[160] The Ministerial Advisory Group ultimately considered standards to be a decision for the Crown.[161]

2.3.4 Ministry of Education advice on the Ministerial Advisory Group's report

On 13 August 2025, Minister Goldsmith provided Minister Stanford with the Ministerial Advisory Group's report and informed her its review of in-scope

151. Document A52, p 57. Section 127(2)(e) was the replacement provision for section 127(1)(d) that, at this point, retained much of the content of section 127(1)(d), only replacing 'local curriculum' with 'teaching and learning programmes'.
152. Ibid, p 58
153. Ibid
154. Ibid
155. Ibid
156. Ibid, p 33
157. Ibid, p 31
158. Ibid, pp 33, 36
159. Ibid, p 33
160. Ibid, pp 33, 37
161. Ibid, p 34

provisions, including those in the Education and Training Act 2020, was complete.[162] In his letter, Minister Goldsmith suggested the Ministerial Advisory Group's recommendations 'be considered in the context of the Education and Training Amendment Bill (No 2)' 'for clarity and consistency', and asked Minister Stanford to confirm whether she supported this approach.[163]

Following receipt of the Ministerial Advisory Group's report, the Ministry of Education provided advice to Minister Stanford, along with the Honourable Penny Simmonds, Minister for Tertiary Education and Skills, and the Honourable Shane Reti, Minister for Universities, on 17 September 2025.[164] As noted above in section 2.2.4, the Education and Workforce Committee reported on the Education and Training Amendment Bill (No 2) on 11 September 2025, meaning the Ministry of Education's advice was provided less than a week later.

With respect to consultation, the Ministry of Education advised '[t]he Crown is expected to develop Te Tiriti provisions in consultation, and, where possible, in partnership with Māori.'[165] Officials advised against a targeted approach to consultation because of the strong attachment to the 2020 changes within the education sector and the likelihood the changes would cause significant debate.[166] Officials also cited the risk of damage to the Māori–Crown relationship and claims to the Waitangi Tribunal if changes were introduced unilaterally or with minimal consultation.[167]

Specific to section 127(1)(d), Ministry of Education officials noted the Ministerial Advisory Group report 'recommends clarifying school board obligations and considering whether the requirement to "give effect" to te Tiriti is an appropriate obligation given their status as Crown Entities at least partially elected at a local community level.'[168] In response, officials recommended against changes to section 127(1)(d) 'without further engagement and design with Māori.'[169] Regarding the Ministerial Advisory Group's view that further policy work was needed, including how a proposed provision should be worded, Ministry of Education officials advised that this work 'would be significant and controversial.'[170]

Officials advised the education ministers that 'Ministers need to consider the relevance of Te Tiriti as a whole, not just its application within schools' when making decisions.[171] According to officials, amending 'Te Tiriti in the Education and Training Act 2020 is a significant and controversial task that we consider will lead to widespread public debate and potentially conflict within the education system

162. Document A43(a), p 175
163. Ibid, p 175
164. Ibid, p 200
165. Ibid, p 201
166. Ibid, pp 201, 202
167. Ibid, p 202
168. Ibid
169. Ibid
170. Ibid, p 203
171. Ibid, p 201

that would distract from the Government's education reform programme.'[172] Officials advised of the treaty's relevance in education and the obligations on the Crown, including 'obligations to support Māori educational success' and kaupapa Māori educational models and emphasised the relevance of education to society generally, such as building society's understanding of the treaty and supporting te reo Māori and mātauranga Māori.[173] In their view, these general obligations were relevant to section 127 as the 2020 changes 'created an expectation of integration of te reo Māori across all schools' and 'were driven in part by a policy objective of supporting language revitalisation'.[174]

As mentioned in our stage one interim report, Ministry of Education officials met with Minister Stanford's Māori Education Ministerial Advisory Group on 16 September 2025. The Māori Education Ministerial Advisory Group was not given the Ministerial Advisory Group's report or the draft Ministry of Education report and instead was asked for general comments on the treaty in legislation. Ministry of Education officials noted the Māori Education Ministerial Advisory Group considered high-level treaty provisions to 'have significant direction-setting effect' and act 'as a signal to Māori of the Crown's intentions'.[175] The Māori Education Ministerial Advisory Group emphasised the Crown's approach to engagement and policy development had to comply with the treaty, which 'means working in good faith with Māori' when developing treaty references and 'including Māori in the education system'. Ministry officials reported '[t]he group was concerned that the process followed so far is not Tiriti-compliant.'[176] The group also stated that ākonga Māori educational success depended on institutions and staff understanding, and having the capability to fulfil, their treaty responsibilities.[177]

This September 2025 Ministry of Education report also explained previous Ministry of Education advice on the development of section 127(1)(d). Consistent with the information the Ministry of Education provided to the Ministry of Justice in the initial stages of the review, officials explained section 127(1)(d) emerged from the Tomorrow's Schools Independent Taskforce's recommendation that the system be founded on the treaty and address inequitable achievement for Māori students in English-medium schools.[178] Thus, the rationale for plans and policies having to reflect te reo Māori, mātauranga Māori, and tikanga Māori 'was to ensure boards work with iwi and hapū in partnership when developing these documents to actively protect Māori educational interests'. Officials were aware this could be challenging for boards and iwi and hapū depending on what systems and policies they had in place, which was recognised by using the words 'work to ensure', which meant it was not an absolute duty.[179] The former requirement

172. Document A43(a), p 201
173. Ibid, p 203
174. Ibid, p 208
175. Ibid, p 205
176. Ibid
177. Ibid
178. Ibid, pp 209–210
179. Ibid, p 210

that parents had to request instruction in tikanga and te reo Māori was 'extended and strengthened' to one where boards were to 'take reasonable steps' to enable such instruction. The obligation to achieve equitable outcomes for Māori students 'was to reflect that this obligation sits directly with the Crown' and address the education system's insufficient support for such outcomes 'by placing an explicit obligation on school boards to address this.'[180]

As set out in our stage one interim report, officials considered if Minister Stanford wished to amend the Education and Training Act 2020 following the treaty clause review, there were four key questions regarding English-medium schools Cabinet would need to determine before changing the Act. These were:

- 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.[181]

Officials provided analysis and commentary on possible responses to these questions in relation to section 127(1)(d). They believed fairness could be achieved by 'a system that enables each individual to achieve their fullest potential' and by supporting the system to address and overcome barriers that prevent educational achievement.[182] Officials considered the new wording as proposed for section 127 in the Education and Training Amendment Bill (No 2) was consistent with this approach. They noted fairness could be framed 'as applying to everyone equally' and not refer to specific groups, but did not recommend this approach because, they argued, not including 'a statement of fairness relating to Māori in a system as fundamental as education' would seem 'out of step' with the constitutional status of the treaty.[183]

Next, officials advised on 'the role of tikanga Māori, te reo Māori, and inclusion of te ao Māori, supporting the Crown's obligations to ākonga Māori'. They advised the Ministry of Education's 'long-standing position has been that an educational environment that recognises and respects a student's language and culture, is a critical part of student engagement and quality teaching'.[184] However, 'teaching for diversity', in itself, did not guarantee educational success, according to officials.[185] With reference to a 'more knowledge-rich curriculum', 'regulation of the teaching profession' and 'the accountability of schools for their performance in delivering student outcomes', they argued 'multiple separate factors' improved outcomes for

180. Ibid
181. Ibid, pp 204, 209
182. Ibid, p 210
183. Ibid, p 211
184. Ibid, pp 211–212
185. Ibid

students.[186] However, officials recommended inclusivity in schools be maintained, with 'reference to the role of tikanga and te reo in supporting educational success of ākonga Māori'.[187] Officials further noted some of these elements, such as te reo and tikanga Māori, were an optional matter of parental choice before the 2020 changes to the Act were implemented.[188] They advised reverting to this approach 'would not support the Crown's wider obligations towards te reo and mātauranga Māori' but 'would go some way to supporting the policy objective of Māori learner success'.[189] It is unclear what officials meant by this.

The Crown's obligations regarding te reo and mātauranga Māori were 'not just about the educational success of students, but about the school system's contribution to a broader set of objectives and Crown legal obligations', according to officials. These arose from Tribunal findings on Crown 'obligations to protect te reo and mātauranga Māori as Taonga.'[190] Many changes introduced through the Education and Training Act in 2020 were designed to reflect this. Officials stated that 'under current constitutional settings it is clear that the education system has a role to play in supporting these broader obligations', but they 'could be made clearer including by distinguishing between the Crown's obligations at a system level, and those of an individual school'.[191] Officials, however, did not make any specific suggestions regarding these issues.

In sum, Ministry of Education officials proposed that any changes to Tiriti provisions, including section 127, be developed in consultation, and ideally in partnership, with Māori; and that additional cross-government policy work on school boards' status as Crown entities be undertaken before any changes to section 127. Officials further advised education ministers of the relationship between section 127(1)(d) and the Crown's broader treaty obligations, including those related to equity, te reo Māori, and mātauranga Māori. Officials identified that section 127 reflected the then Government's commitment to revitalising the Māori language, and was introduced to address the education system's failure to support equitable outcomes for ākonga Māori.

2.4 The Removal of Section 127(1)(d)

In this section, we outline where the Crown's earlier reform of section 127 and the treaty clause review overlapped through the Crown's proposal to introduce an Amendment Paper to the Education and Training Amendment Bill (No 2) to remove school boards' explicit Tiriti obligation. This Amendment Paper, as we set out next, would be introduced at the Committee of the Whole House stage of

186. Document A43(a), pp 211–212
187. Ibid, p 212
188. Ibid
189. Ibid
190. Ibid
191. Ibid, p 213. Note, with respect to providing choice, officials considered this was sufficiently achieved in the current system and issues were practical ones: ibid, p 212.

the Bill. We then discuss the response of Māori and education stakeholders to its removal.

2.4.1 Amendment Paper 428

We do not know Minister Stanford's direct response to the September 2025 Ministry of Education report. The next step, according to the evidence before us, was Minister Stanford's October 2025 Cabinet paper, where she proposed the removal of section 127(1)(d) and, therefore, the explicit obligation on school boards to ensure schools give effect to te Tiriti. This was pursued without any prior public engagement on the proposal.

In October 2025, Minister Stanford sought agreement from the Cabinet Social Outcomes Committee to remove section 127(1)(d) from the Education and Training Act 2020 via an Amendment Paper during the Committee of the Whole House stage of the Education and Training Amendment Bill (No 2).[192] Minister Stanford noted the review of legislative references to treaty principles had made a series of recommendations, which 'focus[ed] on clarifying the status of the Treaty and the specific duties various educational institutions should be required to discharge in meeting Treaty obligations'.[193] Minister Stanford further explained she had previously sought section 127(1)(d)'s inclusion in the treaty clause review, as the Education and Training Amendment Bill (No 2) was being progressed, to 'get expert advice and align to broader Treaty reference changes'.[194]

Minister Stanford noted the Ministerial Advisory Group had 'questioned whether, as Crown Entities, the standard of commitment for school boards is appropriate' and 'whether greater specificity can be provided in respect of boards' specific duties, noting that terms such as "working to ensure" and "taking all reasonable steps" are vague'.[195] In light of this, Minister Stanford proposed the school board obligation to give effect to te Tiriti be removed, because 'schools are not part of the core Crown and school boards are elected by communities' and '[i]t is not reasonable for parents and volunteers who make up boards to hold and discharge legal responsibilities in respect of the Treaty'.[196] Minister Stanford considered sections 4(d) and 32 would mean the Crown's treaty responsibilities would be retained. She noted that the Crown would also continue to support te reo Māori and kaupapa Māori education.[197]

In addition to removing school boards' explicit Tiriti obligation, Minister Stanford also proposed to 'replace' the section 127(1)(d) Tiriti duties with three new obligations.[198] The first, she outlined, would reflect that schools should 'seek to achieve equitable outcomes for Māori students'.[199] Minister Stanford explained

192. Ibid, pp 214, 215, 219
193. Ibid, p 214
194. Ibid
195. Ibid, p 216
196. Ibid
197. Ibid
198. Ibid, pp 216, 219
199. Ibid, p 216

this replacement 'reflect[ed] the need to elevate Māori educational achievement and success'.[200] However, unlike section 127(1)(d), the reference to equity would no longer be accompanied by a reference to the treaty.

The second obligation would require school boards to 'take all reasonable steps to provide for teaching and learning in te reo Māori to students whose parents or caregivers request it'.[201] Minister Stanford explained this replacement 'reflect[ed] that some families consider providing for teaching in te reo important to their child's education, while others do not' and that the provision would aim 'to provide choice to families to enable their child/children to be educated in line with their family's aspirations'.[202] As introduced in section 1.2.3, the original section 127(1)(d)(ii) wording required school boards to ensure the school gave effect to te Tiriti, including by 'taking all reasonable steps to make instruction available in tikanga Māori and te reo Māori'. The new wording would contain no reference to tikanga Māori and make school boards' obligation related to te reo Māori provisional on parental or a caregiver's request.

Lastly, the third obligation would require school boards to 'take reasonable steps to ensure that the policies and practices for its school reflect New Zealand's cultural diversity, including te ao Māori'.[203] Minister Stanford explained this replacement 'reflects that some schools have a high proportion of Māori students and it is appropriate that such a school should conduct its affairs in a way that reflects . . . te ao Māori'.[204] As noted in section 1.2.3, the original wording of section 127(1)(d)(i) required school boards to ensure the school gave effect to te Tiriti, including by 'working to ensure that its plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori, and te ao Māori'. In contrast, this replacement would contain no reference to local tikanga, mātauranga Māori, plans, or local curriculum.

This replacement wording for the third obligation was also nearly identical to the wording of section 133 of the Education and Training Act 2020, which at the time provided '[a] board must take all reasonable steps to ensure that the policies and practices for its school reflect New Zealand's cultural diversity'. Noting the amendment would make section 133 'superfluous', Minister Stanford recommended section 133 also be repealed.[205]

Overall, Minister Stanford considered the third obligation would establish 'a clearer and more appropriate legal standard' by which school boards would be held accountable. The move to a knowledge-rich curriculum would, in her view, also mean 'we now need less emphasis on individual schools adapting curricula'.[206] She noted further that the new curricula 'include more concepts drawn from te

200. Document A43(a), p 216
201. Ibid, p 219
202. Ibid, p 217
203. Ibid, p 219
204. Ibid, p 217
205. Ibid, p 219
206. Ibid, p 217

ao Māori . . . than previous curricula' and stated she had 'been careful to avoid the Crown seeking to define or take over mātauranga Māori'.[207] She was also of the view that the Education and Training Act 2020 would continue to enable kura Māori to deliver mātauranga Māori as they had under previous legislation since the 1980s.[208]

With respect to 'population implications', Minister Stanford's Cabinet paper said the changes sought to deliver choice to families, 'prioritise [the] attainment of equitable education outcomes for Māori and support schools with large Māori populations to conduct themselves in accordance with tikanga and te ao Māori'.[209]

Minister Stanford also noted a regulatory impact statement was not prepared because of time constraints, and instead directed officials to conduct a Post-Implementation Review, with the scope and delivery of this review to be jointly agreed to by the Minister of Education, the Minister for Māori Development, and the Minister for Regulation.[210] No consultation had been undertaken on the Cabinet Social Outcomes Committee paper, but the Department of Prime Minister and Cabinet and the Ministry of Justice were aware of the proposals and the sector would be informed of the changes 'at the first available opportunity'.[211]

On 15 October 2025, the same day the Education and Training Amendment Bill (No 2) passed its second reading, the Cabinet Social Outcomes Committee agreed to remove the requirement that school boards must give effect to te Tiriti as well as to related amendments, and authorised the introduction of an Amendment Paper at the Committee of the Whole House stage of the legislative process to do so. The Cabinet Social Outcomes Committee also agreed for a Post-Implementation Review of the changes to be conducted.[212] Cabinet confirmed these decisions on 20 October 2025.[213]

On 3 November 2025, Minister Stanford introduced Amendment Paper 428, proposing the removal of school boards' explicit Tiriti obligation, along with other amendments agreed to by Cabinet in October 2025. The wording used in the Amendment Paper was different to what was proposed by Minister Stanford and agreed to by the Cabinet Social Outcomes Committee and Cabinet. The obligation relating to cultural diversity omitted the reference to 'te ao Māori'. It instead obliged the board to ensure it 'takes reasonable steps to ensure that the policies and practices for the school reflect New Zealand's cultural diversity'.[214] We do not have evidence explaining when or why this change was made.

207. Ibid
208. Ibid
209. Ibid, p 218
210. Ibid, pp 218, 220
211. Ibid, p 218
212. Ibid, pp 221–222
213. Ibid, p 224
214. See doc A43(a), pp 219, 222; Amendment Paper 2025 (428) Education and Training (Amendment) Bill (140—2)

A short-form supplementary departmental disclosure statement prepared by the Ministry of Education accompanied the Amendment Paper.[215] The supplementary disclosure statement, dated 24 October 2025, stated that removing school boards' Tiriti obligation could 'reduce the Crown's ability to support Māori educational success in accordance with its obligations under article three of Te Tiriti/The Treaty'.[216] The statement noted the Crown had a 'positive duty to act in good faith, reasonably and honourably towards Māori' under the principle of partnership, but that no consultation had occurred with Māori education stakeholders or Māori generally on the proposals contained in the Amendment Paper.[217] The lack of consultation, the paper stated, would 'likely have adverse effects on the Māori–Crown relationship'.[218]

Should school boards' Tiriti obligation be removed, however, the supplementary disclosure statement noted that sections 4(d), 32(h), and 32(i), as the Education and Training Act 2020's purpose provisions, would 'continue to aid in the interpretation of relevant statutory powers and functions exercised under the Act', but school boards would no longer have 'discrete and free-standing legal obligation to give effect to Te Tiriti/The Treaty'.[219] The statement also noted there were other ways the Crown could give effect to its treaty obligations in the context of education, such as through the curriculum.[220]

Regarding the changes to the subparagraphs in section 127(1)(d), the statement advised that the changes to the 'teaching and learning of te reo Māori could reduce the Crown's ability to meet its obligations to actively protect and promote te reo Māori as a taonga of iwi and Māori'.[221] By making instruction available on request, the statement recorded, 'the accountability shifts from the education system to parents and caregivers' and reduces schools' focus on te reo Māori, tikanga Māori and mātauranga Māori, directly impacting ākonga Māori and their educational achievement.[222] It noted having a general provision on cultural diversity may not capture the Crown's particular obligations towards Māori under the treaty. However, under the proposed amendment, a school board would still be required to 'ensure it seeks to achieve equitable outcomes for Māori students'.[223] It would be up to school boards to determine how to satisfy this requirement and they could decide to include tikanga and mātauranga Māori in their approach.[224]

The statement noted section 133 had obliged school boards to 'take all reasonable steps' to ensure school policies and practices reflect Aotearoa New Zealand's

215. Document A43(a), p 228; Amendment Paper 2025 (428) Education and Training (Amendment) Bill (140—2)
216. Document A43(a), p 231
217. Ibid
218. Ibid
219. Ibid, pp 231–232
220. Ibid, p 232
221. Ibid
222. Ibid
223. Ibid
224. Ibid

cultural diversity, with this being changed to taking 'reasonable steps' in the new section 127. Though the statement acknowledged the new wording 'softens what boards may be expected to do to meet this requirement', it noted the obligation remained.[225]

On 4 November 2025, Amendment Paper 428 was adopted via a vote at the Committee of the Whole House and incorporated into the Education and Training Amendment Bill (No 2).

The Bill passed its third reading on 11 November 2025, and the Education and Training Amendment Act 2025 received the royal assent on 18 November 2025. As enacted, section 127 now reads as follows:

> (1) A board's paramount objective in governing a school is to ensure that every student at the school is able to attain their highest possible standard in educational achievement.
> (2) To meet the paramount objective, the board must meet the following supporting objectives: . . .
> (e) to 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.[226]

Section 127(2)(e) was then incorporated into section 9(2), which sets out provisions in the Act 'related to te Tiriti o Waitangi in the context of the regulation of the education system'. Section 127(1)(d) (now removed) was originally contained in section 9(1), which outlined '[t]he main provisions of the Act that recognise and respect the Crown's responsibility to give effect to Te Tiriti o Waitangi'.[227] The enactment of the Bill also repealed section 133 and revoked regulation 9(1)(g) of the Education (School Planning and Reporting) Regulations 2023, which specified annual plans must include 'information describing how the annual targets and intended actions will support the board to give effect to Te Tiriti o Waitangi'.[228]

2.4.2 Response to the removal of section 127(1)(d)

Following Minister Stanford's introduction of the Amendment Paper and the formal removal of section 127(1)(d), there was immediate resistance and protest by Māori and from the wider education sector. We noted some of this response in our

225. Ibid
226. Education and Training Amendment Act 2025, s 8; Education and Training Act 2020, s 127 (version as at 1 October 2026)
227. Education and Training Act 2025, s 9(1)(d) (version as at 22 October 2025)
228. Education and Training Amendment Act 2025, sch 2, cl 9; cf Education (School Planning and Reporting) Regulations 2023, reg 9(1)(g) (version as at 26 June 2023)

stage one report.[229] Te Riu Roa, for example, issued a media release on 4 November 2025 condemning the removal of section 127(1)(d), highlighting that the change was not requested by whānau, professionals, school communities or school boards.[230] It labelled the changes 'ideologically driven' and 'not evidence-based'.[231] Te Wehengarua also issued a press release that same day, calling the change a backwards step and saying that removing the obligation 'sends the message that this is less important than other areas that a board is responsible for'. It called the lack of consultation 'one of the most alarming aspects of the Minister's decision'.[232]

On 11 November 2025, the same day as the Bill passed its third reading, the National Iwi Chairs Forum launched a petition calling on Prime Minister Christopher Luxon and Minister Stanford to reinstate school boards' requirement to give effect to the treaty 'and reaffirm its commitment to Te Tiriti o Waitangi in education'.[233] The petition stated 'Te Tiriti o Waitangi is the foundation of partnership in Aotearoa – removing it from education law undermines our shared responsibility to ensure every learner, Māori and non-Māori, thrives in a system that honours this founding relationship.'[234] The petition stated that removing the section 127 requirement was 'not a technical change' and instead represented 'a step backwards' by 'eras[ing] the Crown's responsibility to honour Te Tiriti in the one place every child in Aotearoa passes through: our education system'.[235] On 8 December 2025, the National Iwi Chairs Forum presented the petition with 24,001 signatures to Minister Stanford and Members of Parliament from other parties.[236]

Following the legislative removal of school boards' explicit Tiriti obligation, many school boards also reaffirmed their commitment to te Tiriti. Tania Waikato, lawyer and Māori rights advocate, began compiling a list of schools which had formally expressed a commitment to continuing to give effect to te Tiriti. By early December 2025 this list, Te Rārangi Rangatira, included over 1,600 schools.[237] By March 2026, the list contained 1,859 schools from Te Hāpua in Northland to Bluff in the South.[238]

229. See Waitangi Tribunal, *Hūtia te Rito o te Harakeke, Interim Stage One*, p 61

230. Document A12(a), p 32, see also pp 31–33

231. Ibid, p 32

232. Document A24(a), p [88]

233. Document A1, pp 415–416

234. Ibid, p 415

235. Ibid, p 416. We note the content of this petition, while identifying the removal of the school board obligation to give effect to te Tiriti, inaccurately described the scope of section 127, stating it 'ensures that schools, early learning services and tertiary institutions give effect to Te Tiriti'. Section 127 applies only to the administration of State schools within the schooling sector and not to early childhood or tertiary education.

236. Pokere Paewai, '24,000 Sign Petition Calling for Immediate Reinstatement of School Te Tiriti o Waitangi Obligations', RNZ, 8 December 2025, https://tinyurl.com/5xrvjcmh, accessed 28 October 2026

237. Document A30, p 10. This December 2025 list was described as being signed by 281 early childhood services and kohanga reo and 32 principal associations. However, they were not subject to section 127(1)(d) as it applied only to State schools.

238. Document A30(a), pp 1–22

CHAPTER 3

TRIBUNAL ANALYSIS / TE TĀTARITANGA A TE TARAIPIUNARA

3.1 Introduction

In this chapter, we turn to our analysis and address the following four issues for determination:

- Did the former section 127(1)(d) result in school boards pursuing Tiriti-consistent outcomes in schooling?
- What work did the Crown do to inform itself as to the risks of its statutory changes?
- Is it appropriate for school boards to hold an explicit statutory treaty obligation?
- What implications (if any) do the Crown's statutory changes to section 127 have for the fulfilment of its treaty obligations in the everyday schooling context?

We begin by setting out the positions of the claimants, interested parties, and the Crown in section 3.2, before analysing each issue in turn.

3.2 The Parties' Positions

3.2.1 The claimants and interested parties

The claimants and interested parties submitted that school boards had been successfully giving effect to the treaty, according to section 127(1)(d), and that this had resulted in positive outcomes for ākonga Māori. Te Riu Roa, for example, submitted section 127(1)(d) had improved Māori board member representation, enabled school boards to prioritise Māori-focused initiatives over other competing demands, and led to partnerships between schools and local iwi.[1] Te Whakakitenga o Waitako similarly submitted the provision had created a legal mandate for Waikato to 'partner with schools to uphold local tikanga, amplify iwi aspirations, and embed Waikato-specific identity, histories, language and maatauranga into school decision-making and classroom practice'.[2] Interested parties also submitted section 127(1)(d) was 'an important statutory requirement' to recognise the treaty in school governance and 'gave clear direction to boards that Māori interests were not optional but were required to be considered'.[3]

1. Submission 3.3.28, pp 10–11
2. Submission 3.3.8, p 8
3. Submission 3.3.9, p 1

Despite its significance, claimants and interested parties submitted the Crown had neither engaged with Māori on its proposals, nor sufficiently informed itself of the potential risks of its reform, in breach of the treaty.[4] The Crown had chosen not to consult despite consultation being the 'key mechanism' to inform itself of risks and being 'put on notice' by official advice of the risks that result from a lack of consultation with Māori.[5] Related to the lack of consultation, Te Kapotai and Ngāti Hine challenged the 'purported time constraints' in the Crown's process and the absence of a Regulatory Impact Statement. They argued the Crown chose 'expediency and opportunity over its treaty obligations and proper process'.[6] Proceeding without advice or engagement with Māori, Te Riu Roa argued, was 'a deliberate and knowing departure from the standards required of an honourable Treaty partner'.[7] In addition to breaching the treaty, Ngā Kura ā Iwi argued that, by failing to consult, the Crown also breached the Kawa Whakapūmau, the memorandum of understanding between Ngā Kura ā Iwi and the Ministry of Education.[8]

Flowing from its failure to consult with Māori, claimants and interested parties submitted the Crown did not have sufficient evidence to inform its changes to the Education and Training Act 2020.[9] Te Whakakitenga o Waikato, for example, submitted the Crown failed to 'provide a sufficient evidential basis to support the removal of [section] 127(1)(d)', in contrast to the strong evidential basis that underpinned the introduction of section 127(1)(d), including the Tomorrow's Schools Review.[10] It further noted the Post-Implementation Review, intended to replace a Regulatory Impact Statement, had also not yet occurred at the time of hearing.[11] Lacking a sufficient evidence or policy base to inform its changes, Te Whakakitenga o Waikato submitted the Crown's 'decision to repeal the provision rest[ed] solely on political impulse'.[12]

Claimants and interested parties submitted it is appropriate for school boards to have a treaty obligation and rejected the Crown's contention that school boards are not 'core Crown' bodies who do not bear responsibility for discharging treaty obligations. In support of their submissions, claimants and interested parties made various legal arguments, including the legal classification of school boards as Crown entities, the 'control test' (which tests the degree of control a Minister exerts over an entity, among other things), school boards' functions according

4. See, for example, submission 3.3.17, pp 7, 8, 16–17; submission 3.3.28, pp 23, 32, 34; submission 3.3.3, pp 7, 8; submission 3.3.27, p [7]; and submission 3.3.31, p 13.
5. Submission 3.3.13(a), pp 18, 19; submission 3.3.17, p 20; submission 3.3.28, pp 3, 9, 11; see also submission 3.3.3, p 7; submission 3.3.31, p 13
6. Submission 3.3.17, p 18
7. Submission 3.3.28, p 26; see also submission 3.3.17, p 20
8. Submission 3.3.29, p 15
9. See, for example, submission 3.3.27, p [5], and submission 3.3.31, p 13.
10. Submission 3.3.31, pp 13–15
11. Ibid, p 13; see also doc A43(a), p 220
12. Submission 3.3.31, p 16; see also submission 3.3.27, p [5]; submission 3.3.31, pp 13, 14

to administrative law, and school boards' responsibilities under human rights legislation.[13]

Beyond these legal arguments, claimant and interested party submissions raised the idea that school boards were functionally how the Crown discharged its treaty obligations in schools. Te Riu Roa, for example, argued imposing a statutory treaty obligation on school boards at the governance level was one of the primary ways the treaty was supported within the education system and school boards were 'instruments through which Crown education policy is implemented'.[14] Te Whakakitenga o Waikato similarly argued the 'operational reality' was that, at the community level, the Crown's treaty obligations were discharged by school boards.[15] In their view, it was difficult to see how objectives related to the promotion of Māori educational outcomes, te reo Māori, tikanga Māori, and cultural diversity (reflected in sections 4(d), 9, 32(h) and (i), and 127(2)(e) of the Act) could be achieved '[w]ithout proper Maaori partnership within the system'.[16] Accordingly, it submitted that 'school boards must necessarily continue to acknowledge and uphold te Tiriti'.[17] In reply submissions, Te Riu Roa and Ngā Kura ā Iwi jointly submitted '[t]he Crown cannot simultaneously delegate education delivery to boards and invoke that delegation as a reason to remove the Treaty obligations that attend delivery.'[18]

Te Kapotai and Ngāti Hine submitted that the Crown provided 'no evidence . . . to suggest that Boards were uncertain or having difficulty with their statutory duty to give effect to te Tiriti o Waitangi'.[19] In their submission, any such view was inconsistent with the evidence heard in this inquiry regarding how school boards operated in practice.[20] The New Zealand Māori Council argued the notion that school boards should not carry a treaty obligation was 'out of step with previous school board obligations'.[21] It noted 'previous governments have seen fit to create obligations for school boards to adhere to Te Tiriti objectives', noting the Education Act 1989 required school boards to act consistently with the principles of the treaty from 2017, which was then strengthened by the Education and Training Act 2020.[22] It submitted that, given the majority of ākonga Māori are educated in English-medium settings and 'previous governments have not considered it an issue to impose this directive, it does not follow to remove this obligation'.[23] It contended that removal was driven by a broader agenda to repeal or dilute treaty provisions.[24]

13. Submission 3.3.31, pp 7–14; submission 3.3.7, p 7; transcript 4.1.2, pp 18–20, 91–93
14. Submission 3.3.28, pp 3, 14
15. Submission 3.3.31, p 12
16. Ibid
17. Ibid
18. Submission 3.3.33, p 2
19. Submission 3.3.17, p 20
20. Ibid
21. Submission 3.3.3, p 11
22. Ibid
23. Ibid
24. Ibid, pp 9–10, 12; submission 3.3.19, pp 5–6; submission 3.3.25, p 3

Although the Ministerial Advisory Group, which was established to advise ministers on statutory references to the treaty as part of the treaty clause review, had questioned the strength of the 'give effect to' standard, Te Kapotai and Ngāti Hine submitted it 'did not reach a clear position on the issue'. They noted the group instead said whether it was appropriate to treat school boards as part of the Crown in the context of being the treaty partner was 'worthy of analysis'.[25] The claimants noted the Crown had not provided evidence that any such analysis took place.[26] Te Whakakitenga o Waikato likewise submitted the group did 'not recommend that school boards should not be treated as the Crown'.[27] While not resiling from its position that school boards are part of the Crown and should reasonably have treaty obligations, Te Whakakitenga o Waikato also noted the Ministerial Advisory Group had suggested alternative ways the Crown could express a treaty obligation for non-Crown bodies.[28] Ngā Kura ā Iwi similarly argued the Crown was obliged to explore alternatives to removing section 127(1)(d) and offer 'Māori a genuine opportunity to participate in that assessment', but there was no evidence the Crown had done so.[29]

Turning to the measures the Crown had established to replace section 127(1)(d), claimants and interested parties argued the replacement section 127(2)(e) risked treaty interests not being honoured.[30] Te Riu Roa, for example, submitted that the supplementary disclosure statement accompanying the Amendment Paper had advised that removing school boards' requirement to give effect to te Tiriti could harm the Māori–Crown relationship and 'reduce the Crown's ability to support Māori educational success'.[31] Te Riu Roa posited, despite these risks, the supplementary disclosure statement had not 'identified replacement protective measures'.[32] Te Kapotai and Ngāti Hine argued that, following the removal of section 127(1)(d), there was 'no explicit statutory mechanism to embed Māori perspectives in the governance, strategic planning and curriculum of schools'.[33] Ngā Kura ā Iwi and Te Whakakitenga o Waikato, in turn, submitted the content of the replacement section 127(2)(e) was not adequate or equivalent to section 127(1)(d).[34] While section 127(2)(e) retained some Māori-focused requirements, such as equitable outcomes and access to te reo Māori, Te Whakakitenga o Waikato argued these new requirements were narrower in scope and were not linked to the

25. Submission 3.3.17, p 18; see also submission 3.3.31, p 16
26. Submission 3.3.17, p 20
27. Submission 3.3.31, p 16; see also submission 3.3.17, p 18
28. Submission 3.3.31, p 16
29. Submission 3.3.29, p 11
30. See, for example, submission 3.3.8, pp 9–12; submission 3.3.17, p 21; submission 3.3.27, p [12]; and submission 3.3.31, p 19, and see also submission 3.3.13, p 5; submission 3.3.14(a), p 16; and submission 3.3.28, p 13.
31. Submission 3.3.28, pp 9, 11, referring to doc A43(a), p 232
32. Submission 3.3.13, p 8
33. Submission 3.3.17, p 21
34. Submission 3.3.14, p 10; submission 3.3.8, p 9

treaty or treaty principles.[35] Accordingly it argued, section 127(2)(e) 'substantively dilutes Maaori interests in comparison' to section 127(1)(d).[36]

Claimants and interested parties further argued that the specific words used in the new provision differed in important ways from the language previously contained in section 127(1)(d).[37] For example, the term 'seek to achieve equitable outcomes' in section 127(2)(e)(i) was aspirational, as opposed to the previous language of 'achieve equitable outcomes'.[38] Claimants and interested parties were also critical of the new section 127(2)(e)(ii), which provides that a school must ensure it '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'.[39] Te Wehengarua, for example, submitted that offering te reo Māori is a clear way for the Crown to discharge its treaty obligations, but the changes in section 127(2)(e)(ii) meant school boards are only required to make instruction available in te reo Māori when requested by a parent or caregiver.[40] It argued the change had also 'shifted the onus to protect te reo Māori' onto parents without providing evidence that it had provided guidance to them.[41] It also contended the change lacked consideration of 'whakamā and trauma', which might prevent parents from making a request, and drew attention to the historically poor treatment of te reo Māori in schooling.[42] Te Whakakitenga o Waikato argued further that requiring policies and practices to 'reflect New Zealand's cultural diversity' in section 127(2)(e)(iii) represented a 'material weakening' of school boards' obligations.[43]

Claimants and interested parties posited that not only was section 127(2)(e) insufficient, but the overarching purpose provisions of the Education and Training Act 2020 and guidance provided by the Crown were not enough to ensure the treaty interests of ākonga Māori were protected. According to Te Riu Roa, the purpose provisions cannot make up the gap because they 'do not impose the same enforceable, board-level governance obligation' as section 127(1)(d) did and do not capture 'the operational realities of schools as was the case with section 127(1)(d)'.[44] Claimants and interested parties submitted further that there had been no communication from the Ministry of Education or the Education Review Office on how boards should approach their treaty obligation which was no longer spelled out in statute, nor was there resourcing, monitoring, or transitional support.[45] The Crown's reform, therefore, created 'a structural vacuum at precisely the level where

35. Submission 3.3.8, p 9
36. Ibid, p 10
37. See, for example, submission 3.3.8, p 12; submission 3.3.27, p [13]; and submission 3.3.33, p 3.
38. Submission 3.3.8, p 11; submission 3.3.33, p 3
39. See, for example, submission 3.3.8, p 12; submission 3.3.27, p [13]; and submission 3.3.33, p 3.
40. Submission 3.3.27, p [13]
41. Ibid
42. Ibid, pp [13], [18]
43. Submission 3.3.8, p 12
44. Submission 3.3.13(a), p 23
45. Submission 3.3.14(a), p 16; submission 3.3.13, p 5; submission 3.3.28, pp 13, 17, 32

Treaty obligations must be operationalised in the lives of tamariki', according to Te Riu Roa.[46]

3.2.2 The Crown

The Crown acknowledged there had been 'no consultation with Māori', including on 'the likely effect of the amendments on the underlying Treaty interests'.[47] Despite this, the Crown submitted officials provided 'robust advice on these matters' in the time available, citing the supplementary disclosure statement that accompanied the Amendment Paper.[48] The Crown explained that the supplementary disclosure statement advised the amendments could generate risks, including a risk that the Crown's capacity to support educational success for Māori, pursuant to article 3 of the treaty, could be reduced.[49]

The Crown submitted that 'a motivation' for removing school boards' treaty obligation 'was the proposition that schools and their boards are not part of the core Crown'.[50] In support of this, the Crown noted school boards are defined as separate legal entities from the Crown under the Education and Training Act 2020.[51] The Crown contended its position was consistent with Tribunal jurisprudence, such as in *The Napier Hospital and Health Services Report* (2001), which the Crown said 'decided that elected health boards were not "the Crown" for the purposes of s[ection] 6 of the Treaty of Waitangi Act'.[52] The Crown, however, acknowledged that '[b]oards do *assist* the Crown to meet *the Crown's* Treaty obligations'.[53] The Crown submitted its position on this point was not 'to lessen its obligations under the Treaty'.[54] Rather, it 'has been clear that it considers *itself* to hold the relevant Treaty obligations'.[55] In light of this, the Crown submitted the 'Tribunal should therefore focus its assessment on whether the amended [section] 127, and the relevant legislative and regulatory settings for school boards, for which the Crown is responsible, are Treaty consistent'.[56]

In answering this, the Crown submitted 'the removal of the obligation on boards to "give effect to Te Tiriti o Waitangi" does not, in and of itself, mean [section] 127 is substantively inconsistent with Treaty principles'.[57] Rather, it submitted, the replacement section must be viewed in its 'context and whether it adequately guides and directs boards in their important governance work' and 'in light of the Treaty obligations the Crown has acknowledged it owes in the area of education

46. Submission 3.3.28, p 14
47. Submission 3.3.32, p 38; see also submission 3.1.8, pp 1–2; submission 3.3.10, p 7; doc A43, p 11
48. Submission 3.3.32, pp 37, 38
49. Ibid, p 37; doc A43(a), p 231
50. Submission 3.3.32, p 19
51. Ibid, pp 20–21 (emphasis in original)
52. Ibid, p 22
53. Ibid, pp 25–26 (emphasis in original)
54. Ibid, p 24
55. Ibid (emphasis in original)
56. Ibid, p 25
57. Ibid, p 26

as a whole'.[58] This included interpreting section 127 'in light of its purpose, captured in [sections] 4, 9 and 32', which 'make it clear' section 127(2)(e) relates to the treaty.[59] The Crown submitted the wording of section 127(2)(e) enables the Crown to satisfy its treaty commitments in the operation of schools. For example, the requirement that school boards now 'seek to achieve equitable outcomes for Māori students' was 'substantively the same' as what was provided under section 127(1)(d), while recognising 'boards cannot themselves achieve equitable outcomes for Māori students. All boards can do is seek to achieve them'.[60] The reference to 'New Zealand's cultural diversity' in section 127(2)(e)(iii), in turn, the Crown argued ought to be interpreted following a purposive approach as 'recognis[ing] the unique role of tangata whenua in New Zealand society'.[61] The Crown submitted the new section 127 imposed mandatory considerations for boards as part of their governance responsibilities that relate directly to the interests of ākonga Māori under the treaty, specifically achieving equitable outcomes, accessing te reo Māori, and recognising cultural diversity in Aotearoa New Zealand.[62]

The Crown pointed to the other objectives in section 127 as evidence of how the Crown continues to protect the treaty interests of ākonga Māori.[63] Given the treaty context, the Crown submitted 'it would not be tenable' to interpret the paramount objective in section 127(1) 'as permitting boards to ignore the interests of ākonga Māori'. This would instead require boards to 'turn their minds to how the paramount objective applies to ākonga Māori in the school community'.[64] The Crown also emphasised that the requirements in section 127(2) must be satisfied and said while the new section 127 establishes a 'hierarchy of objectives, none can be ignored by boards'.[65] Furthermore, under section 127(2)(c)(i), school boards must ensure the school is 'a physically and emotionally safe place for all students and staff' and that '[l]eading guidance on how to discharge this obligation in practice links it to cultural safety'.[66] School boards' obligations related to student rights under the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993 in section 127(2)(c)(ii), the Crown submitted, also make 'discrimination, including based on the grounds of race or ethnicity, unlawful'.[67]

To support its treaty commitments, the Crown noted school boards must tailor their plans and overall approach when discharging their responsibilities regarding equitable achievement for ākonga Māori in multiple ways, albeit not in the same way or under the same terms prior to the amendments.[68] The Crown noted, for

58. Ibid
59. Ibid, pp 27–28
60. Ibid, p 31
61. Ibid
62. Ibid, p 32
63. Ibid, pp 28–30
64. Ibid, pp 28–29
65. Ibid, p 29
66. Ibid
67. Ibid, pp 29–30
68. Ibid, p 35

example, that, under the Education (School Planning and Reporting) Regulations 2023, strategic goals to meet section 127 are to be developed in consultation with the school community, which is defined as including 'the Māori community associated with the school' and relates to the treaty in the context of regulating the education system.[69] Plans must also include 'strategies for identifying and catering to students whose needs have not been met well', with these students defined as including Māori students.[70]

According to the Crown, its statutory 'amendments were not intended to downplay the obligations of schools in respect of achieving equitable outcomes for Māori students, te reo Māori, or the role of tikanga Māori, mātauranga Māori, and te ao Māori in the education system', which 'remain fundamental goals and components of the education system'.[71] The Crown said this is clear from reading the Education and Training Act 2020 as a whole, the national curriculum, and resources the Ministry of Education provides to support schools in its implementation.[72] Furthermore, any concerns about the amendments to section 127 would be explored by officials in the Post-Implementation Review.[73]

Taken together, the Crown submitted the amended section 127 and associated regulations, when interpreted in light of the overall purpose of the Education and Training Act 2020, 'is a detailed statutory framework requiring boards to address Māori educational achievement in a structured and operational way', with school boards having 'substantive' obligations under section 127.[74]

3.3 Did the Former Section 127(1)(d) Result in School Boards Pursuing Tiriti-Consistent Outcomes in Schooling?

In this inquiry, we heard evidence from teachers, principals, and other school board members, whānau, and iwi about how schools were working to give effect to te Tiriti in practice. In this section, we set out what we heard from some of those claimants and interested party witnesses about the Tiriti-consistent outcomes they pursued as a result of section 127(1)(d).

At a high level, we heard that board members considered their Tiriti obligation to be a genuine commitment, which they took seriously, and that meaningfully shaped behaviour. Boards understood their obligation not to be optional.[75] It was seen as the Crown's expression of active protection of taonga, particularly te reo Māori and tikanga Māori.[76] The obligation also constituted a public commitment, including to tamariki, that school governance would give effect to te Tiriti.[77]

69. Submission 3.3.32, p 32, see also p 33
70. Ibid, p 33
71. Submission 3.3.10, p 7
72. Ibid
73. Ibid, p 8
74. Submission 3.3.32, p 35
75. Document A34, p 1; doc A13, p 1; doc A21, p 12; doc A24, p 8; doc A32, p 3
76. Document A28, p [12]
77. Document A29, p 6; doc A13, p 1

In our inquiry, several education leaders noted the Tiriti obligation provided a baseline and created consistency across the system.[78] Leanne Otene, executive member of Te Akatea – the New Zealand Māori Principals' Association and former president of the New Zealand Principals' Federation, said it supported a shift from a tick-box exercise to more meaningful understandings of the treaty across the system.[79] Adrianne McAllister, principal of Mount Cook School, Wellington, also explained the Tiriti obligation gave school boards direction and 'a real sense of foundation'.[80] Martyn Weatherill, principal of Laingholm Primary School – Te Kura Tuatahi o Laingholm in Waitākere, West Auckland, told us section 127(1)(d) 'imposed a clear and explicit statutory obligation on school boards to give effect to Te Tiriti o Waitangi', which gave legal authority and direction to boards and principals.[81]

We heard governance decisions and strategic priorities were informed by the Tiriti obligation.[82] Watson Ohia, Chief Executive Officer of Ngā Kura ā Iwi o Aotearoa and former teacher and principal, for example, told us that section 127(1)(d) provided 'an enforceable statutory basis for treaty-based governance decisions', which included 'decisions about curriculum emphasis, reo Māori instruction, tikanga-based governance processes, and relationships with iwi and hapu'.[83] He explained that when the Ministry of Education or the Education Review Office engaged with kura ā iwi, 'the board could point to its statutory obligation under [section] 127(1)(d) as the legal foundation for its approach'.[84] The Tiriti obligation also enabled board members to advocate for treaty-aligned practices and hold leadership to account.[85]

Section 127(1)(d) influenced schools' focus on equity for ākonga Māori and the incorporation of te reo, tikanga, and mātauranga in schools' curricula and daily practices.[86] Heemi McDonald, presiding member of Rototuna High Schools' Board, said section 127(1)(d) shifted te Tiriti to an operational expectation and meant decisions were approached from a treaty lens.[87] Lealamanu'a Niuafolau Aiga Caroline Mareko, presiding member of Aotea College's Board, said section 127(1)(d) was understood by the Board as affirming that the identities, histories, and languages of ākonga are 'a core condition for equitable educational outcomes' and 'not an optional extra'.[88] She explained that section 127(1)(d) guided governance and classroom practices and led to Aotea College developing a policy on how the school would give effect to te Tiriti.[89] To support this, Aotea College estab-

78. Document A20, p 2
79. Ibid, pp 2–3; see also doc A36, p 4
80. Document A8, p 3
81. Document A11, p 2; see also doc A21, p 11
82. Document A21, pp 11–12; doc A22, p 2
83. Document A29, p 5
84. Ibid
85. Document A25, pp 4–5
86. Document A21, p 11; see also doc A13, p 3; doc A22, pp 2–3; doc A25, p 4
87. Document A21, p 12
88. Document A13, p 1
89. Ibid, p 2

lished Māori leadership and teaching positions, which included responsibility for te reo Māori, tikanga Māori, and mātauranga; built staff understanding of te reo Māori and mātauranga Māori; maintained a kaupapa Māori learning space; and regularly monitored and reported on the educational achievement of ākonga Māori.[90] According to Ms Mareko, Aotea College also 'deliberately localised' its curriculum by incorporating tangata whenua narratives and histories.[91] Ms Mareko further noted tikanga – including mihi whakatau and karakia, and te reo Māori and iwi histories – were 'embedded in our everyday life – in classrooms, assemblies, reporting and board meetings'.[92] Philippa Tinning, secondary school teacher and President of Te Pouhere Whakaako Reo Pākehā o Aotearoa – New Zealand Association for the Teaching of English, similarly explained that section 127(1)(d) 'influenced how kura approached teaching and learning, including the integration of te reo Māori, tikanga Māori, and Māori perspectives'.[93] She said it 'created an expectation that schools would actively consider how their systems and practices supported equitable outcomes for ākonga Māori'.[94]

The obligation in section 127(1)(d) to give effect to te Tiriti helped boards prioritise initiatives to support Māori. In a context of scarce schooling resources and competing priorities, Mr Weatherill told us that the statutory Tiriti obligation meant principals could 'lawfully prioritise Māori-focused initiatives, local curriculum development grounded in tikanga Māori, engagement with mana whenua, and te reo Māori provision – even where these compete with other demands'.[95] He explained that schools do not have sufficient resources to address all priorities they are expected to meet so lower-ranked priorities 'are rendered practically unattainable'.[96] Similarly, Mr McDonald commented that the provision informed strategic priorities and enabled culturally responsible approaches to be prioritised.[97]

Meaningful relationships with tangata whenua were facilitated by the Tiriti obligation contained in section 127(1)(d) and it supported tangata whenua to exercise tino rangatiratanga within the education system.[98] For example, Mr McDonald explained Rototuna High Schools have maintained a relationship with Ngāti Wairere, which has been reflected in the school environment. Learning spaces have been named after significant people and places of Ngāti Wairere, while building designs, colours, and landscaping have incorporated tangata whenua narratives.[99] Strategic plans were also co-designed with Ngāti Wairere to ensure 'the aspirations of mana whenua inform the direction and operation of the school' and

90. Document A13, p 2
91. Ibid, p 3
92. Ibid, p 3
93. Document A22, p 2, see also p 3
94. Document A22, p 2
95. Document A11, p 2
96. Ibid, p 3
97. Document A21, p 11
98. Document A25, p 4; doc A21, p 11; doc A35, p [5]; doc A36, pp 3–4
99. Document A21, p 12

other initiatives with Ngāti Wairere were developed, such as participating in Ngāti Wairere community events.[100] Similarly, Aotea College developed relationships with Ngāti Toa Rangatira, planned curriculum with Ngāti Toa, and incorporated local iwi narratives, history, and te reo Māori into classrooms and school life.[101]

Dr Raewyn Mahara, General Manager – Maatauranga (Education and Pathways) at Te Whakakitenga o Waikato, told us section 127(1)(d) was also having a positive effect from an iwi perspective. She explained, '[f]rom a Waikato perspective, the statutory obligations provided a clear and actionable mandate for school boards to work directly and meaningfully with iwi'.[102] She told us section 127(1)(d) had 'created a legislative foundation upon which Waikato could partner with schools to uphold local tikanga, amplify iwi aspirations, and embed Waikato-specific identity, histories, language and maatauranga into school decision-making and classroom practice'.[103] According to Dr Mahara, the provision 'enabled Waikato to assert mana whenua authority within school governance' and drive curriculum development, and supported 'equitable outcomes for Waikato learners'.[104] She concluded the provision 'opened space for genuine iwi-school partnerships across the rohe'.[105]

Witnesses said the Tiriti obligation had been leading to better outcomes, including improved board representation; greater cultural capability of kaiako, board members, and leaders; and the prioritisation of culturally responsible approaches.[106] At Aotea College, Ms Mareko said it had increased whānau trust, cultural identity for ākonga Māori, and engagement from students.[107] Kārena Ngata, teacher and parent representative, said she had seen 'real change' at her child's school, particularly increased leaning of te reo Māori.[108] According to Meredith Kennett, president of the New Zealand School Boards Association and a Hobsonville Point Schools' Board member, the board's relationship with Te Kawerau ā Maki and integration of its history into the school's teaching deepened the board's understanding of the community, shaped decision-making, supported the incorporation of tikanga and te reo Māori in school life, and led to the needs of Māori students being prioritised.[109] It also had tangible benefits for the capability of kaiako and board members.[110]

Overall, we heard from claimant and interested party witnesses that school boards understood their Tiriti obligation, viewed it as a genuine commitment, and schools and boards benefitted from it. It established minimum expectations for

100. Ibid, pp 12, 13
101. Document A13, pp 2, 3
102. Document A31, p 14
103. Ibid
104. Ibid, p 16
105. Ibid
106. Document A25, p 4; doc A13, p 2; doc A14, pp 1–2; doc A21, p 11
107. Document A13, p 4
108. Document A25, p 4
109. Document A36, p 4
110. Document A25, pp 4, 5. For a further example, see doc A21, p 12.

school boards to meet, which, in turn, supported consistency across the system. The statutory Tiriti obligation meant the treaty was front of mind for school boards when making decisions and setting priorities, in an environment characterised by resource pressures and competing demands. School boards were successfully working to incorporate te reo Māori, tikanga, and mātauranga Māori to improve educational outcomes of ākonga Māori. Critically, section 127(1)(d) provided a foundation for schools to build relationships with tangata whenua and for tangata whenua histories and perspectives to be incorporated into everyday schooling. The examples provided by witnesses suggest these behaviours were driven by section 127(1)(d). Thus, while schools could, in theory, independently align their practices with the treaty without the provision, it was the statutory obligation to give effect to te Tiriti that really drove Tiriti-aligned initiatives. Significantly, we did not hear evidence to the contrary, namely that section 127(1)(d) was immaterial to Tiriti-consistent practice or did not have a tangible impact on school boards. Given this context, we now turn to consider what work the Crown did to adequately inform itself of risks prior to amending section 127.

3.4 What Work Did the Crown Do to Inform itself as to the Risks of its Statutory Changes?

3.4.1 Did the Crown adequately consult with Māori on the proposed changes before it made its decision?

In this section, we consider the extent to which the Crown informed itself of the potential impacts of its proposed reforms on ākonga Māori and other Māori interests, and whether it furnished itself with a sufficient evidence base to make an informed decision. As past Tribunals have made clear, informed decision-making is an integral aspect of the Crown's treaty obligations as a matter of active protection and good government.[111] One of the core mechanisms through which the Crown can inform itself is through consultation, which is itself a treaty duty associated most closely with the principle of partnership.[112] The Crown's obligation to consult with Māori is heightened in circumstances where the matter is of significant interest to Māori or where disparities in outcomes exist.[113]

111. See Waitangi Tribunal, *Hūtia te Rito o te Harakeke, kei Hea te Kōmako e Kō? The Stage Two, Part 1 Report of the Education and Training Amendment Act and Te Mātaiaho Urgent Inquiry – Pre-publication Version* (Wellington: Waitangi Tribunal, 2026), pp 25, 27; see also Waitangi Tribunal, *Te Tinihanga o ngā Mātāpono: The Urgent Report on the Treaty Principles Reform – Pre-publication Version* (Wellington: Waitangi Tribunal, 2026), pp 152, 171; Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on the Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2007), vol 1, p 4; Waitangi Tribunal, *The Māori Wards and Constituencies Urgent Inquiry Report* (Lower Hutt: Blue Star Group (New Zealand) Ltd, 2025), p 18

112. See Waitangi Tribunal, *Hūtia te Rito o te Harakeke, Stage Two, Part 1*, pp 26–27; Waitangi Tribunal, *The Offender Assessment Policies Report* (Wellington: Legislation Direct, 2005), p 10

113. Waitangi Tribunal, *Te Mana Whatu Ahuru*, vol 4, p 2427; Waitangi Tribunal, *Hauora: Report on Stage One of the Health and Outcomes Kaupapa Inquiry* (Lower Hutt: Legislation Direct, 2019), pp 27–29; see also Waitangi Tribunal, *Hūtia te Rito o te Harakeke, Stage Two, Part 1*, p 27

In our stage one interim report, we considered early and meaningful consultation to be required in the context of the Crown's proposed reforms to Tiriti provisions in the Education and Training Act 2020.[114] We consider the same duty applies here as section 127(1)(d) was a similar statutory recognition of Tiriti obligations. Indeed, section 9(1) previously listed section 127(1)(d) as one of the 'main provisions' of the Act that 'recognise and respect the Crown's responsibility to give effect to Te Tiriti o Waitangi'.[115] It is therefore important to investigate whether the lack of consultation can be considered justifiable.

As we outlined in section 2.2.2, the Crown consulted publicly on proposed changes to section 127, including the 'paramount' duty changes, before introducing the Education and Training Amendment Bill (No 2) to Parliament to effect the reform. Importantly, at this stage, the Bill did not propose altering school boards' Tiriti obligation as contained in section 127(1)(d). After the Bill was reported back from select committee, however, Minister Stanford proposed (and Cabinet confirmed) introducing an Amendment Paper to the Bill at the Committee of the Whole House stage to replace the content of section 127(1)(d) with requirements largely the same as what are now contained in section 127(2)(e).[116] Among other specific changes, this alteration would remove school boards' explicit statutory obligation to ensure their schools give effect to te Tiriti. Minister Stanford introduced her Amendment Paper on 3 November 2025 and, as far as we are aware, this date was the first time the public, including Māori, were informed of the significant changes sought by the Crown.[117] The Bill (incorporating the Crown's additional changes to section 127) was later enacted on 18 November 2025.

As the Crown itself acknowledged, its approach to pursuing the amendment to school boards' explicit Tiriti obligation meant there was no engagement whatsoever with Māori, or the general public, on those particular changes.[118] The complete absence of consultation, without even a select committee process, was contrary to the Crown's own internal standards.[119] The Legislation Design and Advisory Committee guidelines, for example, emphasise the importance of identifying 'Māori interests that will be affected by the proposed legislation', and that early engagement with Māori in the legislative process will assist the Crown to identify

114. Waitangi Tribunal, *Hūtia te Rito o te Harakeke, kei Hea te Kōmako e Kō? The Interim Stage One Report of the Education and Training Amendment Act and Te Mātaiaho Urgent Inquiry – Pre-publication Version* (Wellington: Waitangi Tribunal, 2026), p 74

115. Education and Training Act 2020, s 9(1)(d) (version as at 22 October 2025)

116. The language used in section 127(2)(e)(iii) (and proposed in the Amendment Paper) is different to that which was originally proposed in Minister Stanford's Cabinet paper and agreed to by the Cabinet Social Outcomes Committee. The wording was agreed to by the committee was 'take reasonable steps to ensure that the policies and practices for its school reflect New Zealand's cultural diversity, including te ao Maori'. However, the Amendment Paper omitted 'including te ao Māori'. See doc A43(a), pp 219, 222; Amendment Paper 2025 (428) Education and Training (Amendment) Bill (140—2). We discuss this further in section 3.6.4.

117. See, for example, doc A29, p 11; doc A29(a), pp 148–149; and submission 3.3.14, p 5.

118. See submission 3.3.32, p 13

119. See Waitangi Tribunal, *Te Tinihanga*, p 164

and understand such interests.[120] The importance of understanding Māori interests and the need for consultation is also reflected in the Cabinet Office Circular (CO(19)5), which contains guidelines for policy-makers to consider the treaty in the process of policy development and implementation.[121] Indeed, to amend the Education and Training Act 2020 in a manner that contravenes the Crown's own internal standards of consultation with Māori runs counter to the stated statutory purpose of the Act under section 4(d): 'to establish and regulate an education system that . . . honours Te Tiriti o Waitangi and supports Māori–Crown relationships'. In this context, it is unsurprising that members of the education community felt blindsided by the changes. Ms Lessels, for example, told us Te Riu Roa was 'profoundly shocked by this sudden and last-minute change to the bill'.[122]

The Crown's failure to consult with Māori was also inconsistent with advice proffered by officials during the broader education reforms. As we noted in section 2.2.1, in June 2024 Ministry of Education officials advised Minister Stanford that 'the Crown has a duty to actively protect Māori interests and taonga' and that the courts had 'determined that the Crown must take reasonable steps to make informed decisions on matters that affect Māori interests under the principle of partnership'.[123] In 'situations affecting Māori interests', early engagement was advised.[124] In the September 2025 advice to education ministers, the Ministry of Education again emphasised the importance of engaging with Māori before making any changes to section 127(1)(d) following the treaty clause review.[125] The Ministry also informed ministers of the expectation that the Crown 'develop Tiriti provisions in consultation, and, where possible, in partnership with Māori', in line with corresponding expectations in the Cabinet Manual and Cabinet Office Circular CO(19)5.[126]

In proposing her reforms to Cabinet in October 2025, Minister Stanford explained that she intended to introduce the changes via an Amendment Paper to the Education and Training Amendment Bill (No 2), at the Committee of the Whole House stage.[127] While the Minister noted there had been no agency consultation on her Cabinet paper, she did not address the absence of engagement with Māori in advance of her proposal or provide any justification for forgoing consultation entirely.[128] Instead, the Minister explained that the Education and Training Amendment Bill (No 2) was 'still being considered by the House, and progressing changes via an Amendment Paper now will reduce duplication of

120. Legislation Design and Advisory Committee, 'Legislation Guidelines – 2021 Edition', https://tinyurl.com/saepytea, pp 28, 29

121. See Cabinet Office, Circular CO(19)5, 22 October 2019, https://tinyurl.com/2xf4kcm9, pp 4, 5, 6; Te Arawhiti, 'Guidelines for Engagement with Māori' (Wellington: Te Arawhiti, [2019]), https://tinyurl.com/yhp3vcyb, p 2

122. Document A12, 9; see also doc A20, p 7; doc A22, p 2; doc A24, p 8; doc A36, p 2

123. Document A43(a), p 22

124. Ibid

125. Ibid, pp 201–202

126. Ibid, pp 201, 205

127. Ibid, p 215

128. Ibid, p 218

process'.[129] It is also unclear which processes were at risk of being 'duplicated' here. As noted previously, the Bill as introduced had not included Minister Stanford's October 2025 changes to section 127, meaning they were not considered during earlier legislative steps, including select committee. What appears more likely is the decision to introduce the amendment late in the piece was a matter of administrative convenience. This view is consistent with Ms MacGregor Reid's summary of the process: 'The government wished to make the amendment, and the legislative vehicle was available. That legislative vehicle was on a particular timeline and given when the decision was made, it meant that this process was followed.'[130]

In addition to being inconsistent with the Crown's own internal guidance and official advice, the decision to forego any consultation with Māori was also incongruous with the level of engagement that informed the introduction of section 127(1)(d). As noted in official advice to Minister Stanford, the 2020 changes to school boards' statutory objectives followed the Tomorrow's Schools Independent Taskforce's recommendations following its review.[131] That process included wide-ranging consultation with the education sector, including over 100 hui held across the country concerning the Taskforce's interim report.[132] The process followed in that case created a reasonable expectation from Māori that similar levels of consultation would occur for proposals to amend that section. The Tribunal in *Hautupua*, for example, when considering the disestablishment of Te Aka Whai Ora, concluded that the Crown was obliged to follow an equally robust, evidence-based partnership process in disestablishing the Māori Health Authority as it followed in establishing it.[133]

The Crown's failure to consult meant that it necessarily lacked information from Māori and the wider education sector regarding the potential impact of the changes. It would not have received feedback, for example, from whānau, hapū, and iwi regarding what they saw as the potential implications of the change for ākonga Māori and other Māori interests. It would also not have received submissions from principals and other school board members on whether it was 'unreasonable' for boards to bear and discharge treaty obligations. This feedback would have been critical in our view to inform both Minister Stanford's decision to propose the statutory reform to Cabinet and Cabinet's decision to confirm it.

In conclusion, the Crown failed to consult Māori on its proposed removal of section 127(1)(d) and the introduction of section 127(2)(e). Its failure to consult was inconsistent with the Crown's internal guidelines, official advice, and the process that led to the introduction of section 127(1)(d). Forgoing engagement

129. Ibid, p 214
130. Transcript 4.1.1, p 247
131. Document A43(a), p 209
132. Tomorrow's Schools Independent Taskforce, *Our Schooling Futures: Stronger Together Whiria Ngā Kura Tūātinitini Final report by the Tomorrow's Schools Independent Taskforce* (Ministry of Education, Wellington, 2019), pp 95–96
133. Waitangi Tribunal, *Hautupua: Te Aka Whai Ora (Maaori Health Authority) Priority Report, Part 1 – Pre-publication Version* (Wellington: Waitangi Tribunal, 2024), p 19; see also Waitangi Tribunal, *Hūtia te Rito o te Harakeke, Stage Two, Part 1*, p 26

with Māori, and the education sector more broadly, also left the Crown without relevant insights to inform its decision-making. We can see no reason to justify the approach taken by the Crown, especially given the significance of the changes. We consider whether this amounts to a breach of treaty principles later in our findings in section 4.1.

3.4.2 In the absence of consultation, did the Minister seek sufficient internal advice to make an informed decision?

Another way the Crown can make informed decisions is to obtain internal advice. We now turn to consider whether, in the absence of consultation, the Crown procured sufficient internal advice to adequately inform itself of the potential impacts of the removal of section 127(1)(d) and introduction of section 127(2)(e) before confirming Minister Stanford's proposed reforms.

As noted in section 2.4.1, Minister Stanford proposed the relevant amendment to section 127 in October 2025. In her Cabinet paper, the Minister advised that no Regulatory Impact Statement had been prepared on her proposals 'due to the timeframes' but that she had 'directed officials to prepare a Post-Implementation Review after the fact'.[134] The Minister provided no compelling justification for the speed of her reforms, which appeared to be self-imposed. The omission of a Regulatory Impact Statement, which Andy Jackson, Hautū Te Pou Kaupapahere – Deputy Secretary Policy at the Ministry of Education, confirmed was a feature of the normal policy process, was therefore a choice, one which limited the information available to inform the Crown's decision-making.[135]

Despite forgoing a Regulatory Impact Statement, from what we have seen the Minister sought no official advice on the specific changes. Indeed, the Minister's Cabinet paper contained no information about, or analysis of, the potential risks to ākonga Māori or other Māori interests posed by the reforms. While the Minister noted the Crown would retain its 'Treaty responsibilities in respect of schools' in section 4(d) and 32 of the Act, she made no mention of what impact her section 127 changes might have on the Crown's ability to fulfil its treaty obligations at the schooling level.[136]

A piece of advice referenced by Minister Stanford in her Cabinet paper was the Ministerial Advisory Group's August 2025 report.[137] Significantly, however, that report did not recommend repealing section 127(1)(d), as noted in section 2.3.3, and only advised that the question of whether school boards ought to be treated as 'the Crown' in treaty terms was 'worthy of analysis'.[138] The Crown provided no evidence that any such analysis was undertaken or even sought by the Minister. The Ministerial Advisory Group also approached its advice on the express

134. Document A43(a), p 218

135. Transcript 4.1.1, p 247. A Regulatory Impact Statement for the original proposal to make educational achievement the paramount objective while retaining the objective to give effect to te Tiriti was prepared in November 2024: see doc A43(a), pp 75–96.

136. Document A43(a), p 216

137. Ibid

138. Ibid, p 58

understanding that 'genuine engagement' would occur with Māori on 'preliminary decisions' regarding reforms following the treaty clause review.[139] As noted in section 3.4.1, no engagement occurred at all.

Prior to October 2025, Ministry of Education officials did provide more general advice to Minister Stanford about reforming section 127. For example, in September 2025, following the Minister's receipt of the Ministerial Advisory Group's report as part of the treaty clause review, the Ministry of Education advised education ministers of section 127(1)(d)'s origin following the Tomorrow's Schools review, and the intent behind the different parts of the provision.[140] For example, officials advised the ministers that:

- Section 127(1)(d)(i), which required school boards to ensure the school gave effect to te Tiriti by 'working to ensure that its plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori, and te ao Māori', 'was to ensure boards work [with] iwi and hapū in partnership when developing these documents to actively protect Māori educational interests'.[141]
- Section 127(1)(d)(ii), which required school boards to ensure the school gave effect to te Tiriti by 'taking all reasonable steps to make instruction available in tikanga Māori and te reo Māori', had 'extended and strengthened' the former Education Act 1989 duty, which required boards to 'take reasonable steps to make instruction available in tikanga and te reo Māori for full-time students whose parents ask for it'.[142] The 'strengthening' of this objective was to support the purpose of Te Ture Mō Te Reo Māori 2016 and the Maihi Karauna, the Crown's Māori language strategy, the Ministry advised, and reverting to the 1989 Act's approach 'would not support the Crown's wider obligations towards te reo and mātauranga Māori'.[143]
- Section 127(1)(d)(iii), which required school boards to ensure the school gave effect to te Tiriti by 'achieving equitable outcomes for Māori students', 'was to reflect that this obligation sits directly with the Crown, as set out in section 4 of the Act, and Article 3 of te Tiriti'. It 'recognised that the education system has not supported equitable outcomes for Māori learners and sought to address this by placing an explicit obligation on school boards to address this'.[144]

While the September 2025 advice was provided following receipt of the Ministerial Advisory Group's report and did not respond to Minister Stanford's specific proposal to remove and replace section 127(1)(d), it did provide sufficient information to have made the Minister aware that the provision engaged a range of Māori interests and was significant to the Crown's discharge of its treaty obligations in the context of schooling. Both factors ought to have impressed on the

139. Document A52, p 22
140. Document A43(a), pp 209, 210
141. Ibid
142. Ibid
143. Ibid, pp 210, 212
144. Ibid, pp 209, 210

Minister the need to consult Māori, and to seek specific advice from officials on her reform.

When introduced to the House, Minister Stanford's Amendment Paper was accompanied by a supplementary disclosure statement, produced by the Ministry of Education and dated 24 October 2025. As noted in section 2.4.1, the statement identified a number of risks to both Māori interests and the Crown's discharge of its treaty obligations posed by the reforms. For example, the statement advised that removing the explicit obligation for school boards to give effect to te Tiriti 'could reduce the Crown's ability to support Māori educational success in accordance with its obligations under article three of Te Tiriti/the Treaty'.[145] The amendments captured in the new section 127(2)(e), meanwhile, risked (among other concerns) reducing the Crown's ability to actively protect te reo Māori and school 'boards' focus on providing teaching and learning that reflects tikanga Māori, mātauranga Māori, and te ao Māori', with potential implications for ākonga Māori educational achievement.[146] As the supplementary disclosure statement was produced by the Ministry of Education after Cabinet made its decision regarding the reforms, the advice could not have informed ministers' decision-making.[147] What it shows, however, is the kind of advice officials could have given Minister Stanford (and Cabinet more broadly) had their advice on the specific changes been sought in advance. We discuss the Ministry of Education's advice in the supplementary disclosure statement, and whether we agree with officials' estimation, in section 3.6.

In conclusion, it is obvious that deficiencies in the Crown's information base regarding the reforms, borne of its failure to consult Māori, were not resolved by the procurement of internal advice. The Crown's decision was therefore made without sufficient evidence to understand the risks posed to ākonga Māori and Māori interests. Regretfully, the rush which characterised the Crown's process and caused routine policy steps, such as the preparation of a Regulatory Impact Statement, to be skipped, was ultimately self-imposed. We consider whether the Crown's conduct amounted to a breach of treaty principles in our findings in section 4.1.

3.5 Is it Appropriate for School Boards to Hold an Explicit Statutory Treaty Obligation?

As noted in section 2.4.1, Minister Stanford's stated rationale for the removal of school boards' explicit Tiriti obligation in her October 2025 Cabinet paper was that 'schools are not part of the core Crown and school boards are elected by communities' and that it 'is not reasonable for parents and volunteers who make up

145. Document A43(a), p 231
146. Ibid, p 232
147. Cabinet made its decision on 20 October 2025 and the short-form supplementary departmental disclosure statement was dated 24 October 2025: doc A43(a), pp 224, 228.

boards to hold and discharge legal responsibilities in respect of the Treaty'.[148] In this section, we consider the Minister's rationale in two parts:

- First, given that school boards include locally elected volunteers, is it appropriate for them to hold an explicit statutory treaty obligation?
- Secondly, given that school boards are not part of the core Crown, is it appropriate for them to hold an explicit statutory treaty obligation?

3.5.1 School boards as locally elected volunteers

As explained in section 1.2.1, school boards usually include between three and seven parent representatives from within a school's community. Elections for parent and staff representatives are typically held triennially.[149] A school board will also include the school's principal (the chief executive of the school board), a staff representative, and, in the case of a secondary school, a student representative.[150] A school board may also include co-opted members to improve the gender, skill, or ethnic balance of the board.[151] Board membership 'is not a paid position', but members can be compensated by the board for travel costs and receive attendance fees, the amount of which is set by the board.[152]

Despite board membership not being a paid position, school boards do bear significant responsibilities in the context of schooling. As Ms Kennett explained, '[c]haracterising school board members as merely "volunteers" or "parents" does not accurately reflect the nature of their role' or 'how boards operate in practice'.[153] Board members, she explained, 'are elected community representatives who carry significant statutory responsibilities, including shaping the direction, culture, and values of their schools'.[154] School boards are responsible, for example, for ensuring the school 'is a physically and emotionally safe place for all students and staff' and that the school board 'gives effect to relevant rights' under the Education and Training Act 2020, New Zealand Bill of Rights Act 1990, and Human Rights Act 1993.[155] School boards are also responsible for appointing, suspending, and dismissing staff (including the principal).[156] As these examples illustrate, the Crown has not considered it unreasonable or inappropriate for school boards to bear a number of significant responsibilities despite their status as volunteers or

148. Document A43(a), p 216

149. Document A43, p 2; 'What Is a School Board', 25 August 2026, Ministry of Education, https://tinyurl.com/3wum33y4, accessed 28 october 2026; 'The Role of the School Board', 13 March 2026, Ministry of Education, https://tinyurl.com/4b6dmr98, accessed 28 October 2026

150. Document A43, p 2; see also Education and Training Act 2020, s 119 (version as at 8 May 2026)

151. Document A42, p 2

152. 'The Role of the School Board', 13 March 2025, Ministry of Education, https://tinyurl.com/4b6dmr98, accessed 28 October 2026; Education (School Boards) Regulations 2020, reg 19 (version as at 6 July 2026)

153. Document A36, p 6

154. Ibid

155. Transcript 4.1.1, p 55; Education and Training Act 2020, s 127(2)(c)(i), (ii) (version as at 4 September 2026)

156. Education and Training Act 2020, ss 128–129 (version as at 4 September 2026)

their composition including parents. It does not necessarily follow, therefore, that school boards' composition or their lack of remuneration ought to be determinative in whether boards should hold and discharge a treaty obligation.

Despite school board membership including parents and volunteers, Parliament has also considered it appropriate for school boards to bear treaty responsibilities. In 2017, the then National-led Government advanced an amendment to the Education Act 1989 to introduce an explicit statutory treaty obligation for school boards to act consistently with the treaty. In 2020, the then Labour-led Government strengthened this by requiring schools to give effect to te Tiriti and specifying a number of ways in which they must do so through section 127(1)(d) of the Education and Training Act 2020. From our review of Parliamentary debates concerning these proposals, no members of Parliament objected to school boards having a statutory treaty obligation, whether by virtue of their status as volunteers or otherwise. In the past, the Crown has therefore not considered – as Minister Stanford did – that an explicit statutory treaty obligation was necessarily incompatible with school boards' status as volunteers or the nature of their membership.

As Ministry of Education officials noted in advice to the Minister, the enactment of section 127(1)(d) followed recommendations from the Tomorrow's Schools Independent Taskforce.[157] Following extensive consultation on its interim report, the Taskforce released its final report in September 2019.[158] In the context of the Education Act 1989, the Taskforce acknowledged responsibilities for school boards had changed over time and many were onerous, and that boards required support.[159] However, it did not recommend that school boards' statutory treaty obligation be removed. To the contrary, in its view, 'the principles of Te Tiriti o Waitangi and the rights of the child must be given active expression in all board decision making'.[160] Informed by its engagement with the sector, including school board members, the Taskforce did not raise concerns that an explicit treaty obligation should be taken away from school boards, despite recommending other responsibilities be removed.[161]

Far from being inappropriate for school boards, as outlined in section 3.3, we heard from claimant and interested party witnesses that school boards were capably and successfully working to ensure their schools gave effect to te Tiriti in practice. As Ms Kennett explained, the idea that expectations for school boards were 'too high given their status as volunteers' did 'not reflect how boards operate in practice'.[162] Reflecting on feedback received from New Zealand Boards Association members, Ms Kennett told us giving effect to te Tiriti was 'not experienced as a "tick-box" exercise' but rather 'required boards to actively engage in an ongoing

157. Document A43(a), pp 209–210; see also doc A43(a), p 231
158. Tomorrow's Schools Independent Taskforce, *Our Schooling Futures*, p 96
159. Ibid, pp 22, 23
160. Ibid, p 25
161. Ibid, pp 28, 97
162. Document A36, p 6

process of learning, relationship-building, and reflection, through which capability and understanding were developed over time.'[163]

That a Tiriti obligation was appropriate for school boards to bear is also supported by the fact that, as far as we are aware, the proposal to remove school boards' Tiriti obligation did not arise from boards themselves. The Crown provided no evidence that school boards requested the removal or had concerns with the obligation. Ellen MacGregor-Reid, Te Tumu Whakarae mō te Mātauranga – Secretary for Education and Chief Executive of the Ministry of Education, commented that, to her recollection, there was not a significant debate about whether school boards 'were the right entity' to hold a Tiriti obligation when changes to the legislative obligations to school boards were made in 2020, despite the extensive consultation involved in the Tomorrow's School Review process.[164] While Ms MacGregor-Reid stated the Minister had expressed to her that she had 'received correspondence' with concerns regarding school boards' Tiriti obligation, the Ministry of Education had not itself seen that correspondence.[165] There was also no mention of specific school board concerns in Minister Stanford's October 2025 Cabinet paper proposing section 127(1)(d)'s removal.[166] To the contrary, after section 127(1)(d)'s removal, over 1,800 schools committed to continuing to give effect to te Tiriti in schools in Te Rārangi Rangatira.[167] These school boards, from around the country, publicly affirmed their role in ensuring the Crown's treaty obligations were realised.

When asked how the Crown discharges its treaty responsibilities 'on the ground in communities if not through schools', Ms MacGregor-Reid explained that the Ministry of Education, 'as part of the Crown, works to assist the Crown to discharge its Treaty obligations'.[168] The Ministry does so, she outlined, by providing advice on the system, establishing relationships with Māori, supporting kaupapa Māori education, having staff who facilitate relationships between Māori and schools on the ground, and by delivering support to education providers.[169] In her view, the question at issue 'is about where accountability ultimately lies, and this is with the Crown'.[170] As described by Ms MacGregor-Reid, the Ministry of Education's role is focused on monitoring and supporting the system, including school boards, and facilitating a role for Māori. School boards, however, are responsible for the day-to-day governance and management of schools and interact more closely with students. The approximately 2,500 school boards,[171] which are responsible for the governance and management of schools across the country,

163. Ibid, p 4
164. Transcript 4.1.1, pp 325–326
165. Ibid, p 319
166. See doc A43(a), pp 214–220
167. Document A30, p 10; doc A30(a), pp 1–22
168. Document A42(b), p 1
169. Document A42, pp 6–7
170. Document A42(b), pp 1–2
171. Document A43(a), p 42

place the Ministry's role in perspective. Rather than being directly responsible for the day-to-day operations of schools, the Ministry must support school boards to fulfil its expectations.

Finally, we note that education regulations still impose a Tiriti requirement on certain school boards. We refer specifically to regulation 7 of the Education (School Planning and Reporting) Regulations 2023, which sets out the required content for a school board's strategic plan. Under the regulation, a board's strategic plan must include its strategy for meeting its obligations in section 127(2)(e), the provision which replaced section 127(1)(d).[172] However, for certain school boards, these requirements do not apply. Under regulation 7(3), the strategic plan of a Kura Kaupapa Māori, Ngā Kura ā Iwi-affiliated school, and certain other hapū- or iwi-based schools, 'must instead include a general statement about how the kaupapa of the board's school reflects Te Tiriti o Waitangi'.[173] While 'reflects' is a lesser standard than 'gives effect to' te Tiriti (the language of the former section 127(1)(d)), this regulatory requirement indicates that the Crown does consider it appropriate for these kura boards to bear and discharge legal treaty responsibilities. This is the case even though these kura boards – just like other school boards – include volunteers and elected parent representatives. The Crown provided no explanation for this inconsistency.

In conclusion, a number of factors indicate it is appropriate for school boards to bear and discharge a treaty obligation. Moreover, school boards themselves provided evidence showing what they did to give effect to the treaty in practice. While school boards are volunteers and include parent representatives, they are expected to discharge a number of significant responsibilities in the course of their governance of a school. Certain kura boards also still have an explicit regulatory Tiriti requirement. That school boards would hold a treaty obligation was also not previously considered inappropriate by Parliament, which, in 2017, introduced a statutory objective for school boards to act consistently with the treaty. In 2020, Parliament then strengthened the obligation to require boards to give effect to te Tiriti and specified a non-exhaustive list of ways this was to be done. Indeed, as we discuss in the next section, a statutory treaty provision is a necessity when one considers the delegation of the Crown's power in the context of schooling.

3.5.2 School boards as non-core Crown actors

We heard a variety of legal arguments, from both claimant and interested party counsel and from the Crown, about whether school boards are a part of the Crown for the purposes of the Tribunal's jurisdiction, and whether it was legally appropriate for school boards to possess a treaty obligation. To be clear, school boards

172. Education (School Planning and Reporting) Regulations 2023, reg 7(1)(f) (version as at 15 October 2026)

173. Specifically, regulation 7(3) refers to the board of a 'specified kura board'. A 'specified kura board' is defined in section 10 of the Education and Training Act 2020, as including 'a Kura Kaupapa Māori'; 'a designated character school with a character that is hapū- or iwi-based, or that affiliates with Ngā Kura ā Iwi o Aotearoa'; and 'a State integrated school with a special character that is hapū- or iwi-based'.

are not part of the core Crown. They are Crown entities, legally distinct from the Crown proper. This much is obvious from section 124 of the Education and Training Act 2020, and to this extent we agree with the submissions of the Crown. Where we disagree with the Crown, and particularly with Minister Stanford, is on whether that in and of itself justifies the removal of an explicit statutory duty on school boards to give effect to te Tiriti.

We acknowledge that treaty obligations ultimately rest with the Crown as a signatory to the treaty. However, the treaty is a living document, and its application evolves as the years progress to reflect its spirit within the modern landscape. One of the unavoidable features of the current landscape, with regard to education, is that the day-to-day management of schooling, and the day-to-day experience of ākonga Māori, is not determined directly by the Crown. It is instead shaped by school boards. School boards are responsible, for example, for: ensuring the teaching and learning delivered by the school is consistent with the national curriculum, staffing decisions, monitoring and reporting on the performance of students and the school, the safety and well-being of students, and ensuring schools are inclusive of the different needs of students.[174] The Crown has chosen to delegate its control over these arrangements, reflecting the practical reality that the Crown cannot discharge its treaty duties at the school level if not through school boards.

However, as has been well traversed in past Tribunal jurisprudence, the Crown must still ensure its treaty obligations are being practically realised for Māori, even when the relevant Crown decisions have been delegated. For instance, in the local government context, the Tribunal in the *Tauranga Moana* report stated: '[T]he Crown must make sure that the rights of local authorities to govern are matched by the responsibilities of those same authorities to recognise Māori rights and values, and to give effect to the duties of the Crown.'[175]

If the Crown has chosen school boards as the entity through which to govern schools, then it must ensure that governance occurs in a treaty-consistent manner. To argue otherwise is to imply the everyday experience of ākonga Māori in the State education system is irrelevant to the treaty consistency of the Crown's schooling system as a whole. To an extent, the Crown acknowledged this (despite simultaneously arguing the change was justified because of the nature of school boards as non-core Crown entities). In its closing submissions, the Crown stated that school '[b]oards do *assist* the Crown to meet *the Crown's* Treaty obligations'.[176]

The practical reality is that school boards have an integral role to play in realising the Crown's treaty obligations. This was made obvious to us in the claimant and interested party evidence we heard, particularly from those in the education sector who deal most directly with section 127. These witnesses questioned how the Crown would ensure the treaty was honoured in the day-to-day operations of

174. Education and Training Act 2020, ss 127–129, 134, 145, 164–165 (version as at 4 September 2026)

175. Waitangi Tribunal, *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims*, 2 vols (Wellington: Legislation Direct, 2010), vol 1, p 476

176. Submission 3.3.32, p 25 (emphasis in original)

schools if not through school boards' treaty obligations. Ms Otene, for example, stated:

> The comments around school boards not being core Crown bodies and therefore are not a treaty partner raise a fundamental question about where that responsibility now sits in practice. Boards of Trustees are responsible for the governance of schools, including setting strategic direction, making decisions about curriculum and ensuring outcomes for ākonga. If that responsibility is no longer expected to sit with boards, it is unclear who, at the school level, is responsible for ensuring that te Tiriti is meaningfully reflected in the education sector.[177]

In her view, '[r]emoving this responsibility from boards, without clear mechanisms to replace it, creates a gap in accountability'.[178] Ms Kennett similarly explained that school boards 'exercise governance functions on behalf of the Crown at the point where decisions directly impact on ākonga, whānau, and communities'.[179] The suggestion that treaty obligations 'do not operate at this level', she stated, 'creates a disconnect between statutory responsibility and day-to-day decision-making'.[180] Mr Weatherill, for his part, stated that:

> While boards may not be part of the core Crown as a matter of formal institutional status, the function they exercise is the governance of compulsory education within a statutory, universal, and publicly funded education system.
>
> It is difficult to identify a function that is more central to the Crown's responsibility than the delivery and governance of compulsory schooling, where attendance is mandated by law, funding and staffing are controlled by the Crown, curriculum standards are prescribed centrally, and compliance is actively monitored.
>
> In functional terms, schools operate as instruments through which Crown policy is implemented. The removal of an explicit obligation to give effect to Te Tiriti o Waitangi from the governance of this core function does not reduce the Crown's responsibilities. Rather, it displaces Treaty considerations from the point at which day-to day decisions are made . . .[181]

Stepping back, it is clear that school boards are statutory entities established to govern schools within a compulsory, state-funded education system. Their statutory whakapapa to the Crown is undeniable: their existence, powers, functions, and responsibilities ultimately derive from the legislative framework through which the Crown provides education. The Crown's treaty responsibilities cannot be severed from the exercise of those functions merely because Parliament has entrusted their local exercise to bodies outside the core Crown. Indeed, the

177. Document A20, p 5
178. Ibid
179. Document A36, p 6
180. Ibid; see also doc A28, p [12]
181. Document A11, p 5

opposite is true. The more the Crown relies upon devolved bodies to give practical effect to its responsibilities in education, the more important it is that the statutory framework ensures its treaty obligations are observed. Section 127(1)(d) was an important means of doing precisely that.

Moreover, the advice the Crown received on potential amendments to section 127 did not recommend removing the explicit statutory Tiriti obligation from school boards. In advice regarding the 'paramount objective' changes, for example, officials did not raise any issue with school boards being subject to a treaty obligation. In September 2025, officials also advised education ministers of the link between section 127(1)(d) and the Crown's active protection of te reo Māori and mātauranga Māori and its obligations under article 3 of the treaty.[182] Officials explained further that, 'under current constitutional settings it is clear that the education system has a role to play in supporting' the Crown's broader obligations to actively protect te reo and mātauranga Māori.[183] Officials explained that the Crown discharges those obligations in practice by (among other actions) 'providing a basic level of access to te reo in mainstream schools'.[184] While officials noted the obligation 'could be made clearer including by distinguishing between the Crown's obligations at a system level, and those of an individual school', they did not suggest that a treaty obligation was inappropriate for school boards to hold.[185]

Ms MacGregor Reid referenced the Ministerial Advisory Group's report, provided in August 2025, as 'a relatively recent piece of advice to be concerned about precisely where the duties are located'.[186] As mentioned earlier, the Ministerial Advisory Group noted it would be worthwhile analysing whether school boards should be treated as part of the Crown in terms of the treaty partnership.[187] In this context the Ministerial Advisory Group suggested that the 'give effect to' obligation might be too strong, but did not reach a conclusion.[188] Most importantly, the Ministerial Advisory Group did not recommend the removal of the explicit Tiriti obligation from school boards.[189]

In spite of the cautious tone of the advice from the Ministerial Advisory Group, it appears that its remarks prompted the Minister's thinking in regard to section 127(1)(d). In her October 2025 Cabinet paper, Minister Stanford noted that the Ministerial Advisory Group had 'questioned whether, as Crown Entities, the standard of commitment provided for school boards is appropriate'.[190] The Minister's view that it was unreasonable for school boards 'to hold and discharge legal responsibilities in respect of the Treaty' in light of their membership, lack of remuneration, and non-core Crown status was a political judgement – one which

182. Document A43(a), p 210
183. Ibid, pp 212–213
184. Ibid, p 213
185. Ibid
186. Transcript 4.1.1, pp 325–326
187. Document A52, p 58
188. Ibid
189. Ibid
190. Document A43(a), p 216

went much further than the recommendations of the Ministerial Advisory Group. In our view, the Ministerial Advisory Group's report appeared to be a convenient justification for the Minister's removal of the statutory Tiriti reference. In a July 2025 interview recorded before the release of the Ministerial Advisory Group's report, the Minister was asked about whether school boards ought to have a statutory treaty obligation.[191] While not confirming what changes would occur, the Minister confirmed '[t]here will be changes' and that there were 'some legislative vehicles that are coming up that I will be using'.[192] Pressed on whether 'all this treaty stuff' ought to be removed from education entirely, the Minister replied: 'In one go. Not four or five or six times according to someone else's timetable'.[193] Later the Minister added that she would 'deal with the Treaty in one go, carefully and systematically'.[194]

Removing school boards' explicit obligation to give effect to te Tiriti was also not the only option available to the Minister. As noted in section 2.3.3, the Ministerial Advisory Group suggested a number of alternative wording formulations, such as to '*assist the Crown* to give effect to its obligations under the Treaty' where the relevant actor was 'not part of the Crown (such as local government) but Parliament wants to direct them (or delegate to them) the implementation of some of the duties of the Crown'.[195] Notably, the Crown was open to using an alternative duty formulation in the context of other amendments to the Education and Training Act 2020. On 25 June 2026, Parliament passed the Education and Training (System Reform) Amendment Act 2026. The Act (among other things) established the New Zealand School Property Agency whose functions include to '*support the Crown in its responsibility* to give effect to Te Tiriti o Waitangi' and specified a non-exhaustive list of ways it must do so.[196] During the Committee of the Whole House debate on the Bill, Minister Stanford commented that: 'The New Zealand School Property Agency must support the Crown in its responsibility to give effect to [the Treaty of Waitangi]. It's exactly the same for school boards. In section 127, we are very clear on the duties that school boards [have].'[197]

Despite the Minister acknowledging that both school boards and the new Property Agency support the Crown in its discharge of treaty obligations, it is significant that, on the one hand, specific wording relating to te Tiriti was removed from section 127 while, on the other hand, the property agency's statutory treaty responsibilities were made explicit. This brings us back to a point the Crown made in its closing submissions that school '[b]oards do *assist* the Crown to meet *the Crown's* Treaty obligations, and while some legislation makes this distinction

191. Document A18(b), p [4]
192. Ibid, pp [4], [6]
193. Ibid, p [5]
194. Ibid
195. Document A52, p 36 (emphasis added)
196. Education and Training (System Reform) Amendment Act 2026, ss 4, 57 (emphasis added)
197. Erica Stanford, 'Education and Training (System Reform) Amendment Bill: Committee of the Whole House', 20 May 2026, NZPD, https://tinyurl.com/52e43tx7

express, [section] 127 does not'.[198] When viewed against subsequent legislative reform, like the Education and Training (System Reform) Amendment Act 2026, the Minister's choice here makes less sense.

In addition, while the Ministerial Advisory Group thought it prudent, in the context of the treaty partnership, to analyse the role of school boards in relation to the Crown, no such analysis appears to have occurred.[199] As noted in section 3.4.2, the Crown provided no evidence the Minister had sought such analysis before proposing that school boards' statutory requirement to give effect to te Tiriti be removed. This is remarkable, especially so when one considers the amendments were not otherwise advised on by officials, were not consulted on publicly, and skipped the select committee process entirely.

In sum, prior to October 2025, it seemed clear to all involved that it was appropriate for school boards to hold some form of statutory treaty obligation, despite their status as Crown entities. The arrangement established in section 127(1)(d) reflected the practical reality that school boards, not the Crown, are the entities most directly involved in the day-to-day operation of schools and the experience of ākonga Māori. The Crown acknowledged this in its closing submission where it observed school boards assist the Crown to meet its treaty obligations. Where the Crown delegates its power, it must put the statutory mechanisms in place to ensure its treaty duties are observed in the exercise of that power. It is therefore appropriate for school boards to hold some form of explicit statutory treaty obligation. The amendments to section 127(1)(d) cannot be justified purely on the basis that school boards are not part of the core Crown.

3.6 What Implications (If Any) Do the Crown's Statutory Changes to Section 127 Have for the Fulfilment of its Treaty Obligations in the Everyday Schooling Context?

3.6.1 Explicit statutory reference to the treaty

In her October 2025 Cabinet paper, Minister Stanford stated that, notwithstanding the removal of school boards' statutory obligation to ensure schools give effect to te Tiriti, the Crown still 'retains its Treaty responsibilities in respect of schools'.[200] Those responsibilities, the Minister stated, were set out in sections 4(d) and 32 of the Education and Training Act 2020.[201] As noted previously, those provisions relate to the purpose of the Act and the purpose of part 3 of the Act (where section 127 is contained), respectively.

Similar commentary was contained in the supplementary disclosure statement that accompanied Amendment Paper 428. It stated: 'It is important to note that the Crown acknowledges and maintains its commitment to Tiriti/Treaty obligations in respect of the schooling system, as set out in sections 4(d), 32(h), and

198. Submission 3.3.32, pp 25–26 (emphasis in original)
199. Document A52, p 58
200. Document A43(a), p 216
201. Ibid

Sections 4(d), 9(2)(ba), and 32(h) and (i) as at 1 October 2026

4 Purpose of Act

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

. . . . .

(d) honours Te Tiriti o Waitangi and supports Māori-Crown relationships.

9 Te Tiriti o Waitangi

. . . . .

(2) Other provisions related to Te Tiriti o Waitangi in the context of the regulation of the education system include—

. . . . .

(ba) section 127(2)(e), which provides that, when meeting its paramount objective in governing a school, the board must ensure that it—

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

(i) reflecting and integrating te reo Māori, tikanga Māori, mātauranga Māori, and te ao Māori in the schooling system.

32(i) of the Act.'[202] Those provisions, officials stated, 'will continue to aid in the interpretation of relevant statutory powers and functions exercised under the Act'.[203] However, in contrast to section 127(1)(d), officials noted those sections do not create a 'discrete and free-standing legal obligation to give effect to Te Tiriti/The Treaty'.[204]

As outlined previously, section 4(d) provides that a purpose of the Act 'is to establish and regulate an education system that . . . *honours* Te Tiriti o Waitangi and supports Māori–Crown relationships'.[205] Section 32(h), in turn, similarly refers to '*honouring* Te Tiriti o Waitangi and supporting Māori–Crown relationships that

202. Document A43(a), pp 231–232
203. Ibid, p 232
204. Ibid
205. Emphasis added

make a difference to learning' in the context of the schooling system.[206] 'Honour' is a comparatively strong treaty standard, one that reflects a serious statutory expectation that the Crown's treaty obligations will be upheld in the context of education. As far as we are aware, the Education and Training Act 2020 is unique in both its use of this standard and because it refers to 'Te Tiriti o Waitangi' (and not the Treaty of Waitangi or a combination of the two), often without referencing its principles. To us, this sends a very clear message to decision makers under the Act that Te Tiriti o Waitangi and the relationship it established and the responsibilities arising from that relationship, are to be held in the very highest regard. It makes sense to us that honour and Te Tiriti o Waitangi were purposely chosen in the context of education. This combination reflects the fact that schooling is compulsory and therefore touches the lives of all ākonga Māori in Aotearoa New Zealand. The standard expected of the Crown must therefore be a high one. In our view, requiring the education system to honour Te Tiriti appropriately reflects the significance of that responsibility: the greater the reach of the State into the lives of Māori, the greater the imperative that its actions uphold the relationship and responsibilities established by Te Tiriti.

Turning to the Crown's argument, we agree that the purpose provisions remain relevant to the interpretation of section 127 as a matter of orthodox statutory interpretation. This approach is also consistent with the Supreme Court's commentary in *Trans-Tasman Resources Limited v Taranaki-Whanganui Conservation Board*, a 2021 judgment discussed in our stage one interim report. In that case, the Supreme Court commented 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.[207]

As the Tribunal in *Te Tinihanga o ngā Mātāpono: The Urgent Report on the Treaty Principles Reform* described, this line of judicial reasoning 'indicates that at a general level the courts may be prepared to "read in" the Treaty/te Tiriti as a relevant consideration for officials' and so '[t]herefore, Treaty/Tiriti principles can be "read in" to a statute, even when a statute does not mention the Treaty/te Tiriti'.[208] In our view, the removal of section 127(1)(d) is unlikely to be interpreted as negating the relevance of the treaty due to the continued application of the Act's purpose provisions. In this context, therefore, if section 127 (in its amened form) came before the courts, a purposive approach would likely be favoured – not just as a matter of orthodox statutory interpretation, but also in keeping with this line of judicial reasoning.

206. Emphasis added

207. *Trans-Tasman Resources Limited v Taranaki-Whanganui Conservation Board* [2021] NZSC 127 at para 151

208. Waitangi Tribunal, *Te Tinihanga,* p 192

However, whether school boards will understand how the Act's purpose provisions ought to apply in interpreting their section 127 obligations is far from clear. While the Act's purpose provisions, including section 4 and section 32, colour the interpretation of section 127, they are less obvious for school boards. In practice, school boards are more likely to look to section 127 itself to understand what the law requires of them. Indeed, the importance of explicitly stating expectations for school boards in section 127 was recognised in the context of the earlier reforms. In November 2024, officials advised against proposals to remove an express reference to school boards' obligations under the New Zealand Bill of Rights 1990 and the Human Rights Act 1993 from section 127.[209] In their view, the amendment would 'send an incorrect message to school boards that student rights are not important or relevant for them'.[210] Submitters had opposed the proposal during public consultation, officials summarised, because they wanted 'to keep student rights visible for school boards, who are made up of laypeople with variable experience of governing schools'.[211] According to submitters, removing the express objective from section 127 could 'lead to board practices that are not consistent with these rights'.[212]

We consider that similar risks exist here. It is not just the statutory meaning found by courts through litigation that matters, as we concluded in our stage one interim report. The signal sent to statutory actors, and their understanding of their obligations, is also important for ensuring the Crown's treaty obligations are honoured in practice. In this context, the removal of an explicit obligation from school boards to ensure their schools give effect to te Tiriti risks sending a message to school boards that the treaty is no longer relevant or important to their work. This is especially when, as we concluded above, the continued application of the purpose provisions may not be obvious to school boards. Removing the explicit reference to te Tiriti also risks obscuring the fact that school boards still hold Tiriti-related obligations in the replacement section 127(2)(e). This is clear from section 9(2) of the Act, which lists section 127(2)(e) as one of the '[o]ther provisions related to Te Tiriti o Waitangi in the context of the regulation of the education system'.[213]

Significantly, despite the Crown's arguments regarding sections 4, 9 and 32 of the Act, the Crown at the time of hearing had provided no guidance to school boards about how to interpret their obligations in section 127(2)(e) or how the purpose provisions ought to apply.[214] If the Crown did not want to leave school boards' awareness of the continued relevance of the treaty to chance, we would have expected it to have expressly and clearly instructed school boards to read section 127 in conjunction with the relevant purpose provisions in the Act. The Crown submitted the Ministry of Education intended to provide guidance to

209. Document A43(a), p 65
210. Ibid
211. Ibid
212. Ibid
213. Education and Training Act 2020, s 9(2)(ba) (version as at 4 September 2026)
214. See, for example, submission 3.3.32, p 27.

school boards 'about the meaning and effect of the changes to [section 127]', but this had not yet occurred at the time of closings.[215] The absence of specific guidance was reflected in Ms Mareko's evidence. She told us there had been

> no clear guidance as to how boards are now expected to uphold Te Tiriti in the absence of a statutory duty; no additional resourcing, professional learning or monitoring mechanisms to ensure that mātauranga Māori, te reo Māori and local iwi partnerships continue to be strengthened rather than sidelined; and no assurance to whānau Māori that their children's rights and interests remain protected at a system level.[216]

Indeed, it appears that for those schools who signed Te Rārangi Rangatira, their perception was that they needed to make that public statement to show that, despite the removal of section 127(1)(d), they were still committed to giving effect to te Tiriti.

Overall, as we noted in our stage two, part I report, in light of longstanding educational inequities for ākonga Māori and the vulnerable state of taonga like te reo Māori, the Crown's treaty obligations are enhanced.[217] In view of this, addressing inequities and actively protecting taonga requires vigorous and proactive action on the part of the Crown. Any increase in uncertainty for school boards' understanding of their statutory objectives in this context is inconsistent with the expectations placed on the Crown.

As outlined previously, section 127(1)(d) also contained a non-exhaustive list of ways schools would give effect to te Tiriti (namely, paragraph (i) to (iii) of section 127(1)(d)). While aspects of those paragraphs are reflected in an amended form in section 127(2)(e), as we discuss further next, the section no longer contains any explicit reference to the treaty itself. The supplementary disclosure statement accompanying Amendment Paper 428 advised that the 'proposal to remove the explicit Tiriti/Treaty obligation on school boards could reduce the Crown's ability to support Māori educational success in accordance with its obligations under article three' of the treaty.[218] In addition, claimant witnesses told us the removal of this explicit expectation would undermine boards' capacity to prioritise treaty-consistent decision-making and initiatives in practice. Mr Weatherill, for example, explained:

> Schools are currently operating under acute resource pressure. Staffing entitlements in primary schools are insufficient, learning support funding is inadequate, and principals face expanding compliance and reporting obligations. These pressures are not speculative – they are immediate and ongoing.
>
> In this context, statutory obligations matter profoundly. Where the law requires boards to give effect to Te Tiriti, principals can lawfully prioritise Māori-focused

215. Ibid, p 39; see also doc A43, p 13
216. Document A13, p 5
217. Waitangi Tribunal, *Hūtia te Rito o te Harakeke, Stage Two, Part I*, pp 27–28, 30, 228
218. Document A43(a), p 231

initiatives, local curriculum development grounded in tikanga, engagement with mana whenua, and te reo Māori provision – even where these compete with other demands.[219]

Removing the 'explicit treaty obligation', Mr Weatherill explained, 'inevitably results in the downgrading of Te Tiriti in considerations in day-to-day decision-making'.[220] While 'Te Tiriti is not expressly excluded', he stated, 'it is displaced by other mandated priorities in circumstances of chronic under-resourcing'.[221] According to Mr Weatherill, decisions under the amended framework were already being made and '[e]ach decision taken without a clear Treaty mandate compounds the marginalisation of Te Tiriti within school governance'.[222] Ms Mareko, similarly, told us that the removal of section 127(1)(d) 'sends a signal that Te Tiriti is no longer a non-negotiable foundation of schooling, but an area where boards may choose the extent of their commitment'.[223] In her view, '[a] future board, less committed than the current one, could legitimately redirect resources away from Tiriti-focused work, citing the absence of any statutory obligation'.[224]

Although the public commitment expressed by so many school boards to continue to give effect to the treaty is admirable, this commitment is not substitute for an explicit statutory obligation. While schools may strive to fulfil this commitment, Ms Mareko and Mr Weatherill's evidence clearly illustrates that statutory backing is important to support treaty-consistent action in the context of board decision-making. In addition, while many schools have expressed their commitment, the commitment is not universal. Without an explicit expectation applying to all schools, practice across schools is unlikely to be consistent. Even for those schools who have signed Te Rārangi Rangatira, there is a risk that their commitment may wane over time as board membership changes and other priorities compete for attention. As Lizzie Waipara, a primary school teacher at Island Bay School in Wellington, told us: 'Many boards will continue to uphold the partnership because they believe in it. But others, particularly those that are overworked, under-resourced, or struggling, simply won't have the capacity to sustain it without statutory backing.'[225]

Indeed, the potential impacts of repealing school boards' explicit Tiriti obligation was considered by Ministry of Justice officials in the advice pack provided to the Ministerial Advisory Group. There, Ministry of Justice officials explained there was a 'clear link' between section 127(1)(d) and the purpose of the Act in section 4(d).[226] Section 127(1)(d), officials explained, was 'intended to support the general purpose set out at section 4(d)', with the intention being 'for the Crown to ensure it

219. Document A11, p 2
220. Ibid, p 3
221. Ibid
222. Ibid, pp 3–4
223. Document A13, p 4
224. Ibid
225. Document A7, p 2
226. Document A54(b), p 76

is upholding its Treaty obligations within the education system by setting requirements consistent with those obligations for school boards.'[227] Officials warned that repealing section 127(1)(d) would likely remove 'Treaty considerations from school boards' strategic and implementation plans'; would 'create a compliance risk regarding s[ection] 4'; could reduce schools' focus on treaty considerations; and would reduce the Minister of Education or Secretary for Education's ability 'to intervene to ensure school boards take any action in respect of giving effect to the Treaty'.[228]

In this case, the Crown has not simply repealed section 127(1)(d) but replaced it with a new provision section 127(2)(e), which we analyse next. However, the fact remains that the Crown has removed school boards' explicit statutory obligation to give effect to te Tiriti. In our view, section 127(1)(d), including the 'give effect to' obligation, was a key lever though which the expectations in section 4(d) and 32(h) could be fulfilled – namely, the expectation that the schooling system established by the Act *honours* te Tiriti. As mentioned, 'honouring' is a strong treaty standard, one that is unique to the Education and Training Act 2020. In our view, removing school boards' explicit statutory Tiriti obligation creates a potential disconnect between school boards' objectives and the purpose provisions. It also removes part of the mandate that previously supported treaty-consistent practice, as the claimant witnesses explained.

Overall, given the removal of the explicit statutory Tiriti reference and the importance of clarity in section 127 itself, the replacement section 127 needs to very explicitly impose statutory requirements that comprehensively reflect the relevant treaty interests engaged in the schooling system. This is important to ensure the Crown's treaty obligations are fulfilled at the schooling level, including in relation to sections 4(d) and 32(h), and not deprioritised or otherwise overlooked in school boards' decision-making. In the next section, we therefore turn to consider the content of the new section 127 specifically to assess whether, compared to its predecessor, the application of the provision on its face will increase the risk that the Crown's treaty obligations in the everyday schooling context will not be realised.

Specifically, in the following three parts of our analysis, we consider section 127(2)(e) with regard to the Crown's treaty obligations in the context of schooling. We firstly consider the provision in light of the principle of equity, before analysing the section with reference to the Crown's obligations towards te reo Māori, mātauranga Māori, and tikanga Māori. We note that, compared to other issues, there was relatively little claimant and interested party evidence concerning the substantive content of the new section.

3.6.2 Equity

The Crown, in accordance with the principle of equity, is obliged to address the longstanding educational inequities experienced by ākonga Māori. In rectifying disparities, the Crown is not merely required to provide 'the same level and

227. Ibid, p75
228. Document A54(a), pp77–78

Section 127(1)(d)(iii) as at 22 October 2025

127 Objectives of boards in governing schools

(1) A board's primary objectives in governing a school are to ensure that—

. . . . .

(d) the school gives effect to Te Tiriti o Waitangi, including by—

. . . . .

(iii) achieving equitable outcomes for Māori students.

Section 127(2)(e)(i) as at 1 October 2026

127 Paramount objective of boards in governing schools

. . . . .

(2) To meet the paramount objective, the board must meet the following supporting objectives:

. . . . .

(e) to ensure that it—

(i) seeks to achieve equitable outcomes for Māori students; and

type of education to everyone', but to ensure the education provided to Māori is that which best suits their needs.[229] The existence of longstanding inequities also heightens the Crown's partnership obligations and kāwanatanga responsibilities in the context of education reforms.[230]

The new section 127(2)(e)(i) provides that an essential supporting objective of school boards is to ensure the school 'seeks to achieve equitable outcomes for Māori students'. Minus the obvious reference to the treaty, this is similar in content to section 127(1)(d)(iii). That section required school boards to ensure schools gave effect to te Tiriti by 'achieving equitable outcomes for Māori students'.[231]

In her October 2025 Cabinet paper, Minister Stanford explained this amendment 'reflects the need to elevate Māori educational achievement and success'.[232] However, no explanation was provided by the Minister as to how the amendment,

229. Waitangi Tribunal, *Hūtia te Rito o te Harakeke, Stage Two, Part 1*, p 29; see also Waitangi Tribunal, *Kei Ahotea Te Aho Matua*, p 232; Waitangi Tribunal, *Te Urewera*, vol 8, pp 3774, 3776

230. Waitangi Tribunal, *Hūtia te Rito o te Harakeke, Stage Two, Part 1*, pp 27, 30; see also Waitangi Tribunal, *Hauora*, pp 28–29

231. Education and Training Act 2020, s 127(1)(d)(iii) (version as at 22 October 2025)

232. Document A43(a), p 216

which weakens the expectation on school boards and removes explicit references to the treaty, would 'elevate' Māori educational achievement. What is more likely, therefore, is that Minister Stanford meant that ākonga Māori educational achievement had been 'elevated' in the sense that it was now to be listed first in the provision, rather than that this specific reform was directed to substantively address that issue.

We nevertheless agree that the Minister's focus on addressing inequities is important and recognise the similarities between the content of the former section 127(1)(d)(iii) and the content of section 127(2)(e)(i). However, the new requirement in section 127(1) that focuses on students attaining 'their highest possible standard in educational achievement' (the new 'paramount objective') is typically defined and measured by standardised metrics. Moreover, removing the obligation to give effect to te Tiriti suggests that educational achievement and giving effect to the treaty are mutually exclusive. We disagree. Giving effect to te Tiriti is necessary to support educational achievement for ākonga Māori. We further agree with the concerns raised by claimants and interested parties that the new paramount objective risks demoting treaty-related considerations contained in the 'supporting objectives'.[233]

The new section softens the expectation on a school board from ensuring that it 'achieves equitable outcomes' to ensuring it '*seeks to achieve* equitable outcomes' for ākonga Māori.[234] Ms Kennett was critical of this amendment, explaining it represented 'a shift from a firm duty to a more aspirational standard'.[235] This view was shared by Te Whakakitenga o Waikato, which argued the new section 'imposes only an obligation to aspire toward equity rather than to actually achieve it'.[236] Combined with section 127(1) which introduced a 'paramount objective' for school boards, Ms Kennett was concerned the change 'diminishes' the obligation 'because now it separates Māori students as something that hopefully we'll get to'.[237] In cross-examination, the Crown questioned Ms Kennett about the degree to which school boards can influence outcomes in the classroom, noting school boards are responsible for 'governance as opposed to day-to-day management' of a school.[238] Ms Kennett acknowledged school boards could not guarantee outcomes or that anyone, for that matter, could.[239] In its closing submissions, the Crown argued the new language in section 127(2)(e)(ii) reflected 'as claimant evidence recognised' that 'boards cannot themselves achieve equitable outcomes for Māori students'.[240]

233. See, for example, submission 3.3.8, p 11; doc A11, p 2; and doc A5, p 4.

234. Compare the Education and Training Act 2020, s 127(1)(d)(iii) (version as at 22 October 2025) (emphasis added) and the Education and Training Act 2020, s 127(2)(e)(i) (version as at 4 September 2026) (emphasis added).

235. Document A36, p 5

236. Submission 3.3.8, p 11; see also submission 3.3.33, p 3

237. Transcript 4.1.1, p 54

238. Ibid, p 56

239. Ibid, p 57

240. Submission 3.3.32, p 31

However, we have three concerns with the changes in section 127(2)(e)(i). First, in the context of longstanding educational inequities, 'seek to achieve' is too weak an expectation. As officials outlined in the Ministry of Justice's advice pack provided to the Ministerial Advisory Group during the treaty clause review, the strength of language used in the original section 127(1)(d)(iii) was chosen intentionally. Specifically, the stronger requirement 'was to reinforce through the law that this is an important objective'. Officials advised further that any amendment to 'make the language . . . more flexible would therefore signal a change in the degree of importance of this objective', creating potential inconsistency with Cabinet's desire to 'elevate the importance of equitable outcomes'.[241] We agree with this assessment and consider that the amendment, considered alongside the removal from the section of an explicit reference to the treaty, risks sending a signal to school boards that the objective is less important.

Secondly, the standard of 'seeks to achieve' lacks specificity for school boards in terms of what is required of them and creates ambiguity. The lack of clear direction may lead to inconsistent practice across schools. For example, a school taking minimum steps to achieve equity for ākonga Māori and a school taking significant and meaningful action to address equity for ākonga Māori may both be seen as satisfying the new standard. The potential for a reduced effort on the part of school boards to addressing inequities sits uncomfortably alongside the expectations in section 4(d) and 32(h) that the schooling system honour te Tiriti.

Thirdly, compared to the policy work that informed the introduction of section 127(1)(d), the new section 127(2)(e)(i) wording appears to have undergone far less analysis. No explanation was provided, for example, in the Minister's Cabinet paper or in the supplementary disclosure statement regarding why the standard of 'seeking to achieve' had been chosen. The best indication we have of the rationale was provided in the Crown's closing submissions and its cross-examination of a claimant witness at hearing, as outlined above. The apparent lack of intentionality behind the section's redesign contrasts starkly with the purposeful design of section 127(1)(d). As Ministry of Justice officials stated in their advice pack regarding the provision, the language used in section 127(1)(d)(i)–(iii) was chosen purposefully.[242] In the case of section 127(1)(d)(iii), as noted above, the intention behind 'achieving' equitable outcomes was to reinforce the importance of this objective.[243]

In summary, section 127(2)(e), while removing an explicit reference to the treaty, retains an objective focused on ākonga Māori educational achievement. As section 9(1) makes clear, this is a Tiriti-related provision and there is an obvious relationship between this expectation and the Crown's obligations under article 3 of the treaty. However, section 127(2)(e) softens the previous objective's more clearly defined expectation on school boards. The language of 'seeks to achieve' equitable outcomes does not adequately reflect the importance of the objective in the context of longstanding educational inequities and lacks specificity for school

241. Document A54(b), p 77
242. Ibid
243. Ibid

boards in terms of what is required of them. We consider whether the Crown's statutory changes amount to a breach of treaty principles in our findings in section 4.1.

3.6.3 Te reo Māori

Te reo Māori is a taonga of 'transcendent importance to Māori' guaranteed under article 2 of the treaty.[244] In accordance with the principle of active protection and given te reo Māori is in a 'highly fragile' state, the Crown is therefore obliged to take vigorous action to protect the language, particularly as 'its own actions damaged te reo'.[245] To discharge its obligations, the Crown must 'fully support the use by Māori of te reo in everyday and normalised interactions'.[246] The Crown's commitment to protecting te reo Māori should also neither be diminished, nor 'piecemeal . . . given the language's ongoing vulnerability'.[247]

The new section 127(2)(e) contains a statutory objective related to te reo Māori. However, its content and form differ significantly from the expectation formerly contained in section 127. Specifically, section 127(2)(e)(ii) provides that an essential supporting objective of a school board is to ensure it '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'. In contrast, former section 127(1)(d)(ii) required school boards to ensure schools give effect to te Tiriti by 'taking all reasonable steps to make instruction available in tikanga Māori and te reo Māori'.[248]

In her October 2025 Cabinet paper, Minister Stanford explained the replacement provision 'reflects that some families consider providing for teaching in te reo important to their child's education, while others do not'.[249] The new section, she explained, 'aims to provide choice to families to enable their child/children to be educated in line with their family's aspirations'.[250] From this commentary, the Minister's focus in proposing this specific amendment appeared to be on the interests of parents who 'do not' consider te reo Māori important to their child's education, rather than on obligations owed by the Crown to the Māori language under the treaty.

In the supplementary disclosure statement concerning the changes, officials advised that the amendment to school boards' objectives with regard to 'the provision of teaching and learning in te reo Māori could reduce the Crown's ability to meet its obligations to actively protect and promote te reo Māori as a taonga of

244. Waitangi Tribunal, *Hūtia te Rito o te Harakeke, Stage Two, Part 1*, pp 9, 228; see also Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuarua*, vol 2, p 442

245. Waitangi Tribunal, *Taku Reo Kura, Taku Reo Kahurangi*, p 51; see also Waitangi Tribunal, *Hūtia te Rito o te Harakeke, Stage Two, Part 1*, p 28

246. Waitangi Tribunal, *Taku Reo Kura, Taku Reo Kahurangi*, p 50; see also Waitangi Tribunal, *Hūtia te Rito o te Harakeke, Stage Two, Part 1*, p 28

247. Waitangi Tribunal, *Taku Reo Kura, Taku Reo Kahurangi*, p 51; see also Waitangi Tribunal, *Hūtia te Rito o te Harakeke, Stage Two, Part 1*, p 28

248. Education and Training Act 2020, s 127(1)(d)(ii) (version as at 22 October 2025)

249. Document A43(a), p 217

250. Ibid

Section 127(1)(d)(ii) as at 22 October 2025

127 Objectives of boards in governing schools

(1) A board's primary objectives in governing a school are to ensure that—

. . . . .

(d) the school gives effect to Te Tiriti o Waitangi, including by—

. . . . .

(ii) taking all reasonable steps to make instruction available in tikanga Māori and te reo Māori; and

Section 127(2)(e)(ii) as at 1 October 2026

127 Paramount objective of boards in governing schools

. . . . .

(2) To meet the paramount objective, the board must meet the following supporting objectives:

. . . . .

(e) to ensure that it—

. . . . .

(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

iwi and Māori.'[251] While the new section would 'ensure that teaching and learning is available in te reo Māori on request', officials stated, in the amended section 'accountability shifts from the education system to parents and caregivers.'[252]

This amendment represents a regression to an outdated approach to supporting the transmission and revitalisation of te reo Māori. As officials advised education ministers in September 2025, the 2020 amendments to the Act strengthened and expanded school boards' responsibilities with respect to te reo Māori.[253] In a departure from the 1989 Act, the obligation would no longer be contingent on a parent requesting access to te reo Māori for their child.[254] This reflected the then government's commitment to supporting the revitalisation of the language,

251. Document A43(a), p 232
252. Ibid
253. Ibid, p 212
254. Ibid

including by 'creat[ing] an expectation of integration of te reo Māori across all schools.'[255]

The normalisation of the Māori language rests in large part on the ease of its availability in the schooling context. The change to school boards' obligations in this case shifts the onus onto parents and caregivers and creates an unnecessary barrier. Contrary to the expectations placed on the Crown, the approach is also piecemeal and does not reflect the Crown's obligations to protect the language which exists independently of the wants and preferences of specific parents. Significantly, we note the Crown mounted no argument that this specific change complied with its obligations with respect to te reo Māori.

As for the change to school boards' requirements related to equity for ākonga Māori, we see a potential disconnect between the Crown's statutory amendment and expectations contained in the Act's purpose provisions. As mentioned, sections 4(d) and 32(h) refer to the honouring of te Tiriti. In addition, section 32(i) provides that a purpose of part 3 of the Act (where section 127 resides) 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 . . . reflecting and integrating te reo Māori, tikanga Māori, mātauranga Māori, and te ao Māori in the schooling system.

The reference to te reo Māori relates to *all learners/ākonga* (not just learners whose parent or caregiver requests it). It does not appear that section 127(2)(e)(ii) has been designed with sections 32(h) and 32(i) in mind.

Reverting to an outmoded approach to supporting the revitalisation of te reo Māori also sits uncomfortably alongside the Crown's broader obligations in Te Ture mō Te Reo Māori 2016. Alongside recognising te reo Māori as a taonga and official language of Aotearoa New Zealand, section 4 of that statute provides that a purpose of the Act is to affirm the status of te reo Māori as 'a language valued by the nation' and 'to provide a means to support and revitalise the Māori language.'[256] Section 6 of the Act also contains a Crown acknowledgement that its past policies and practices have not actively protected the Māori language and expresses the Crown's 'commitment to work in partnership with iwi and Māori to continue actively to protect and promote this taonga, the Māori language, for future generations.'[257] Lastly, the Act articulates a number of guiding principles, including that:

- 'knowledge and use of the Māori language enhance the lives of iwi and Māori';
- 'knowledge and use of the Māori language are sustained through transmission of the language from generation to generation among whānau and by daily communication in the community'; and

255. Ibid, pp 208, 210
256. Te Ture mō Te Reo Māori 2016, s 3(2)(a)(i)–(iv), (b)
257. Ibid, s 6(1), (2)

- 'the Māori language is important to the identity of New Zealand'.[258]

The purpose of the Act, alongside its guiding principles, reinforces the Crown's obligation to actively protect the language and to foster its daily use and transmission in the community. As noted above, the revised section 127 shifts the onus away from schools and onto parents and caregivers rather than promoting the language's normalisation in schools. Such an approach, which emphasises the importance of providing choice to parents and caregivers who do not consider the language important to their child's education, also fails to reflect the language's value to the country as a whole or its importance to New Zealand's identity.

More broadly, however, we have insufficient information before us regarding the potential implications of this change for students' access to te reo Māori. For example, we do not know what the potential impact of the change might be for schools' capacity to offer learning and teaching in te reo Māori where only a few parents request te reo Māori for their children; what might occur if a student wants to learn te reo Māori but their parent disagrees; or what implications might exist for a student's language continuity if they change schools and the new school has had no parents request te reo Māori for their child.

What is clear, however, is that making school boards' obligation with respect to te reo Māori provision contingent on parents and caregivers requesting it increases uncertainty about year-to-year access. There is a risk, for example, that access to te reo Māori tuition might become a 'nice to have' rather than a consistent option across schools. Taking vigorous and active steps to protect the language when it is in a state of vulnerability does not mean shifting the onus away from schools and onto the school community. This change represents a diminishment in the Crown's commitment towards the language and suggests the Crown is abdicating its responsibility towards te reo Māori. We consider whether this amounts to a breach of treaty principles in our findings in section 4.1.

3.6.4 Mātauranga and tikanga Māori

Mātauranga Māori and tikanga Māori are highly valued taonga for Māori protected under the treaty. However, where once mātauranga Māori was transmitted within the context of the whānau, it is now often learned by tamariki Māori in school.[259] In a context where assimilationist state education long sought to diminish Māori culture, the Crown bears responsibilities under the treaty to support the transmission of Māori cultural knowledge.[260] In accordance with the principle of active protection, where a taonga such as mātauranga Māori is in a vulnerable state, the Crown's duty is heightened.[261] In addition, under the principle of options,

258. Te Ture mō Te Reo Māori 2016, s 8(2)(e), (f), (l)
259. See Waitangi Tribunal, *Hūtia te Rito o te Harakeke, Stage Two, Part 1*, p 12
260. Ibid, pp 13, 14
261. Ibid, p 27; Waitangi Tribunal, *The Report on the Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (Lower Hutt: Legislation Direct, 2021), p 176

Section 127(1)(d)(i) as at 22 October 2025

127 Objectives of boards in governing schools

(1) A board's primary objectives in governing a school are to ensure that—

. . . . .

(d) the school gives effect to Te Tiriti o Waitangi, including by—

(i) working to ensure that its plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori, and te ao Māori; and

Section 127(2)(e)(iii) as at 1 October 2026

127 Paramount objective of boards in governing schools

. . . . .

(2) To meet the paramount objective, the board must meet the following supporting objectives:

. . . . .

(e) to ensure that it—

. . . . .

(iii) takes reasonable steps to ensure that the policies and practices for the school reflect New Zealand's cultural diversity:

Māori have the right to choose their 'social and cultural path'.[262] This principle 'protects Māori in their right to continue their way of life according to their indigenous traditions and worldview while participating in British society and culture, as they wish'.[263]

The new section 127 does not refer to either tikanga Māori or mātauranga Māori. As introduced in section 1.2.3, tikanga Māori was previously referenced explicitly in section 127(1)(d)(ii) alongside te reo Māori. Both mātauranga Māori and tikanga Māori were also referenced in section 127(1)(d)(i), which required school boards to ensure the school gave effect to te Tiriti by 'working to ensure that its plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori,

262. Waitangi Tribunal, *Hauora*, p 35; Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), p 65; see also Waitangi Tribunal, *Hūtia te Rito o te Harakeke, Stage Two, Part 1*, p 30

263. Waitangi Tribunal, *Hauora*, p 35; see also Waitangi Tribunal, *Hūtia te Rito o te Harakeke, Stage Two, Part 1*, p 30

and te ao Māori'.[264] In contrast, section 127(2)(e)(iii), the closest provision to the former requirements of section 127(1)(d)(i), provides that an essential supporting objective of school boards is to ensure it 'takes reasonable steps to ensure that the policies and practices for the school reflect New Zealand's cultural diversity'.

In her October 2025 Cabinet paper, Minister Stanford proposed a different formulation for this provision, one which would require school boards to 'take reasonable steps to ensure that the policies and practices for its school reflect New Zealand's cultural diversity, *including te ao Māori*'.[265] This wording was later agreed to by the Cabinet Social Outcomes Committee.[266] However, in the Amendment Paper introduced to the Committee of the Whole House by the Minister in November 2025, the reference to 'including te ao Māori' was gone.[267] We do not have evidence explaining when or why the decision was made to omit this specific wording, but note the Cabinet Social Outcomes Committee did authorise the Minister 'to make decisions on any issues of detail that may arise during the drafting process without further reference to Cabinet' and 'agreed the drafting of the Amendment Paper' would be 'subject to Parliamentary Counsel Office's discretion as to how best to express the above policy decisions in legislation'.[268] It is therefore likely to have been a decision made during the legislative drafting process.

In her Cabinet paper, Minister Stanford explained her amended section 'reflects that some schools have a high proportion of Māori students and it is appropriate that such a school should conduct its affairs in a way that reflects and [*sic*] te ao Māori'.[269] Separately, the Cabinet Social Outcomes Committee noted the Minister's intention

> to provide a schooling system that provides for equity in education outcomes for Māori students, while offering students and families choice in respect of the extent to which children receive an education in te reo or are educated in a school whose foundations are embedded in tikanga and te ao Māori.[270]

However, the Crown's obligations with respect to taonga Māori do not turn on the proportion of ākonga Māori within a school. In addition, the Cabinet Social Outcomes Committee minute, quoted above, suggests the Minister's intention in removing explicit references to tikanga and te ao Māori was mainly about providing choice to parents who did not want mātauranga Māori or tikanga Māori to feature significantly in their children's education.

The former section 127(1)(d) set an expectation that all State schools, no matter their makeup, would work to ensure local tikanga Māori, mātauranga Māori, and

264. Education and Training Act 2020, s 127(1)(d)(i) (version as at 22 October 2025)
265. Document A43(a), p 219 (emphasis added)
266. Ibid, p 222
267. Ibid, p 225
268. Ibid, p 222
269. Ibid, p 217
270. Ibid, p 221

te ao Māori was reflected in their plans, policies, and local curriculum. Māori culture also has relevance not only for ākonga Māori but for all students in Aotearoa New Zealand. As the Tribunal observed in *Ko Aotearoa Tēnei*:

> New Zealand has developed to a point where core aspects of Māori culture have become a part of our national identity. We use the Māori language to express that identity, whatever our ethnicity. We use Māori performance and song in the same way. We integrate Māori ideas into the way we describe ourselves. In these ways, Māori culture is fundamental to our unique New Zealand culture. Crown support for the survival and revival of mātauranga Māori must also be seen in this context. It is not just Māori who benefit – all New Zealanders do.[271]

In the supplementary disclosure statement concerning the change, officials advised that the Crown's proposed amendments 'could . . . reduce school boards' focus on providing teaching and learning that reflects tikanga Maori, mātauranga Māori, and te ao Māori and may have a direct impact on Māori students, including their educational progress and achievement'.[272] While the reference to 'New Zealand's cultural diversity' in section 127(2)(e)(iii) 'could include te ao Māori', officials explained, the 'general provision on cultural diversity may not reflect the Crown's specific obligations towards Māori under Te Tiriti / the Treaty'.[273] Officials noted school boards also had an obligation to ensure they sought to achieve equitable outcomes for ākonga Māori (section 127(1)(e)(i) discussed above).[274] Officials further explained that school boards 'would determine how to meet this obligation and may choose to incorporate tikanga and mātauranga Māori as part of their approach'.[275]

While officials are correct that the reference to 'New Zealand's cultural diversity' is sufficiently broad to include Māori culture, especially when read in conjunction with the Act's purpose provisions, the crucial point is that this interpretation is not guaranteed. As mentioned, officials advised that the reference '*could* include te ao Māori', not that it must. For many schools, reading in a reference to Māori culture will likely be an obvious and intuitive interpretation of this objective. However, this approach – especially in the absence of guidance – has been left as a matter for individual school boards to interpret. There is also a more fundamental problem. To place Māori within the general rubric of 'cultural diversity' risks dissolving their distinct status as tangata whenua into a broader collection of cultures. Māori are not simply one of the many cultural communities that comprise contemporary Aotearoa New Zealand. Their status as tangata whenua is distinct, and recognition of te reo, tikanga and mātauranga Māori cannot depend upon whether individual

271. Waitangi Tribunal, *Ko Aotearoa Tēnei, Te Taumata Tuarua*, vol 2, p 577
272. Document A43(a), p 232
273. Ibid
274. Ibid
275. Ibid

school boards choose to regard them as falling within the general concept of cultural diversity.

Overall, given the importance of clarity in section 127, the Crown's amendment has introduced ambiguity where before there was none. As noted in section 2.4.1, the new phrasing of section 127(2)(e)(iii) is very similar to the wording previously contained in section 133 of the Act (now removed). That section provided that '[a] board must take *all* reasonable steps to ensure that the policies and practices for its school reflect New Zealand's cultural diversity'.[276] Section 127(2)(e)(iii), in contrast, softens this expectation to 'reasonable steps'. Previously, section 133 also operated alongside the requirements in section 127(1)(d), sending a clear signal that school boards bore specific responsibilities with respect to mātauranga, tikanga, and te ao Māori in the context of the treaty, and also responsibilities to reflect the wider cultural diversity of New Zealand.

The new provision, in contrast to its predecessor, omits any explicit reference to tikanga Māori, mātauranga Māori, or te ao Māori previously contained in the section. This risks these matters being de-emphasised, especially in the context of the Crown removing the reference to te Tiriti. There was no reason to remove tikanga Māori, mātauranga Māori, or te ao Māori from the new provision, especially as clearer text has the best chance of being carried out in practice and of ensuring consistent practice across schools.

As mentioned, schools frequently have difficult decisions to make between competing priorities in the context of scarce schooling resources. When it comes to deciding between property maintenance, teachers' professional development, or other initiatives, express statutory language matters.[277] As Mr Weatherill explained, when school 'resources are insufficient to meet all objectives, principals must prioritise those objectives that are most clearly mandated'.[278] In this context, the omission of express statutory language is not just unhelpful for school boards' understanding of the expectations placed on them, but has implications for ensuring mātauranga and tikanga Māori are appropriately prioritised.

The previous references to mātauranga, tikanga, and te ao Māori were also accompanied by 'local'. This, alongside the explicit statutory obligation to give effect to te Tiriti, supported schools to develop and strengthen their relationships with tangata whenua. As noted in our stage two, part I report concerning the national curriculum, this included schools working with tangata whenua to localise their curricula and include local Māori histories of the area. This approach created space for tangata whenua, as kaitiaki, to provide input into curriculum planning and to ensure their mātauranga was being appropriately reflected.[279] Removing the explicit statutory framework that supported those relationships risks undoing positive work by both schools and hapū and iwi to develop those relationships. As Dr Mahara told us, the removal of section 127(1)(d) 'under-

276. Education and Training Act 2020, s 133 (version as at 22 October 2025) (emphasis added)
277. See doc A11, pp 2–3; doc A56(a), pp 183–184
278. Document A11, pp 2–3
279. Waitangi Tribunal, *Hūtia te Rito o te Harakeke, Stage Two, Part I*, pp 175–176

mines decades of progress toward restoring iwi authority over the education of our tamariki' and makes 'iwi engagement optional rather than mandatory'.[280] Ms Mareko was similarly concerned the removal of section 127(1)(d) 'undermines the trust that whānau Māori and mana whenua have placed in Aotea College on the understanding that the Crown, through legislation, requires boards to honour Te Tiriti in practice – not just in rhetoric'.[281]

In addition, as noted in section 3.3 and in our stage two, part I report, we heard section 127(1)(d) had supported schools to build relationships with hapū and iwi, including to incorporate mātauranga Māori and local histories in curriculum planning. Ms Mareko told us the statutory changes carried several risks, including 'weaken[ing] the position of school leaders who are working to embed te ao Māori and mātauranga Māori across the curriculum'.[282] In the absence of 'clear legislative backing', she explained, 'this work becomes more vulnerable to political change, budget pressures or local opposition'.[283] While school boards are still required to engage with 'the Māori community associated with the school' when developing their strategic goals for meeting their section 127 objectives, this is a more tightly-prescribed role for tangata whenua compared to what existed under section 127(1)(d).[284] Despite the emphasis in sections 4(d) and 32(h) on supporting Māori–Crown relationships, then, the Crown's changes risk compromising schools' capacity to develop and strengthen their relationships with tangata whenua.

Finally, we note that while school boards might, as the supplementary disclosure statement suggested, 'choose to incorporate tikanga and mātauranga Māori as part of their approach' to ensuring they seek to achieve equitable outcomes, this is not guaranteed and risks inconsistent practice across schools. Mātauranga Māori is a taonga in and of itself and deserves explicit statutory protection as such. Contrary to the aims of elevating educational achievement, officials also advised that the proposed changes may 'reduce school boards' focus on providing teaching and learning that reflects tikanga Māori, mātauranga Māori, and te ao Māori' and risks harming Māori educational achievement.[285]

In summary, while aspects of the Crown's treaty obligations remain in section 127, such as the reference to seeking to achieve equitable outcomes for ākonga Māori in section 127(2)(e)(i), those duties do not reflect the full range of the Crown's treaty obligations relevant to the decisions school boards are responsible for. When compared to its predecessor, section 127(2)(e) is less clear and, in the context of competing board priorities and scarce schooling resources, risks boards

280. Document A31, pp 16, 17
281. Document A13, p 4
282. Ibid
283. Ibid
284. Under the regulations, school boards' strategic goals are to be 'developed in consultation with the school community', which is defined in the Act as including (among others) 'the parents, families, and whānau of the school's students' and 'the Māori community associated with the school'. See Education (School Planning and Reporting) Regulations 2023, reg 7(1)(b) (version as at 6 July 2026); Education and Training Act 2020, s 10(1) (version as at 4 September 2026); submission 3.3.32, p 32.
285. Document A43(a), p 232

deprioritising the protection of treaty interests in schooling. This risk is compounded when considering the Crown's removal of explicit reference to the treaty in the provision itself. We consider whether the Crown's statutory changes amount to a breach of treaty principles in our findings in section 4.1.

3.6.5 The Post-Implementation Review

In her October 2025 Cabinet paper, Minister Stanford noted that she had directed Ministry of Education officials 'to undertake a Post-Implementation Review' of her reforms, with the specific nature and timing of that review to be 'jointly agreed by the Minister of Education, the Minister for Māori Development and the Minister for Regulation.'[286] In his evidence received on 15 April 2026, Mr Jackson told us the Ministry of Education officials 'had initial discussions with Ministry for Regulation officials, but the review ha[d] not yet commenced, as it [was] too early, after just one term of the school year' at that date.[287]

The Crown, in its approach to proposing this law change, bypassed numerous policy steps that could have identified potential risks proactively, such as the preparation of a Regulatory Impact Statement. While it is possible this review, once conducted, may have identified some or all of the deficiencies we have highlighted, the point remains that school boards will have been operating under the replacement section for months without proper guidance on what the objectives require of them. In short, the current section is influencing school boards and a Post-Implementation Review will be no substitute for proactive engagement with Māori prior to the amendment's enactment.

The Crown should have ensured that its legislative reform was clear, evidence-based, and could meaningfully reflect its treaty obligations in schooling. Clear guidance to schools about how to interpret their objectives in line with the Crown's treaty responsibilities could also have mitigated some of this ambiguity in the new section 127. However, such guidance needed to have been provided at the time, or very soon after, the new section's enactment. Timely and clear guidance was also important to counteract the stronger signal sent to schools by the removal of school boards' statutory obligation to give effect to the treaty. However, as at the time of closings, no such guidance had been provided to schools.

In the next section, we set out our findings on whether the Crown's conduct has breached treaty principles.

286. Document A43(a), p 220
287. Document A43, p 13

CHAPTER 4

FINDINGS AND RECOMMENDATIONS / NGĀ WHAKAKITENGA ME NGĀ TŪTOHUNGA

4.1 Tribunal Findings

This brings us to our findings. The first thing to say is that the Crown removed the express Tiriti obligation on school boards opportunistically, when the change could be ushered through Parliament without public scrutiny. This was clearly deliberate: the Crown will have known full well that removing section 127(1)(d) would meet with considerable opposition, not just from Māori but also from the education sector (including school boards themselves). Not only did the sector oppose earlier proposed reforms because they risked deprioritising the treaty (a clear indication they would strongly reject any proposal to remove the statutory Tiriti reference in its entirety), but officials also advised the Minister that making changes to the Tiriti reference in section 127(1)(d) would be 'significant and controversial'.[1]

The Crown's approach, which included no engagement with Māori or even a select committee process, was inconsistent with its own internal guidelines and contrary to repeat advice from officials regarding the necessity of consultation under the treaty. To make matters worse, whereas other proposed changes to treaty provisions – such as the Treaty Principles Bill or broader treaty clause review policy – came with a warning, this change blindsided Māori. As Ms Lessels explained:

> This erasure was never consulted on. The 2024 consultation did not propose complete removal as an option. It was not in the Bill sent to the Select Committee. Those who submitted had no opportunity to address it. Within one week, the Bill passed its third reading and [section 127(1)(d)] was swift and brutally gone in one fell swoop.[2]

That the Crown would make such a significant change to the statute without even talking to its treaty partner or otherwise engaging with the education sector is confounding. As Ms Lessels explained, the Crown's conduct in removing section 127(1)(d) would be something she would tell her grandchildren about:

> I was thinking the other day, I might get me a t-shirt that says, 'No 428' written on it, so that I can tell my mokopuna, when they say: 'Nanny, he aha tērā kei runga i a

1. Document A43(a), pp 201, 203, see also p 202
2. Transcript 4.1.1, p 76

koe?' Let me tell you about amendment paper 428. It did not merely demote te Tiriti obligation, it removed it all together.[3]

This brings us to the importance of honouring te Tiriti. As noted previously, a purpose of the Education and Training Act 2020 is 'to establish and regulate an education system . . . that *honours* Te Tiriti o Waitangi and supports Māori–Crown relationships'.[4] Honouring te Tiriti is an exacting standard. It requires more than technical compliance or selective recognition of particular treaty obligations. It imports a standard of conduct governing the Crown's relationship with Māori and requires the Crown to act consistently with the integrity of that relationship. There is a stark inconsistency between an express statutory purpose of honouring te Tiriti and supporting Māori–Crown relationships, on the one hand, and a process which excluded the Crown's treaty partner from engagement on changes affecting the expression of that very purpose, on the other. In our view, in proceeding as it did, the Crown failed to meet the standard of honour required of it.

It is not surprising, therefore, that we find the Crown to have breached the principle of partnership. The Crown did not formally concede the point but essentially acknowledged it. Counsel for the Crown accepted that there had been no consultation on the change or its likely effects and that the process the Crown adopted could 'be expected to result in negative comment by the Tribunal'.[5]

Compounding our concerns is that the Crown's rationale for the change was flimsy at best. In fact, it seems to have been little short of a pretext. The treaty clause review Ministerial Advisory Group had mused about the propriety of locally elected school board members carrying treaty responsibilities, and had merely suggested that the question be looked into. No evidence was put in front of us of any previous concern about this matter, from the moment treaty obligations for school boards were first enacted in 2017 onwards (including when these duties were considerably expanded in 2020). Rather, Minister Stanford appears to have seized upon the Ministerial Advisory Group's comment as a justification to remove section 127(1)(d).

We say this because the Minister was clearly already motivated to change the school boards' Tiriti obligation. As mentioned, pressed on when it would be removed in an interview in July 2025 – before the treaty clause review Ministerial Advisory Group's report was released – she said she would 'be definitely making some changes' and 'there are some legislative vehicles that are coming up that I will be using'.[6] It will be recalled that 'legislative vehicle' was also how Ms MacGregor-Reid described the Education and Training Amendment Bill (No 2).[7] In other words, the determination to remove the obligation pre-existed the Ministerial Advisory Group's report, but once the report was released it provided

3. Transcript 4.1.1, p 75
4. Education and Training Act 2020, s 4(d) (emphasis added)
5. Submission 3.3.32, p 39
6. Document A18(b), p 6
7. Transcript 4.1.1, p 247

a convenient rationale, and the existence of an education Bill at the Committee of the Whole House stage in Parliament provided a convenient opportunity. We find that, through this series of steps to effect the removal of section 127(1)(d), the Crown failed to act transparently and in good faith towards its treaty partner.

In stark contrast to the engagement and official advice that led to the introduction of section 127(1)(d), the Crown's process in this case also lacked the policy rigour we would expect from a reform of this kind. As the Tribunal in *Te Tinihanga* summarised:

> The Tribunal in *Hautupua*, when considering the disestablishment of Te Aka Whai Ora, noted that where policy results from an evidence-based partnership approach, it is incumbent on the Crown to follow a similarly thorough process when dismantling that policy.[8]

Despite forgoing any consultation with Māori or the public, we saw no evidence that the Crown sought advice from officials regarding the potential risks of the changes for ākonga Māori or Māori interests. The speed of the process also meant no Regulatory Impact Statement could be prepared. Nevertheless, we concluded the Minister did have sufficient information about the provision's significance to know that further advice on the risks and impacts of her proposal was needed. Minister Stanford had been advised, for example, that section 127(1)(d) engaged a range of Māori interests and was significant to the Crown's discharge of its treaty obligations in the context of schooling.

We find that the Crown therefore breached its obligation of good government and active protection by confirming Minister Stanford's proposed reform in the absence of the information or internal policy analysis required for the Crown to understand the specific implications of its reforms for ākonga Māori and Māori interests.

The Crown has sent mixed messages on the extent to which school boards must still give effect to te Tiriti. On the one hand, the Minister has said that the duty now sits with the Crown, and not with the 'volunteers' on school boards. Counsel for the Crown, however, has explained that both the new section 127 itself and the purpose provisions in the Education and Training Act 2020 mean that 'the legislative and regulatory scheme continues, in substance, to protect and promote underlying Treaty interests engaged in the education context'.[9] As we have said, the Crown's delegation of control over the running of schools to boards means there is nowhere else the duties can sit, despite the Minister's comments.

We find that the confusion and uncertainty created by the Crown's removal of the explicit Tiriti obligation on boards and its lack of clear guidance to boards

8. Waitangi Tribunal, *Te Tinihanga o ngā Mātāpono: The Urgent Report on the Treaty Principles Reform – Pre-publication Version* (Wellington: Waitangi Tribunal, 2026), p166; Waitangi Tribunal, *Hautupua: Te Aka Whai Ora (Maaori Health Authority) Priority Report, Part 1 – Pre-publication Version* (Wellington: Waitangi Tribunal, 2024), p19

9. Submission 3.3.32, p36

about how they should continue to give effect to the treaty is a breach of the principle of good government. Moreover, the explicit treaty duty gave unambiguous direction and its removal thereby breached the Crown's duty of active protection.

Aside from the Crown's removal of section 127(1)(d), there have of course been other changes to section 127. There is now no reference to ensuring boards' plans, policies, and local curriculum reflect local tikanga Māori, mātauranga Māori, and te ao Māori. Instead, there is – by the Crown's logic – provision for school policies and practices to reflect 'the unique role of tangata whenua in New Zealand society' through a general requirement to cater for 'cultural diversity'.[10] There is now an onus on parents or caregivers to request instruction in te reo Māori rather than an expectation that schools will do so as a matter of course. There is now, rather than an obligation on schools to achieve equitable outcomes for Māori students, a watered-down requirement for schools to 'seek to achieve' this. Taken together, these changes represent a significant retreat from the protections previously afforded to Māori within section 127. In particular, shifting the onus onto parents and caregivers to request instruction in te reo Māori diminishes the Crown's commitment to the active protection of the language and transfers responsibility away from the education system and onto Māori themselves.

We find that these changes breach the Crown's duty of active protection, including its duty to actively protect te reo Māori as a taonga, and the principle of equity.

The Education and Training Act 2020 retains two important purpose provisions. In section 4(d), the Act's purpose is 'to establish and regulate an education system' that 'honours Te Tiriti o Waitangi and supports Māori–Crown relationships'. In section 32(h), the purpose of Part 3 of the Act 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'. Given our findings, it is clear that the Crown has failed to act in accordance with its own legislation. It has not honoured te Tiriti o Waitangi. We find that the Crown has further breached the principle of good government.

In sum, we find that the Crown:

- has breached the principle of partnership by acting unilaterally and abruptly in removing the explicit Tiriti obligation on school boards;
- has failed to act transparently and in good faith towards its treaty partner through the series of steps it took to effect the removal of section 127(1)(d);
- has breached its obligation of good government and active protection by confirming Minister Stanford's proposed reform in the absence of the information or internal policy analysis required for the Crown to understand the specific implications of its reforms for ākonga Māori and Māori interests;
- has breached its duty of active protection by removing a clear and unambiguous direction to school boards to ensure schools give effect to te Tiriti;

10. Submission 3.3.32, p 31

- has breached the principle of good government by creating confusion and uncertainty about the ongoing treaty obligations carried by school boards;
- has, by diminishing or removing other Māori-specific provisions in section 127, breached its duty of active protection and the principle of equity; and
- has, through its clear failure to honour te Tiriti as required by purpose provisions in the Education and Training Act 2020, further breached the principle of good government.

4.2 Prejudice

Through these breaches we find that the Crown has caused prejudice to the claimants. For a start, the removal of section 127(1)(d) has caused Māori considerable distress. Waihoroi Shortland of Ngāti Hine put it like this:

> The changes serve a remnant of something insidious in our society that continues to undermine the small progress that has been made over the last 180 years in a so-called democratic society. This has very little to do with enlightenment and more to do with pulling us back to the dark ages we thought we had emerged from. The actions serve the mire of the lower social base of our society and that is what makes it insidious.[11]

He felt that the removal of section 127(1)(d) would 'enable heavily Eurocentric communities to snub their noses at anything that they perceive touches a supposed advantage that we have as Māori'.[12]

Arona Tipene, a teacher from Moerewa, said she was 'angry' when she learnt that section 127(1)(d) would be removed, and reacted with disbelief: 'I cannot understand how this is a thing. How can they do this?'[13] Kara George of Te Kapotai said that '[a] change by the Government which seeks to demote the treaty, is a demotion of our people'.[14] Maia Cooper, the principal of Moerewa School, described the change as 'pōuri'. She maintained that a shift away from a focus on te Tiriti was 'messing with whakapapa', adding that '[t]he Government is asking us to do things that inherently go against the fabric of our being'.[15]

Inevitably, given the manner in which the removal of section 127(1)(d) was effected, there has been damage to the Māori–Crown relationship. Officials of course predicted the likelihood of this in their supplementary disclosure statement in October 2025. Mr Shortland expressed it like this: 'Te Tiriti envisaged two nations coming together to make a nation. This iteration of the Crown does not want to acknowledge that such a thing ever existed and that such a thing can exist.'[16] Mr George said the decisions had 'been made in Wellington, away from

11. Document A2, p 2
12. Ibid
13. Document A6, p 1
14. Document A3, p 2
15. Document A5, pp 1–2
16. Document A2, p 3

our people. The first we hear of it is on the news. That is not partnership and that undermines our mana and rangatiratanga."[17]

The removal of section 127(1)(d) is likely to leave school boards' commitment to the treaty to chance. School teacher Ms Waipara predicted that removing the explicit Tiriti obligation on school boards would 'create a vacuum where the responsibility to uphold Te Tiriti at an operational level will start to erode'. While some school boards would continue to uphold the treaty partnership, 'others, particularly those that are overworked, under-resourced, or struggling, simply won't have the capacity to sustain it without statutory backing'.[18] Ms Tipene also foresaw inconsistency across schools. As she put it, '[w]e have tamariki Māori who will miss out because there is not an expectation that all schools uphold and value Māoritanga. I am not confident schools will carry out ngā mea Māori without the requirement to do so."[19] Presiding board member at Aotea College, Ms Mareko, likewise considered that 'the change exposes tamariki Māori to greater variability and uncertainty, dependent on the disposition of individual boards and principals rather than on a consistent nationwide obligation'.[20] Ms Otene, a past president of the New Zealand Principals Federation, described 'how legislation shapes behaviour within schools'. In the absence of a legal expectation, she explained, 'some boards, especially those without strong bicultural leadership, may default to other priorities'.[21] Mr McDonald, presiding member of Rototuna High Schools' Board, remarked that although 'some schools' would 'continue to prioritise te Tiriti', this would 'increasingly depend on the values and capabilities of individual leaders and boards, rather than a clear and consistent expectation across the system'.[22]

These responses are also indicative of the confusion caused by the Crown's lack of clarity, which may be the largest and most lasting form of prejudice. None of these witnesses pointed to the combination of the new provisions in section 127(2)(e) and the purpose provisions in sections 4(d) and 32(h) as meaning all school boards would carry on in the same fashion. Rather, the claimants and interested parties often tended to depict treaty obligations on school boards as now having ceased. Mr Jepsen, for example, referred to the Tiriti obligation as having been 'stripped' from schools 'to the point that te Tiriti is optional'.[23] Dr Therese Ford similarly stated: '[t]he Government says that schools can still choose whether they give effect to the treaty. When the Government leaves things to choice or chance, the results you get are random."[24] Not even the president of the New Zealand School Boards Association contemplated the ongoing effect of the Act's purpose provisions.[25] This is understandable, because the Crown has given no clear and

17. Document A3, p 3
18. Document A7, p 2
19. Document A6, p 3
20. Document A13, pp 4–5
21. Document A20, p 2
22. Document A21, p 13
23. Transcript 4.1.1, p 32
24. Document A4, p 6
25. Document A36, pp 4–6

reassuring signal. In fact, the Minister has done the opposite. This explains why so many school boards have reaffirmed a commitment to giving effect to the treaty, regardless of what counsel for the Crown called the continuing protection and promotion of 'underlying Treaty interests'.

The removal of section 127(1)(d) must also be seen within a larger context of Crown changes to education settings and legislation over the last three years. The impact of all this change on Māori educators and communities has been cumulative. Mr Jepsen described the experience like this: 'The Minister overwhelmed us with change. There was so much change you did not know where to look. What was under attack? Well, everything; everything was under attack.'[26]

4.3 Recommendations

4.3.1 The relief sought by the claimants and interested parties

The claimants and interested parties sought an apology from the Crown regarding the removal of section 127(1)(d) of the Education and Training Act 2020.[27] Te Riu Roa further requested that the Crown publicly acknowledge that the removal of the provision 'constituted a breach of its duties under Te Tiriti o Waitangi'.[28]

The claimants and interested parties sought a recommendation that the Crown restore section 127(1)(d) in full.[29] Te Kapotai and Ngāti Hine asked that we adopt the approach of the Tribunal in the *Taku Reo Kura, Taku Reo Kahurangi* and *Oranga Tamariki Section 7AA* reports by recommending 'specific wording for how legislation can be restored and further strengthened to protect Māori treaty interests'.[30] They further requested that we specify that any work 'to restore te Tiriti/the Treaty into legislation' be carried out through 'engagement with Māori and sector leaders'.[31]

4.3.2 The Tribunal's recommendations

As stated above, we have determined the Crown has breached the treaty principles of good government, partnership, active protection, and equity and prejudicially affected Māori. In order to mitigate the prejudice identified, we make the following recommendations.

First, we recommend that the Crown formally apologise to Māori for its breaches of the treaty arising from the removal of section 127(1)(d). An apology

26. Document A4(a), p 2

27. Submission 3.3.17, p 35; submission 3.3.31, p 26; see also statement of claim 1.1.1, p 13; statement of claim 1.1.2, p 1; submission 3.3.5, p 7; submission 3.3.27, p [22]

28. Submission 3.3.1, p 23

29. Statement of claim 1.1.1, p 14; statement of claim 1.1.2, p 1; submission 3.3.1, p 23; submission 3.3.2, p 20; submission 3.3.3, p 20; submission 3.3.5, p 7; submission 3.3.9, p 6; submission 3.3.25, p 12; submission 3.3.28, p 35; submission 3.3.29, p 23; submission 3.3.31, pp 23, 26

30. Submission 3.3.17, pp 35–36; Waitangi Tribunal, *The Oranga Tamariki (Section 7AA) Urgent Inquiry 10 May 2024 Report* (Petone: Blue Star Group (New Zealand) Ltd, 2024), pp 35–36; Waitangi Tribunal, *Taku Reo Kura, Taku Reo Kahurangi – Te Rerenga i Mua i te Whakaputa* (Wellington: Waitangi Tribunal, 2025), p 318; see also submission 3.3.27, p [22]; submission 3.3.31, p 26

31. Submission 3.3.6, p 9

is necessary to acknowledge both the manner in which the Crown acted and the harm its actions have caused to the Māori–Crown relationship. The Crown removed a significant statutory Tiriti obligation abruptly, unilaterally, and without engagement with Māori, despite knowing both the importance of the provision to Māori and its obligation to engage with its treaty partner. That conduct was fundamentally at odds with the Act's stated purpose of establishing an education system that honours te Tiriti and supports Māori–Crown relationships. Acknowledging that failure is a necessary first step towards repairing the harm caused and rebuilding trust in the Māori–Crown relationship in education.

Secondly, we recommend that the Crown restore section 127(1)(d) to the Education and Training Act 2020 in its entirety. Restoration is necessary to remedy the substantive effects of the Crown's breaches. The provisions that replaced section 127(1)(d) do not provide equivalent statutory recognition of te Tiriti and protection for te reo Māori, tikanga Māori, and mātauranga Māori, or equitable outcomes for Māori students. Reinstatement would remove the ambiguity created by the reforms and, importantly, restore an express and substantive statutory Tiriti obligation on school boards.

We further recommend that, given the new section 127 now includes a paramount objective and essential supporting objectives (rather than the objectives being co-equal as originally enacted), the Crown work with Māori in the education sector to determine how the provision is to be reinstated within the present statutory framework, while preserving its full substance and effect.

As we have done in the previous reports produced in this inquiry, we return in closing to the words of Te Aupouri tupuna whaea Meri Ngaroto:

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

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.

As we said in our stage one interim report, we see the rito as representative of the treaty in the Education and Training Act 2020. To pluck out the rito as the

Crown has done through the amendment to section 127 is, therefore, to place at risk the educational achievement and future wellbeing of ākonga and whānau Māori. It also places significant strain on the awhi rito and tūpuna, representative of the Māori–Crown relationship, which we have said is already in a vulnerable state. Whether the damage caused by removing the rito can be repaired, the awhi rito and tūpuna strengthened, or a new harakeke must be planted and nurtured, remains unclear. What is clear is that any path forward must begin with the Crown demonstrating its willingness to honour Te Tiriti o Waitangi.

Dated at Wellington this 29th day of October 2026

Kaiwhakawā Rachel Mullins, presiding officer

Gerrard Albert, member

Derek Fox, member

Dr Paul Hamer, member

Kevin Prime, member

THE SEAL OF THE WAITANGI TRIBUNAL

WEBSITES

To aid in accessibility, endnote references to websites in this report have been shortened using Tinyurl, a URL (uniform resource locator) shortener. However, for the sake of completeness, the full links are recorded here. All links were live at the time of going to print.

Chapter 1
https://tinyurl.com/29f75vuw
https://nzhistory.govt.nz/page/1989-key-events

https://tinyurl.com/2s43zfbe
https://library.victoria.ac.nz/databases/nzgazettearchive/pubs/gazettes/1993/1993%20ISSUE%20058.pdf

https://tinyurl.com/3wum33y4
https://www.education.govt.nz/education-professionals/schools-year-0-13/administration-and-management/what-school-board

https://tinyurl.com/4b6dmr98
https://www.education.govt.nz/parents-and-caregivers/schools-year-0-13/what-happens-school/role-school-board

Chapter 2
https://tinyurl.com/3kezcvb6
https://www3.parliament.nz/en/pb/sc/make-a-submission/document/54SCEDUW_SCF_8826C9D4–8F6E-4018-CDF7–08DD758B2660/education-and-training-amendment-bill-no-2

https://tinyurl.com/58zwuk7j
https://www3.parliament.nz/resource/en-NZ/54SCEDUW_EVI_8826c9d4-8f6e-4018-cdf7-08dd758b2660_EDUW5147/638496afbf1c2b76009cb6a661af8ad27b011352

https://tinyurl.com/5xrvjcmh
https://www.rnz.co.nz/news/te-manu-korihi/581221/24–000-sign-petition-calling-for-immediate-reinstatement-of-school-te-tiriti-o-waitangi-obligations

Chapter 3
https://tinyurl.com/2xf4kcm9
https://www.dpmc.govt.nz/sites/default/files/2019-10/CO%2019%20%285%29%20Treaty%20of%20Waitangi%20Guidance%20for%20Agencies.pdf

https://tinyurl.com/3wum33y4
https://www.education.govt.nz/education-professionals/schools-year-0-13/administration-and-management/what-school-board

https://tinyurl.com/4b6dmr98
https://www.education.govt.nz/parents-and-caregivers/schools-year-0-13/what-happens-school/role-school-board

https://tinyurl.com/52e43tx7
https://hansard.parliament.nz/hansard-transcript/2026-05-19/bills-education-and-training-system-reform-amendme?sld=7ba1c1d344834a7f8755a43324699ff4&lang=en

https://tinyurl.com/saepytea
https://assets.ctfassets.net/6i3jqfgtuxyj/6aizyggovq4kym4hcsdhaz/0c429e6e0446174552aff55a36c073d9/ldac-Legislation-Guidelines-2021-edition.pdf

https://tinyurl.com/yhp3vcyb
https://whakatau.govt.nz/assets/Tools-and-Resources/Guidelines-for-engagement-with-Maori.pdf