

Report of
The Waitangi Tribunal
on
The Te Reo Maori Claim

(Wai 11)
Waitangi Tribunal
Department of Justice
Wellington
New Zealand

April 1986



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Original cover design by Cliff Whiting,
invoking the signing of the Treaty of Waitangi and the
consequent development of Maori–Pakeha history interwoven in
Aotearoa, in a pattern not yet completely known, still unfolding.

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WAI 11

To Hon KT Wetere
Minister of Maori Affairs
Parliament Buildings
WELLINGTON

**FINDING OF THE WAITANGI TRIBUNAL
RELATING TO TE REO MAORI
AND A CLAIM LODGED**

**BY HUIRANGI WAIKEREPUKU AND
NGA KAIWHAKAPUMAU I TE REO
INCORPORATED SOCIETY**

(The Wellington Board of Maori Language)

EDWARD TAIHAKUREI DURIE	CHAIRMAN
SIR GRAHAM STANLEY LATIMER	MEMBER
PAUL BASIL TEMM QC	MEMBER

CONTENTS

1.	INTRODUCTION	1
2.	RECORD OF HEARING	3
3.	BACKGROUND	7
3.1	Nature of the Claim	7
3.2	Te Reo Maori in the Past	8
3.3	Te Reo Maori in the Present	10
3.4	Te Reo Maori in the Future	13
3.5	The Place of Maori Culture in the Heritage of New Zealand	17
4.	JURISDICTION	19
4.1	The Claimants and their Right to Claim	19
4.2	The Treaty and the Language	19
4.3	Proof of Prejudice	21
5.	OBJECTIONS TO OFFICIAL RECOGNITION	25
6.	EDUCATION	29
6.1	The Claimants' Criticisms	29
6.2	The Department's Response	34
6.3	Conclusions	36
7.	Broadcasting	39
7.1	Background	39
7.2	The Royal Commission and the Broadcasting Tribunal	40
7.3	The Claimants' Criticisms of Radio and Television Broadcasting Policy	41
8.	Official Recognition	43
8.1	The Advantage of Recognition	43
8.2	The Extent of Recognition	45
9.	Conclusion	49
10.	Recommendations	51

1. INTRODUCTION

The Maori people of New Zealand take pride in their race, in their history, in their culture and in their status as the tangata whenua of our country.

For the last 150 years they have had to come to terms with the influence of the European culture that new settlers brought with them, and in some respects that adjustment is far from complete.

Pakeha New Zealanders have outnumbered Maori New Zealanders since the middle of the last century and this predominance has had effect in many ways. As we show in our Finding this proportion has changed during the 20th century, and it may be that in the next 100 years the number of people of Maori descent living in New Zealand may grow to equal or even be greater than those of pakeha ancestry.

Because there have been so many English speaking people and so comparatively few Maori speaking people the use of English has predominated to the detriment of the Maori language.

The claimants have said to us that the Crown has failed to protect the Maori language (te reo Maori) and that this is a breach of the promise made in the Treaty of Waitangi.

Some New Zealanders may say that the loss of Maori language is unimportant. The claimants in reply have reminded us that the Maori culture is a part of the heritage of New Zealand and that the Maori language is at the heart of that culture. If the language dies the culture will die, and something quite unique will have been lost to the world.

Our task has been to decide whether the Treaty has been broken in this respect, and if it has, what should be done about it.

The evidence and argument has made it clear to us that by the Treaty the Crown did promise to recognise and protect the language and that that promise has not been kept. The 'guarantee' in the Treaty requires affirmative action to protect and sustain the language, not a passive obligation to tolerate its existence and certainly not a right to deny its use in any place. It is, after all, the first language of the country, the language of the original inhabitants and the language in which the first signed copy of the Treaty was written. But educational policy over many years and the effect of the media in using almost nothing but English has swamped the Maori language and done it great harm.

We have recorded much of what we were told of the effect upon Maori children of our educational policy and it makes dismal reading. It seems that many Maori children leave school uneducated by normal standards, and that disability bedevils their progress for the rest of their lives.

We have recommended that te reo Maori should be restored to its proper place by making it an official language of New Zealand with the right to use it on any public occasion, in the Courts, in dealing with Government Departments, with local authorities and with all public bodies. We say that it should be widely taught from an early stage in the educational process. We think instruction in Maori should be available as of right to the children of parents who seek it. We do not recommend that it should be a compulsory subject in the schools, nor do we support the publication of all official documents in both English and Maori, at least at this stage in our development, for we think it more profitable to promote the language than to impose it. For that reason we favour instead the

appointment of a Maori Language Commission to foster it, watch over its progress and set standards for its use.

This Finding is the result of our consideration of the matter. We commend the thoughts we express in these pages to all New Zealanders who have the welfare of their country at heart.

2. THE RECORD OF HEARING

The claim was lodged by Huirangi Waikerepuru and Nga Kaiwhakapumau i te Reo (Inc) asking that the Maori language receive official recognition. It was proposed that the language be official for all purposes enabling its use as of right in Parliament, the Courts, Government Departments, local authorities and public bodies. Over seventy recommendations were sought to achieve that purpose, concentrating in particular on broadcasting, education, health and the Public Service.

Public notice of the claim was given in the *New Zealand Times*, 2 and 16 June 1985, 15 and 29 September 1985, *Auckland Star*, *Dominion*, *Evening Post* 1 and 15 June 1985 and the *New Zealand Herald* 5 and 15 June 1985. It was given again in all those publications on 14 and 28 September 1985.

Individual notices of the claim were sent to:

The Prime Minister
Minister and Secretary of Justice
Minister and Director-General, Education
Minister of Broadcasting
Secretary, Broadcasting Corporation of New Zealand
Chairman, Broadcasting Corporation of New Zealand
Director, TVNZ
Director, RNZ
Minister and Secretary of Energy
Director-General of Forests
Director-General of Lands
Director-General of Agriculture and Fisheries
Director-General, Housing Corporation of New Zealand
Director-General, New Zealand Post Office
Director-General, Scientific and Industrial Research
Secretary, Department of Internal Affairs
Principal Private Secretary, Parliament Buildings
Secretary of Defence
Secretary, Foreign Affairs
Secretary, Department of Labour
Secretary, Trade and Industry
Clerk of House of Representatives
Commissioner of Police
Minister and Director-General, Department of Health
Commissioner for the Environment
Commissioner of Works and Development
Commissioner of Inland Revenue
Government Printer
Comptroller of Customs
Managing Director, Accident Compensation Corporation

General Manager, Tourist and Publicity
Managing Director of Government Life
Chairman, State Services Commission
General Manager, Railways Corporation
Public Trustee
Secretary, Treasury
Director Planning and Development, Department of Justice
Secretary, New Zealand Combined Education Association
Dr Richard Benton, New Zealand Council for Educational Research
New Zealand Labour Party
New Zealand Law Society
Messrs Brandon Brookfield Towle and Beyer
Messrs Daniel Overton and Goulding
Mr PJ Downey and Mr G Rowe, Broadcasting Corporation
Office Solicitor, Department of Maori Affairs
International Commission of Jurists
The Solicitor-General
New Zealand Maori Council
Nga Puna Waihanga
Mr PJH Southern
Mr Hugh Young
Mr Clifford-Jones
Mr HP Richardson
Dr DV Williams
Ms Carol Greensmith, Radio New Zealand
Chief Reporter, *Evening Post*
Chief Reporter, *Dominion*
New Zealand Times

The claim was heard at Waiwhetu Marae, Lower Hutt

- (a) on 24 to 28 June 1985 for the purpose of hearing the claimants and defining the issues, and
- (b) on 8 to 12 October 1985,

and at Te Herenga Waka Marae, Victoria University of Wellington.

- (c) On 19 to 28 November 1985 for the purpose of hearing responses to those issues and final submissions.

Most of the Maori claimants (and some of the non-Maori supporters) addressed us in Maori. The interpreter followed the marae protocol of not interrupting a speaker so that translations were given at the end of each address. We recognise the skills of the interpreter, Miria Simpson and Ngati Awa and we wish to acknowledge the considerable assistance she gave us.

The Tribunal was welcomed by the elders of the Waiwhetu Marae, before the formal hearing began.

Mr JD Rangitauira of Rotorua appeared as Counsel for the claimants and with him Ms A Sykes, also of Rotorua.

The Tribunal head from a number of elders coming from most tribes and districts. They include Rangi Luke-Ngaheke of Waiwhetu, Sir James Henare, Maori Marsden, and Miro Stephens of North Auckland, Wiremu Ohia of Tauranga, Tamati Wharehuia and Bishop Manu Bennett of Rotorua, Monita Delamere of Opotiki, Kapunga Dewes of Te Araroa, Canon Wi Huata of Wairoa, Sonny Waru of Taranaki, and Tipene O'Regan of Te Waipounamu.

Many spoke in a representative capacity on behalf of particular groups including:

WH Waikarepuru for Nga Kaiwhakapumau i te Reo Inc

Mr W Ohia for the New Zealand Maori Council

Dr R Walker for the Auckland District Maori Council

Mr H Hohepa for Te Reo Maori Society, Rotorua

Mr T McDonald and Mr N Healey for Te Reo o Taranaki Topu

Miss P Ruha for the Maori Women's Welfare League

Ms R Evans for the Maori Economic Development Commission

Professor W Winiata for the Raukawa District Council, Raukawa Trustees and Aotearoa Broadcasting Systems Inc

Ms A Collins and Mr P Tremur for Pakehas Against Racism

Mr R Fantl for Environment and Conservation Organisation of NZ Inc

Mr P Winiata for the NZ University Students Assn

Other speakers included:

Mr J Williams, Rev H Henare, Mr N Apanui, Mr K Hamiora, Mr D Mihaka, Mr H Kahu, Mr T Rawiri, Mrs T Rawiri, Mrs P Hond, Mr EF Douglas, Ms SM Williams, Ms M Melhuish, Mr R Nicholson, Mrs H Jackson and Mr L Smith.

Overseas experiences were related by Dr M Chunn and Mr M Keala of the Office of Hawaiian Affairs, USA.

Aspects of law and treaty interpretation were discussed by Professor H M Mead, Dr R Benton, Canon M Marsden, Professor B Biggs, Mr M Dawson and Mr T Mataitunga for the International Commission of Jurists and the Rev M Henare.

Amongst those speaking on educational aspects were Dr R Benton, Professor B Biggs, Mr A Reedy, Mr P Temara, Dr P Sharples, Mrs J Mead, Mr T Cairns, Mr M Hollings, Mr P Heremaia, Mr T Roa, Mrs P Luke-Ngaheke, Mrs P Higgins, Mrs C Morgan and Ms C Dewes.

Particular submissions relevant to Health were given by Dr P Ngata (for himself and Dr E Pomare) and Mr P Winiata.

On matters relevant to Broadcasting we heard from the following broadcasters:

Mr D Fox, Mr P Walker, Mr H Williams, Mr M McDonald and Mr P Temara.

Submissions were also made by Professor W Winiata on behalf of Aotearoa Broadcasting Systems Inc.

On State Services we heard from Mr A Robb.

Legal submissions on questions of jurisdiction, on the claimants' behalf, were received from:

Mr JD Rangitauira, Barrister and Solicitor, Rotorua and Mr A Frame, Law Lecturer, Victoria University of Wellington.

Mr W Dewes made submissions for the Department of Maori Affairs and called the Secretary, Dr T Reedy and the Director of Policy Development and Administration, Community Services Division, Mr DT Hauraki.

The Department of Justice was represented by Mr J Duncan with him Mr K Tukukino, who called the Secretary of Justice Mr SJ Callaghan.

Speaking for the Education Department were Mr JA Ross, Assistant Director-General, Mr C Bryce, Assistant Secretary for Schools and Development, and Mr W Kaa, Director of Maori and Island Education.

Mr PJ Downey and with him Mr G Rowe appeared for the Broadcasting Corporation. Mr Downey called:

Mr HB Rennie, Chairman of the Broadcasting Corporation of New Zealand, Miss B Wakem, Director-General of Radio New Zealand and Mr A W Martin, Director-General of Television of New Zealand.

Mr PW Boag, Deputy Chairman, spoke for the State Services Commission together with Mr K Workman and Miss K Pewhairangi of the Commission.

Mr R Smith represented the Defence Department and produced a written submission from the Secretary of Defence Mr DBG McLean.

Mr C Northover appeared for the Commission for the Environment and called Mr K Piddington, Commissioner for the Environment.

For the Department of Health submissions were made by Mr HD Evans, Assistant Secretary Resources and Review and Mr W Potaka.

Written submissions were received without an appearance from:

Dr Williams, senior lecturer in law. The Te Reo Maori O Aotearoa Society, Mr R Reiha, Ms Temara, Mr TK Royal, Te Wananga O Raukawa, Mr R Hamiora.

Expressions of support were received from Nga Puna Waihangā, the New Zealand Maori Artists and Writers Association, Mr H Young, the New Zealand Combined Education Association, and the Tauranga Moana Maori Trust Board.

Objections to the claim were received by letter from Mr Arthur P Richardson, Mr PJH Southern, Mr SS Clifford-Jones and the Buller County Council.

In all the Tribunal received 110 written submissions, several with extensive supplementary material annexed.

We record the considerable assistance and co-operation that we received from all the parties. We express our thanks for the generous hospitality given to us and to all those who attended by the people of Waiwhetu and Te Herenga Waka Marae.

3. BACKGROUND

3.1 The Nature of the Claim

3.1.1 This has been the longest of our hearings so far—four weeks were taken up in listening to those who wanted to be heard—but in some ways it has proved to be the least complicated of the claims we have had to consider. Nga Kaiwhakapumau I Te Reo (The Maori Language Board of Wellington) wanted us to recommend that Te Reo Maori (The Maori Language) should be recognised as an official language throughout New Zealand, and for all purposes.

3.1.2 So stated, the claim is simple. But in its ramifications—politically, socially, financially and otherwise—it may well be the most difficult of all. The demand from Maoridom for official recognition is strident and determined as the wide range of speakers clearly showed, for every major tribe and district was represented. They “came from the four winds” and they spoke with one voice. The Board was just the spokesman for the claim. It was supported strongly from Maori quarters on every side.

3.1.3 The political consequences of supporting the claim are linked with social factors that must be put into the balance when weighing it. The Motunui case was largely a matter of importance for the people of Taranaki and although it has had its impact on fisheries much of the New Zealand population was unaffected by it. The Kaituna River case had its importance in a legal sense for in that case we pointed out why the Treaty of Waitangi can no longer be regarded as ‘a simple nullity’. Yet its consequences as a decision were still mainly local in character. The Manukau Harbour case was important because it showed how the course of history shapes current attitudes, but again it did not affect the people of New Zealand as a whole. This claim will affect everybody in the country and not only those now living but future generations as well. If we reject it one section of the community might extol our common sense and pragmatism, If we reject it the whole of Maoridom will be incensed, even outraged. Somehow we must chart a course for the Tribunal’s canoe between the Scylla that will devour those who cannot look ahead and the Charybdis that will swamp those who will not look at the changes that are bound to come in our society.

3.1.4 One witness after another told us how important is the Maori language to Maori culture. We were told of the proverb:

“Ka ngaro te reo, ka ngaro taua, pera i te ngaro o te Moa”

(If the language be lost, man will be lost, as dead as the moa)

and it is quite obvious that the language and its preservation is important. It is unique, spoken nowhere else in the world, and is part of a rich heritage and culture that is also unique, There is a great body of Maori history, poetry and song that depends upon the language. If the language dies all of that will die and the culture of hundreds and hundreds of years will ultimately fade into oblivion. It was argued before us that if it is worthwhile to save the Chatham Islands robin, the kakapo parrot or the notornis of Fiordland, is it not at least as worthwhile to save the Maori language?

3.1.5 But the cost of doing all that the claimants seek will run into many millions of dollars annually. At the close of the hearing we were given a list of recommendations sought by the claimants that covered an enormously wide range—from translating all official documents into Maori

(including all statutes, regulations, Gazette notices and other official papers) to the establishment of Maori language radio stations and a television service, the appointment of Maori speaking health workers in all hospitals, a Commission of Official Languages (with a budget of \$2 million for the year 1986/87), a requirement that all Departmental Heads be bilingual in English and in Maori within ten years, a Maori Teachers Training College, a Maori Technical Institute, amendments to the State Services Act, the State Services Conditions of Employment Act, the Education Act and other statutes (to give emphasis to the ability to speak Maori) and full translation into Maori of all Court proceedings with the right for any person to use the Maori language in any Court or in dealing with any Government department or local Authority.

3.1.6 As we have said, the claim was simple; its ramifications are not. To do justice to it we have looked at the past, we have looked at the present situation and we have tried to see what lies ahead in the future.

3.2 Te Reo Maori in the Past

3.2.1 During the colonial era many settlers were bilingual and the promotion of the English language among the Maori did not at first seem necessary. Missionary instruction was given in the Maori language. The Bible and prayer book were translated into Maori, Governor Grey recorded the myths and legends of the Maori in the Maori language—a book that would also be used by large numbers of settlers. Church authorities often recorded their proceedings in Maori although many of the clergy were pakeha, and when a Westminster-style government was established after 1852 its proceedings were recorded both in Maori and in English.

3.2.2 At the end of the 19th century the Maori population of New Zealand had declined from well over a hundred thousand people to 42,100 (1896). It seemed that the Maori was dying out and that in the course of the twentieth century the Maori people of New Zealand would follow the path taken by their Hawaiian cousins. Of those Maori living at the turn of the century most spoke Maori as their ordinary means of communication. Many were bilingual in both English and Maori but the majority used te reo Maori as their first language.

3.2.3 We heard from many speakers who were born in the early years of this century and they gave us their own experiences of the use of the language since their childhood. Separately we were given evidence of the change in the Maori population over the same period of time. Far from declining, the Maori New Zealander has thrived since the beginning of the century—the population has increased eight-fold from 41,200 in 1896 to 385,000 in 1981. (We will have more to say about these figures later in this Finding.)

3.2.4 It is convenient to look at this century in three twenty-five year periods. Among the kaumatua (elders) who spoke to us several were at school in the first twenty-five year period. They told us how they went to school as monolingual children and the main educational effort was to teach them English. To achieve this they were forbidden to speak Maori which “had to be left at the school gates.” And one after another told us that if they were caught speaking Maori even in the playground, they were punished. There was some disagreement about this in Education Department quarters. It was said that the Department had no such official policy. We decided to explore this matter carefully. It seemed to us important to get to the truth of the matter.

3.2.5 One of those who came before us was Sir James Henare, perhaps the most outstanding figure in Maoridom today. Sir James is a very distinguished New Zealander, a former Commander of the 28th (Maori) Battalion and one whose career both in peace and in war has earned the respect of all who know him. His English is impeccable and is rivalled only by his reputation as a great Maori orator. His manner and bearing is so impressive that even if what he had to say stood alone he could only be described as a credible and reliable witness. But he did not stand alone; what he said was corroborated by many others.

3.2.6 We asked him directly about this matter. We told him of what we had already heard about punishment for speaking Maori and that we understood that the Department would say that there was no official policy to that effect. His answer was clear and emphatic:

“The facts are incontrovertible. If there was no such policy there was an extremely effective gentlemen’s agreement!”

Then he went on to give us his own experience with reference to time and place and the names of the teachers and school inspectors concerned. He told us of an inspector, whom he named, who told Sir James and his fellow pupils that “English is the bread-and-butter language, and if you want to earn your bread and butter you must speak English”. Then he also told us of being sent into the bush to cut down a piece of supplejack with which he was punished for breaking the rule that te reo Maori must “be left at the school gates”.

3.2.7 He was not alone in saying this. Another speaker told of being at school as an infant and asking (in Maori for she could not speak English) if she could go to the toilet. She too was punished and the memory was obviously vivid to her still, many years later.

3.2.8 We do not think it necessary to give other extracts of evidence to similar effect. We simply say that on what we have heard it was clearly at least a practice widely followed that during the first quarter of this century Maori children were forbidden to speak Maori in school, even in the playground, and that they were punished if they did so.

3.2.9 But in justice to dedicated teachers of those days we should say more. It is easy to be wise in the light of hindsight. We will shortly outline the consequences of this policy (because we think it was more than just a practice) and those consequences will be seen to have proved to be undesirable if not disastrous. But for teachers in the first quarter of this century it was, they thought, vital to teach English to Maori children, (as indeed it was) and that the best way to do so was to prevent such children from speaking Maori (as indeed it was not, as events have turned out). Yet at that time and for years afterwards well towards the middle of the century, European New Zealanders believed that the Maori was dying out and that the Maori people of New Zealand would be assimilated into the European population as the decades went by. It therefore seemed wise in the light of that belief that all Maori children should be fluent in English. It was not realised then what a destructive effect this emphasis on English speaking would have on te reo Maori and ultimately on the culture which is part of our national heritage whether we are Maori or European.

3.2.10 As the first quarter of this century moved into the second twenty-five year period, Sir James Henare and his contemporaries grew to adulthood. They were bilingual because they still spoke in Maori to their parents and relatives of the older generation and in English as they went about their daily work. They married and had children, but now a change

occurred. Remembering their own experiences at school many brought up their children to speak English from infancy. They did not want the next generation to suffer the disadvantages (and the punishment) they themselves had had to endure, Their children went to school with a fair knowledge of English although many in the rural parts of New Zealand could still speak Maori to their grandparents and other elderly relatives. But while they were to some extent bilingual, their first language was English. Maori became more and more a second language in which they gradually lost fluency. In many cases their Maori was that of childhood, in some cases they lost the faculty altogether. The departmental policy continued as before. Professor Bruce Biggs gave evidence on another aspect of this matter, but he told us that he began teaching in a Maori school in 1941. He said:

“When I began teaching in 1941, any teacher in a Maori school who allowed Maori to be spoken in the playground, let alone the classroom, was regarded as very liberal.”

3.2.11 In the third quarter of the century this process was accelerated. The move to monolingualism in education was compounded by the movement of the majority of Maori people from their rural bases to urban areas, and reinforced by an official policy of “pepper-potting” homes throughout the suburbs so that Maori families were scattered. These forces of conditioning had such an effect that by the early 1960’s when Maori people were actively engaged in promoting play-centres, they too stressed the need for young children to be instructed solely in English. And so the second generation grew to adult life speaking English much more than they spoke Maori. In a lot of homes English alone was the means of communication. For such parents it was said to be necessary for their children to be fluent in English in order to take full advantage of the educational system. Believing this, (and the educational system was best used by those fluent in English) many parents consciously and conscientiously brought up their children to speak English and never (or rarely) spoke in Maori to their families. The result was that a whole generation has been reared who know no Maori or who knowing so little of it are unable to use it effectively and with dignity.

3.2.12 Furthermore these parental attitudes were reinforced by radio, television and the newspapers. All the media transmitted English in a kind of incessant barrage that blasted the Maori tongue almost into oblivion. As we shall point out later the combined effects of the monolingual educational system, the radio, television, newspapers and the cinema on the use of Maori have been far-reaching.

3.3 Te Reo Maori in the Present

3.3.1 For the last twelve years the Maori Unit of the New Zealand Council for Educational Research has been studying the state of the Maori language in New Zealand and we have had the benefit of hearing from the Council’s Acting Director, Dr Richard A Benton. We also heard Professor Bruce Biggs, formerly a lecturer in Maori and Anthropology at the University of Auckland. The information these two gentlemen gave to us was sobering indeed. It is clear that the Maori language in New Zealand is not in a healthy state at the present time and that urgent action must be taken if it is to survive. As we shall explain the Maori people themselves have begun the task of revival but they are working under severe disadvantages, financial and otherwise.

3.3.2 Dr Biggs supplied us with figures showing that in 1913 90% of Maori schoolchildren could speak Maori. Forty years later in 1953 this percentage had dropped to 26%. Twenty years after that the figure (in 1975) had fallen to less than 5%. These figures show how effective has been the educational policy that has operated in a social climate where children hear nothing but English on all sides—at the cinema, on radio and television, and in their ordinary social and school life.

3.3.3 Dr Benton then produced the results of surveys carried out by the Maori Unit of the Council for Educational Research and summarised the situation in this way:

“... there were very few communities where Maori was still spoken by nearly everyone, from preschoolers to superannuitants... There were a handful of places where practically everyone still understood Maori... but where most young children were more comfortable in English than they were in Maori, and a rather larger group where Maori was still widely used among adults when talking with each other but had ceased to be the main language for the community as a whole...”

3.3.4 He then went on to make his own observations as to why there had been such a rapid decline in the number of Maori speakers. He said:

“... There are many reasons why the language has declined so rapidly over the last two or three decades but the major causes stem from the fact that language is first and foremost a social phenomenon. Languages do not flourish in a social vacuum and they are learned and established most effectively through use in a wide variety of contexts. Social changes in recent New Zealand history have greatly reduced the contexts in which Maori speaking people can use their language; urbanisation, improved communications, industrialisation, consolidation of rural schools and internal migration have all taken their toll.”

“For children especially, the massive influence of English at school, and in the neighbourhood through radio, television and the movies has had the same effect where the Maori language is concerned as pollutants have on the health of oysters in an oyster bed; when the environment becomes polluted beyond a critical point neither the oysters nor their linguistic counterpart can survive...”

3.3.5 These outside influences are not the sole cause of the decline in the Maori language. The real cause (if a single cause can be assigned) is that Maori people do not speak the language in their homes. Dr Benton also referred to this when he said to us:

“... There are many reasons why people decided (often against their will and despite their deepest feelings) to abandon the use of Maori in their homes. One major and ever-present factor in such decisions however has been the obvious lack of support for the language in the New Zealand community as a whole. In the 1950's when this process began, Maori was still the everyday language in dozens, probably hundreds of rural localities. Yet only a tiny minority of Maori-speaking children were able to study their language, even at secondary school: some, like their parents and grandparents before them could not even speak Maori in the playground (let alone the classroom) without running the risk of being punished for transgressing school rules. It was very obvious that the only language that really counted in New Zealand was English...”

3.3.6 The survival of the Maori language in the 20th century had come to depend on the existence of isolated rural communities and traditional villages where Maori still predominated and was the medium of social interaction in the home and in community discussions. The extent of the threat to language survival was graphically illustrated by Dr Benton's description of language loss in nearly all the traditional villages. It is now apparent that the expectation that the language would survive because of those villages is not realistic. It seems very clear to us that the survival of the language can no longer depend upon an edict that Maori fathers and Maori mothers should speak the language to their children. Other policies are now necessary if it is to survive and if it is to be more than like Church Latin, to be used on some ceremonial occasions and nothing more.

3.3.7 As if in recognition of this fact a remarkable thing has happened. During the last three years an extraordinarily vital development has taken place among Maori people. This is the Kohanga Reo Movement which we must now discuss.

3.3.8 In 1982 in Wellington the then Secretary of the Maori Affairs Department, Mr Kura Puketapu, made the very point that we are making now.

He said publicly that it was up to Maori parents to preserve the language. The seed that he planted fell on fertile soil and in Waiwhetu in the Hutt Valley the first group of parents gathered together to give their infants an understanding of Maori. The children were not old enough to go to school but like all children they were receptive to new sounds and symbols. It is said that children up to ten years of age find it easy to learn two or more languages simultaneously. In the diplomatic world it is no uncommon experience to find young children talking one language to their parents and another altogether to household staff. There are cases on record of small children mastering three or more languages at once.

3.3.9 The Kohanga Reo Movement is capitalising on this faculty. The infants come to a place where nothing but Maori is spoken. They have their day filled with activity—games, songs and other pastimes to be found in any kindergarten—but all in Maori. Within a surprisingly short time they master Maori fluently in a childish way until they are five or six years of age when they go to an orthodox primary school. By that time they are able to carry on an animated conversation in Maori and we watched them doing so in a Kohanga reo that we visited. One of the notable features of the place we were taken to was the mixture of children—both Maori and pakeha—all playing happily in a perfect demonstration of racial harmony, all New Zealanders together.

3.3.10 From one place in 1982 the movement has mushroomed to such an extent that three years later, according to Education Department figures there are now 416 attended by more than 6000 children. The parents take an active part in the running of these centres and they pay fees for each child attending. The cost differs from place to place but \$25 per child per week was said to be a common charge. This is a significant sum of money for Maori families especially when it is certain that many are not well-to-do members of the higher income group in society. We will have more to say about this later but for the moment we just make the point that [although the Maori language today is suffering from the effects of decades of opposition to its propagation many Maori parents are making valiant efforts to repair the damage that it has suffered. Whether their rescue attempt will be successful remains to be seen—it is far too early to tell—but these at least by their actions give an effective answer to those who say

that is for the Maori people to help themselves. They complain that their efforts are nullified by the present education system and that their children lose their Maori fluency after six months or so at primary school where they are swamped with English and never hear so much as one word of Maori. We consider this aspect of the matter in that part of this Finding dealing with the subject of education.

3.4 Te Reo Maori in the Future

3.4.1 When this nation began in 1840 the Maori outnumbered the European by more than a hundred to one. At about the time of the Land Wars in the early 1860's the European and Maori populations were more or less equal. By the turn of the century European migration had brought great numbers to these shores and the Maori had been almost decimated by sickness and disease that had been quite outside previous experience. As we have already said, since the census of 1896 the Maori population has greatly increased—by eight times what it was—and there are clear signs that it will increase even more in the future. The prospect of assimilation much discussed a generation or two ago is a real one, but assimilation of a kind our fathers and grandfathers never dreamed. The typical New Zealander of the 21st century may prove to be of Maori descent, brown-eyed, dark haired and well aware of his whakapapa (genealogy) and cultural history in which some European forebear will be a more or less distant relative.

3.4.2 Population projections are notoriously difficult. They must proceed on assumptions—that birth and death rates will be constant, that immigration and emigration rates can be assessed with tolerable accuracy—all of which can vary throwing projections askew. For example, in 1960 it was reliably forecast that New Zealand's population would be about five million by the end of this century. But demographers at that time could not see the effect of new contraceptive devices that have contributed to a declining birth rate among Europeans. Nor could they forecast the recession of the 1970's which led to greatly increased emigration. The current abortion law was not then in contemplation and all these factors have led to current projections that are nowhere near what was expected about 25 years ago. It is now thought that New Zealand's population in 2000 AD will be much nearer to four million than the five million that was once confidently predicted.

3.4.3 Our observations that follow on population growth can only be tentative because underlying them are the assumptions that are inevitable with all such forecasts. But some calculations can be made on the basis of persons alive today, and some of these are startling.

3.4.4 The Government Statistician supplied us with figures that he expressly warned were guidelines only. He explained that the Maori population is difficult to count because the definition of "Maori" is variable. For quite a long time a Maori was a person who was a half-blood or more, ie, at least one of his parents was a full-blooded Maori, or both were three-quarter Maori or some similar combination. Later this definition was changed to mean a person of Maori descent, that is one or other of his parents was of Maori blood. This much broader definition would include many people who would be excluded by the "half-blood or more" test. There are some pakeha who still cling to the half-blood or more idea and who will say that "there is no such thing as a full-blooded Maori". This attitude deserves examination.

3.4.5 It can fairly be said that at the root of many conflicts between races lies a belief in racial supremacy—the idea that one race is better than another. There is nothing new in this, it is as old as mankind. So a European will consider himself racially superior to an Oriental, while the Oriental will regard the European deprecatingly as no more than “a hairy barbarian”. (The Japanese word for foreigner means exactly that. Even the English have a saying “All Wogs begin at Calais!” Superiority or a sense of superiority is to be found everywhere). The soundness and justification for the disposition is open to doubt.

3.4.6 The early settlers in this country (and some more recent migrants too) brought with them all the prejudices that they themselves inherited, and after the atrocities committed (by both sides) in the Land Wars those prejudices became ingrained at least for a time. They brought forth an attitude of superiority towards the Maori that persisted, but the exploits of the Maori Battalion in the Second World War had a profound effect on both Maori and pakeha alike. The pakeha came to respect the Maori soldier for his military prowess and the whole community admired the men of the Maori Battalion for their courage and gallantry. The Maori on his side realised that he was just as good a soldier as his pakeha comrade in arms and on his return to New Zealand at the end of the war he carried himself proudly, no longer feeling himself to be one of a conquered people as his father and grandfather had felt before him. It was probably in the sands of the desert and in the mountains of Italy that the new Maori renaissance had its origins. There was born then and is to be found everywhere today the feeling that the Maori is every bit as good as the pakeha and that he will not tolerate in any way the attitude that he is some kind of inferior being.

3.4.7 The truth is that many pakeha New Zealanders have never regarded their Maori compatriot as inferior—especially those who have been born and bred in this country and who have grown up with Maori playmates. But some New Zealanders, more especially those who have come here recently or whose geographical location has meant that they have never had anything to do with Maoris, have persisted in an attitude of superiority. It is these who are most likely to say that most Maoris are “not a full blood”—as if that makes any difference. The idea is that if a Maori has European ancestry then really speaking, he is European. The Maori looks at the same situation from exactly the opposite point of view. He says that if someone has a Maori ancestor, then that person is a Maori even if his ancestor was three or four generations back.

3.4.8 Statistically speaking, the Maori view is the correct one because now any person who is descended from a Maori is Maori for the purposes of the Maori Affairs Act, the Treaty of Waitangi Act, the Electoral Act and many other statutes. The real test is the attitude and disposition of the person concerned. So long as he is descended from a Maori he can choose for himself whether he regards himself or is to be regarded by others as a Maori or as a pakeha.

3.4.9 This throws into relief the difficulty of population projections. Who can tell how many people in the future will regard themselves as being Maori, and how many whose ancestry qualifies them to do so will prefer to consider themselves to be European? Being “Maori” rather than “European” is as much psychological as biological. A Maori is one who has Maori ancestry and who feels himself to be Maori.

This definition becomes very important as we look beyond the lives now in being. For example let us assume that two children alive today, one

Maori and one pakeha, marry in twenty years time. They will be, statistically speaking, one Maori person and one European person. But if they have four children they could become, statistically speaking, five Maoris and one European. Or they might become five Europeans and one Maori, or even some combination in between those figures depending upon their choice yet to be made.

3.4.10 Now we add another factor to the equation. It seems to us to be likely, as time goes on, that more and more people will claim their Maori ancestry and assert their “Maori-ness”. Maori New Zealanders enjoy a number of advantages and have a number of privileges that their pakeha fellow citizens do not possess. For example Maori ancestry can lead to financial benefits through Maori Trust Boards, trusts and incorporations which are growing stronger by the year. Some of these produce large annual incomes that provide valuable scholarships and other assistance to those whose ancestry qualifies them to apply. Then again there are provisions in the Maori Affairs Act that enable Maoris to obtain finance for land development or house building on generous terms not generally available. Some schools and universities give important preferences to Maori students—and there are other similar advantages as well. In addition we seem to detect in the community a greater readiness for people to disclose or to claim (according to one’s point of view) Maori ancestry. There may no longer be a social stigma attaching to marriage between a Maori and a pakeha New Zealander as there once was in some quarters. Social attitudes seem to be changing although for reasons we have already mentioned it cannot yet be said that the kind of change we are discussing here is by any means universal. To a degree we sense that the further south one travels in the country the more one finds distance between the races. The racial problems that undeniably exist in the north of New Zealand are not as obvious in the south. On the other hand numbers and proximity breed tension and it is to that subject of proximity that we now turn.

3.4.11 One of the witnesses who came before us was Mr Edward Douglas, a demographer from the University of Waikato. He told us of calculations that he had made and supplied us with further information that we requested from him. Put shortly he forecasts a marked increase in the Maori population and expressed the opinion that in another generation the Maori population will amount to over 30% of the total population. If inter-marriage takes place even on the present scale it is easy to see that in another generation after that, the Maori population of New Zealand may well exceed that of the Pakeha section of the community. His views are well known in Maoridom and the prospect of becoming the majority in this country instead of being the minority is an exciting one indeed for many young Maoris, especially those whose political and social views usually find them being classed as “radicals” or “activists”.

3.4.12 But for the reasons we have mentioned, especially the assumptions that underlie these calculations—as to birth and death rates, immigration patterns and inter-marriage—we have to say that we are not prepared to hold that Mr Douglas’s views are inevitably correct. He would not claim so himself. Yet it can be said that there is a possibility, even a probability, that the shape of New Zealand’s population is undergoing a profound change. The consequences of this change could be far-reaching and it is important for all of us to be aware of them.

We have not overlooked a recent projection by the New Zealand Planning Council. This body has reported that population trends in New Zealand are less than they used to be. It has also said that the Maori

proportion of our population is only 8.91% compared with Mr Douglas's 23%. But what is "a Maori"? The Council has not used Mr Douglas's definition which has statutory authority and which gives a very different picture from that based on an arbitrary biological definition of "half-blood or more". The true projection, as one might expect, probably lies between the two opinions.

3.4.13 One important calculation made by Mr Douglas relates to children leaving school fifteen years from now, i.e. at the turn of the century. From census figures in 1981 and other published statistics Mr Douglas has told us that in 15 years time, of all children leaving school throughout New Zealand nearly 25% will be Maori and of those living north of a line drawn east and west through Lake Taupo, more than half will be Maori.

3.4.14 If those figures are projected twenty-five years ahead from the present time it is easy to see that inter-marriage north of Lake Taupo could account for a significant increase in the Maori population in that part of the country during the lifetime of all people who are now forty years of age or younger. The proportion of New Zealanders of Maori descent living north of Lake Taupo in thirty years time could be very different from the present national figure that is estimated by the Government Statistician at about 13% of the total. It is probable that in Canterbury, Southland and Otago the face of the population will not change nearly as much. But for those living in the Waikato, the Bay of Plenty, Auckland, Northland and elsewhere the change could be very marked indeed.

3.4.15 If such a change does come about then the demand for fluency in the Maori language will increase rather than diminish. If there are difficulties put in the way of those who want to attain that fluency then serious social tensions could develop. It may be said that no such demand for fluency in Maori is likely to arise. We consider this and allied matters later in this Finding, but let us point out one important matter here that might not be widely known.

3.4.16 For reasons already mentioned there are many Maoris now of adult years who cannot speak their language and others who know something of it but who lack fluency or who make serious mistakes when speaking, both in grammar and in pronunciation. Many of these people find life very difficult when they go on to their marae. If called upon to speak they feel a loss of mana because they cannot understand what has already been said and because they must themselves speak in English. The Maori renaissance is everywhere about us. More and more Maoris are establishing their genealogies and returning to visit the marae of their ancestors. This trend is almost certain to increase rather than diminish. For Maoris who feel strongly about their ancestry and who experience a sense of humiliation that they cannot express themselves in Maori it is natural and understandable that they should seek to put the blame for their deficiency on someone or something other than themselves. The most common complaint is that the education system has been stacked against them. They say that they have been forced to learn in English which has proved to be unsuccessful and that they have been taught no Maori, which is undeniable. Thus they have fallen between two stools and "pakeha law is to blame."

3.4.17 Whether this attitude is justified or not, it is real and quickly develops into a feeling of injustice. We have to say that it is a common experience of mankind that there is no more dangerous element in the community than a sense of injustice, and when it is felt by a growing section of society the results can be explosive.

3.4.18 For these reasons what has been thought to be satisfactory in the past may have to occupy a very different place in the scale of importance in our country than it has in years gone by.

3.5 The Place of Maori Culture in the Heritage of New Zealand

3.5.1 As a nation we have always acknowledged Maori culture as part of our heritage. New Zealand's Coat of Arms features a Maori warrior prominently as one of the two supporters. Our national airline sports a Maori symbol—the koru—on the tail of every one of its aircraft as they fly across the world. Prominent guests of State are accorded a Maori welcome. Even our national rugby team does a haka before it begins to play a test match. There has always been recognition that Maoritanga is part of New Zealand.

3.5.2 And so it should be. The Maori culture of New Zealand is unique in the world. Its carvings are rich in symbolism. Its music is harmonious and appealing. Its dancing has captivated many hearts and its oral tradition is abundant in song and story. There is a great body of "oral literature" that has survived for many generations, full of wisdom in its narrative and beauty in its poetry, and at the heart of it all is the Maori language.

The retention of the language for the maintenance of an oral history is but one reason why the claimants seek to promote the language. It is also the means by which they explain themselves and their ways to the rest of New Zealand. The language is the embodiment of the particular spiritual and mental concepts of the Maori, more closely related to oriental tradition than to our western ways. It offers a particular world view which, while not challenging our social structure, highlights alternatives for development. Its emphasis on holistic thinking, group development, family relationships and the spiritual dimension of life is not inappropriate in a nuclear age. Without the language this new dimension of life from which New Zealand as a whole may profit would be lost to us. That is the burden of the claim made in this case.

3.5.3 But the claimants and their supporters go further. They say that it is intolerable that a Maori should be treated like a mascot. They say that the dignity of the Maori race is in issue and the preservation of the Maori tongue is at the heart of the matter. They say that the unique quality of Maori culture is a special reason for its preservation and that to preserve the body one must nourish the soul. They adopted what Dr Benton had to say when telling us of the right to speak Maori (now denied in many public places such as the Courts) and of the right to hear Maori spoken (now an all too rare experience because of the overwhelming predominance of English in the media). He said:

" . . . Rights which cannot be enforced are illusory, and protection which cannot sustain life is no protection. We would not think that the Wildlife Service is fulfilling its responsibilities if it announced that it was protecting the kakapo by supplying a few live specimens to selected zoos, a few stuffed ones to selected museums, and then declaring an open season on the grounds that 'nature' must be left to take its course. The Maori language is just as much a part of our national heritage as the kakapo, and far more important in human terms than any of the birds or trees whose names it has given us, yet

it is in no less danger from man-made environmental hazards than the endangered species in our flora and fauna.”

3.5.4 The claimants say that they are not just part of an ethnic minority. They say that they are not to be treated like migrant groups who have recently come to this country from other lands. They say that they belong here, that they and their culture have no other home, that they are the tangata whenua of New Zealand and that by the Treaty they made with the colonising English they and their culture were given promises in writing that they expect and demand to be kept.

It is against all this background that we have had to consider this claim.

4. JURISDICTION

4.1 The Claimants and Their Right to Claim

4.1.1 There are two claimants in this matter—Nga Kaiwhakapumau i te Reo (Inc) and Huirangi Waikerepuru, the Chairman of that Society. It was sound advice that led both parties to be made claimants in this case because if the only claimant had been the incorporated society Nga Kaiwhakapumau it is likely that we would not have had jurisdiction to hear the matter.

4.1.2 We have as a Tribunal no more power than Parliament has seen fit to give us. We cannot deal with any and every claim that some person may want to bring before us. Parliament has enjoined us to consider any matter “where any Maori claims that he or any group of Maoris of which he is a member” is prejudicially affected by any act or omission of the Crown (etc).

4.1.3 Nga Kaiwhakapumau i te Reo (Inc), as its name clearly indicates, is a society incorporated under the Incorporated Societies Act 1908. As such it is in law a legal personality capable of doing anything that an individual person might do subject to its rules of incorporation. As such it is clearly not a Maori. It is a legal fiction clothed by the law with the rights, powers and duties given by the statute under which it is incorporated. On a pure legal view of the matter it is doubtful to say the least whether the Society has any right to make a claim under our statute.

4.1.4 Huirangi Waikerepuru is clearly a Maori and has undoubted standing before us within the meaning of s6 of the Treaty of Waitangi Act 1975. We need take no more time on this matter because even if the incorporated society has no right to bring the claim, its Chairman Mr Waikerepuru certainly can and we see no advantage to anyone in embarking upon a consideration of the legal position as it affects Nga Kaiwhakapumau i te Reo Inc.

4.2 The Treaty and The Language

4.2.1 The next point we must settle is whether or not the Treaty of Waitangi protects the Maori language. If it does not, that is the end of the matter. If it does we must then go on to decide whether any of the grounds laid down in s6 of our Act have been made out—ie, has there been any act or omission by the Crown, or is there any statute or policy now in force relating to the Maori language that is “inconsistent with the principles of the Treaty” (s6(1)).

4.2.2 The claimants put their case in this way:

“ . . . The Maori Affairs Act 1953 (s. 77A), the Broadcasting Act 1976, the Education Act 1964, the Health Act 1956 and the Hospitals Act 1957 and broadcasting and educational policies are inconsistent with the principles of the Treaty and as a result (the claimants) are prejudiced in that they and other Maori are not able to have the Maori language spoken, heard, taught, learnt, broadcast or otherwise used for all purposes and in particular in Parliament, the Courts, Government Departments and local bodies and in all other spheres of New Zealand society including hospitals.”

Stated in this way it can be seen that the claimants launched their attack on a very wide front. We will have to consider each of these statutes and

the policies mentioned in due course but we would have no need to consider any of them if the Treaty does not cover te reo Maori with its protection.

4.2.3 The claimants called Professor Hirini Moko Mead of Victoria University of Wellington who produced for us a carefully prepared submission on the meaning of Article II and Article III of the Treaty. The general thrust of his view of the treaty so far as Article II is concerned is that the phrase “O ratou taonga katoa” covers both tangible and intangible things and can best be translated by the expression “all their valued customs and possessions.” This is in accordance with the conclusion we have already reached in the Kaituna River Finding (para. 4.7) where we accepted the phrase to mean “all things highly prized”, and the Motunui Finding to the same effect. In the Manukau Harbour case we reached the conclusion that “taonga” in the context of the Treaty means more than objects of tangible value (para 8.3 sub para 3)

4.2.4 When the question for decision is whether te reo Maori is a “taonga” which the Crown is obliged to recognise we conclude that there can be only one answer. It is plain that the language is an essential part of the culture and must be regarded as “a valued possession”. The claim itself illustrates that fact, and the wide representation from all corners of Maoridom in support of it underlines and emphasises the point.

4.2.5 We have pointed out in other Findings we have made that it is not possible to interpret the Treaty faithfully by looking at the English version only, nor the Maori version only. Those who read Article II of the Treaty in the English version could be led to believe that the Royal guarantee given in that Article relates only to “. . . exclusive and undisturbed possession of their Lands and Estates, Forests, Fisheries and other properties . . .” thereby mistakenly concluding that the assurance was in respect of the specified interests and things of similar kind. But we have made it clear that the Maori version is broader than the English phrase used in this connection, and that we must, under our statute, “have regard to the two texts of the Treaty” set out in the Treaty of Waitangi Act 1975. The statute then goes on to require us “to decide issues raised by the differences between them” (s5 (2)).

4.2.6 By making this provision Parliament expressly recognised that there are differences between the two versions. In this claim as in others we have had to consider, we have applied the ordinary legal principles applicable to the interpretation of treaties that we explained in the Manukau Harbour Finding (para 8.2).

4.2.7 Submissions on behalf of the New Zealand Section of the International Commission of Jurists gave emphasis to the nature of the Crown’s obligation, referring in particular to the use of the word “guarantee” in Article II of the English text. By reference to the *Shorter Oxford English Dictionary* (3rd Ed 1964) together with various law dictionaries and a *Dictionary of International Law and Diplomacy*, the point was made that the word denotes an active executive sense rather than a passive permissive sense, or in a phrase “affirmative action”. To quote from the submission:

“By these definitions therefore, the word (guarantee) means more than merely leaving the Maori people unhindered in their enjoyment of their language and culture. It requires active steps to be taken to ensure that the Maori people have and retain the full exclusive and undisturbed possession of their language and culture

...

“The situation could be different if the Treaty merely required the Crown to permit to the Maori people the full exclusive and undisturbed possession of the Taonga. Having so permitted, it could be argued that a policy of benign neglect amounted to compliance.

“The word guarantee imposes an obligation to take active steps within the power of the guarantor, if it appears that the Maori people do not have or are losing, the full, exclusive and undisturbed possession of the Taonga . . .”

4.2.8 We have considered this aspect of the case having regard to the particular words in the Treaty, but in so doing we have not been unmindful of the broader social purpose of the contract without which no discussion of the Treaty can be complete. In that broader perspective, and as we have said in earlier Findings, the Treaty was directed to ensuring a place for two peoples in this country. We question whether the principles and broad objectives of the Treaty can ever be achieved if there is not a recognised place for the language of one of the partners to the Treaty. In the Maori perspective the place of the language in the life of the nation is indicative of the place of the people.

4.3 Proof of Prejudice

4.3.1 When a claimant proves that he is entitled to bring a claim, and that the subject of the complaint is covered by the Treaty, these facts alone do not give us jurisdiction. Such a claimant must go further and prove that he (or they) are prejudiced or are likely to be prejudiced in one of the ways specified by s6(1) of the Treaty of Waitangi Act 1975.

4.3.2 Many illustrations have been given in the claim of ways in which the claimants say that they have been prejudiced (para 4.2.2); for present purposes we are content to focus on one issue only, viz. that no Maori may use his language in the Courts of New Zealand if he can speak English. In other words he may not, according to our law use his native tongue even to speak on his own behalf.

4.3.3 This conclusion was reached by the High Court in 1979 and confirmed by the Court of Appeal in *Mihaka v Police* [1980] 1 NZLR 453. The appellant had been prosecuted in the District Court where he claimed the right to address the Court in Maori. He was refused permission to do so and appealed unsuccessfully to the High Court. He then applied to the Court of Appeal for special leave to appeal which he argued in person. It seems that no amicus curiae was present. He based his claim on the Treaty of Waitangi.

4.3.4 The Court of Appeal said:

“ . . . The appellant has argued with dignity and restraint that his rights as a Maori New Zealander entitle him to have the hearing conducted in Maori. The use of the Maori language in New Zealand is a matter of public importance but it does not follow that it raises a question of law in the circumstances of the present case. The Treaty of Waitangi to which reference was made does not deal with the legal point now in issue . . .” (p 462)

In concluding as it did that the Treaty did not cover the right to use Maori in the Courts, the Court of Appeal was declaring the law as it now exists. As to whether the law as it now exists is inconsistent with the principles of the Treaty is the very point we have to consider.

4.3.5 In deciding that the Treaty does not confer this right we gather that the Court probably did not have the benefit of full argument as to the meaning of the Treaty and most likely had regard to the English language version only. That version provides in Article II that the Crown guarantees to the Maori people of New Zealand “. . . full, exclusive and undisturbed possession of their Lands and Estates, Forests, Fisheries and other properties . . .” Reading that passage on its own, one might easily conclude that the Royal guarantee of protection related to land and land matters, fishing rights and no more. But the equivalent provision in the Maori version is a guarantee of “the fullness of control” (te tino rangatiratanga) over “. . . their lands, their villages and all the things they value highly” (o ratou wenua o ratou kainga me o ratou taonga katoa). By the ordinary legal principles applicable to the interpretation of treaties where neither version is superior to the other, any variation between the two versions must be resolved having regard to both languages.

4.3.6 Taking the two versions side by side it will become at once apparent that the Maori guarantee is significantly wider than the English version of that guarantee, which leads us to say that the right to use the Maori language would have been one of the rights expected to be covered by the Royal guarantee by those chiefs who signed the Treaty. Taking into account all the circumstances as they existed when the bargain was made we think that it is unlikely that many Maori signatures would have been obtained if it had been said by Captain Hobson that the Royal guarantee of protection would not include the right to use Maori in any public proceedings involving a Maori.

4.3.7 As to taking surrounding circumstances into account when interpreting treaties, the legal principles are well-settled especially in North America where the Courts have frequently been required to interpret treaties, many of them similar to our own and made long before it. The Ontario Court of Appeal interpreted an Indian Treaty made in 1818 in the case of *The Queen v Taylor and Williams* (1981) 62 CCC (2nd) 227. The terms of the treaty in question did not provide for the reservation of hunting and fishing rights but there was written evidence of the circumstances that existed when the treaty was signed. The Court declared:

“. . . The principles to be applied to the interpretation of Indian treaties have been much canvassed over the years. In approaching the terms of a treaty quite apart from the other considerations already noted, the honour of the Crown is always involved and no appearance of ‘sharp dealing’ should be sanctioned. Further if there is any ambiguity in the words or phrases used not only should the words be interpreted as against the framers and drafters of such treaties, but such language should not be interpreted or construed to the prejudice of the Indians if another construction is reasonably possible. . . . Finally if there is evidence by conduct or otherwise as to how the parties understood the terms of the treaty, then such understanding and practice is of assistance in giving content to the term of terms . . .” (p 235)

4.3.8 To the extent that the Court of Appeal has decided that the Treaty of Waitangi does not guarantee and protect this right we accept at once that that is the law today because it has said so. But to the extent that the law ought to protect that right because of the terms of the Treaty, we conclude that the law is in conflict with the Treaty and we must make a finding to that effect.

We have already concluded that the language is a “taonga” of Maoridom. The Crown by Article II of the Treaty guaranteed its protection of the language. As we said in the Manukau Harbour Finding:

“The Treaty of Waitangi obliges the Crown not only to recognise the Maori interests but actively to protect them . . .” (para 8.3, sub para 1; and see para 4.2.7 above)

It is a denial of that protection for the Crown to refuse a Maori the right to use his language in the Courts especially when some persons who appear before the Courts may be able better to express themselves in Maori rather than English. We think it is no answer to say that if a person can speak and understand English justice will be done to him if the proceedings are conducted in English. That, to us, is not the point. The real point is whether the recognition and protection guaranteed to the language by the Treaty is denied if a Maori person is prohibited from using it when he wants to do so.

4.3.10 The point is also that while in earlier years the right to use Maori in the Courts may have been argued on the ability of a person appearing to speak and understand English, that is not the main problem today. Perhaps the understanding between two people that the Treaty sought to endorse will not be complete until it is the judges themselves who are bilingual. We understand that at present there is only one High Court Judge who is able to speak the Maori language fluently. We would see great advantage in the instruction of judges in the Maori language as well as in the maintenance of the right to speak the language in the Courts. He who speaks the language will understand the movements of the mind.

4.3.11 For now we can come only to the conclusion that a prohibition on the use of the language in the Courts is completely inconsistent with the guarantee of recognition given by the Crown under the Treaty. It may also be less than just, especially when the person concerned feels that his Maori expression is superior to his facility in English. Because of the Courts’ decision in this matter the rule that a Maori person who can speak and understand English may not use Maori in the Courts is a matter of law, and the law as it exists is a policy of the Crown. As such we find that policy to be inconsistent with the principles of the Treaty and we uphold the claim that the claimants are prejudiced thereby.

4.3.12 The decision of the Courts is based upon an English statute passed over six hundred years ago, the Pleadings in English Act, 1362 (36 Edw 3, c15). This statute became part of our law by virtue of the English Laws Act 1858 when our legislature adopted all the laws of England that were in force on January 14, 1840. The 14th Century statute seems to have been passed at a time when it was decided that the indigenous language (English) should be preferred and perhaps protected against the incursions of the language of government (Norman-French). It is ironical, say the claimants, that over six centuries later the same statute should be invoked to protect the language of government (English) against the indigenous language of New Zealand (Maori). We refrain from comment.

4.3.13 We therefore come to the conclusion that on this ground alone we have jurisdiction to deal with this matter. We leave for later discussion the effect on te reo Maori of the Maori Affairs Act 1953 (s77A) and other statutes referred to by the claimants as the foundation for their claim. We point out that we are not empowered to intervene in respect of any act or omission by the Crown that occurred before October 10 1975 (s6(6)(a)). The state of the law was explained by the Court in 1980 and has not been

altered by the Crown since the matter was brought to attention. The law on this question has been in conflict with the principles of the Treaty at least since that time, and the omission to rectify the position by removing that conflict is an omission of the Crown. Since this has been the case at least from 1980 onwards the omission has occurred since October 10, 1975 and so the matter is within our statutory competence.

5. OBJECTIONS TO THE RECOGNITION OF TE REO MAORI AS AN OFFICIAL LANGUAGE OF NEW ZEALAND

5.1 The claimants seek recognition of te reo Maori as an official language. We have decided that it would be helpful to consider now some of the commonly expressed objections to that course. We do not profess to canvass every possible objection because there may be some that have not occurred to us. We have not had the benefit of Counsel to assist us who would have been able to direct our minds to points that were not made before us. With the passing of the Treaty of Waitangi Amendment Act 1985 we will be able to have such assistance in the future.

5.2 There is no need for recognition because Maori people can speak English anyway

This objection assumes that the only issue is functional—if a person can understand and be understood in speaking English nothing more is required. We think it unsound because some Maori people are more comfortable speaking Maori than in speaking English. That fact alone is important when considering this objection but we go further. It is an important part of this claim that Maori as a language is smothered by the prevalent use of English and is adversely affected as a consequence. To protect the language it must be used. Opportunities for use must be provided. Whether a speaker understands English well or not is a side issue. To protect te reo Maori and to provide opportunities for its use, official recognition will give public acknowledgment of that need. Underlying our comments on this topic is our conclusion that the Maori language is worth protecting and deserves protection, quite apart from the Crown's duty under the Treaty to provide such protection.

5.3 The Maori language cannot meet the needs of modern society

This objection usually refers to the existence in English of many words describing modern concepts—computer, helicopter, nuclear energy, television, microwave, telex, electricity, carburettor to mention but a few—which do not have an equivalent in Maori. One of the qualities of any living language is its ability to take in new words directly from other languages or to adapt such words. English is full of words taken from other languages—garage, chauffeur, telephone, television, avionics, blitzkrieg, parallel, fjord, ski, automobile—or adapted from other languages of which an exhaustive list would run into hundreds of examples. Maori is just as capable of doing the same thing. When the first Polynesian navigators came to these shores they had no words in their language for our native trees and birds, nor for things they had never experienced—ie, snow, ice, geysers, boiling pools—yet the language was adapted to meet all these new things. So also in modern times te reo Maori is well capable of adopting or adapting new words to meet modern needs and concepts.

5.4 English is an international language and therefore much more useful than Maori

There is no question that English has become an international language and that Maori is almost unknown outside New Zealand. But official recognition of Maori will not affect the international use of English and the issue is not whether Maori is more useful or less useful than English. Usefulness depends upon circumstances. The monolingual New Zealander speaking nothing but English soon learns on a marae that his limited education puts him at a disadvantage. Furthermore it seems to be accepted in educational circles that to learn a second or third language is a distinct advantage in speaking and understanding the language of first preference.

5.5 Most New Zealanders cannot speak or understand Maori

To say that most New Zealanders cannot speak Maori suggests that the only criterion for official recognition is a matter of numbers. We do not agree that official recognition should be decided on this basis. For one thing such recognition may encourage more people to acquire a knowledge of Maori and for another the fact that many of us are limited in our education to one language only does not mean that others not so disadvantaged should be deprived of the opportunity of using their skill. Official recognition will increase that opportunity of using their skill. Official recognition will increase that opportunity even though most New Zealanders find that they are not able, at the present time, to take advantage of it themselves. Because one, or some, or even a majority of us cannot take advantage of something does not seem to justify denying to others the opportunity that they are able to exploit.

5.6 Official recognition will become too expensive

This objection pre-supposes that by official recognition all public documents—statutes, regulations, public notices, perhaps even street—signs should be published in both languages. We do not agree. The extent to which official recognition would require efforts of this kind will depend upon subject-matter, locality, audience and other factors as well as costs. We cover this in more detail later in this Finding but for the moment we simply observe that official recognition—the right to speak Maori on public occasions—is likely to be comparatively inexpensive when balanced against the corresponding importance of ensuring that the language does not die.

5.7 Minority languages always die out eventually so why try to save Maori by giving it official recognition

Some minority languages have died out, as in Scotland and to an extent in Ireland where Gaelic or Erse are rarely to be heard, but many countries are bilingual and show signs of remaining so. There are minority groups speaking their own language in Belgium, Sweden, Finland, Canada, Wales and elsewhere. We do not think it correct to say that minority languages always die out, but we agree that they are likely to do so if they are suppressed in their use and if they are not recognised, which limits their usefulness and as a result, their usage.

5.8 The Maori is only a minority in New Zealand and should not be allowed to force the majority to adopt his standards and values

Official recognition does not force Maori standards and values on to anyone. English speaking New Zealanders can continue their lives as before, but Maori New Zealanders will be able to use their language on occasions when they cannot do so now. If any New Zealanders want to use te reo Maori on a public occasion, official recognition will permit them to do so. No penalty will attach to those who do not want to do so. Official recognition does not imply compulsion.

5.9 Official recognition is an empty gesture of no benefit to anyone

We are inclined to think that official recognition will go some distance towards eliminating the attitude that te reo Maori is of no worth or value. The fact that it cannot now be used in some public places and if not discouraged is not encouraged to be used in other places contributes to the assessment that it is of no value.

In particular, among Maori New Zealanders it has been made obvious to us that official recognition will go a long way towards restoration of the mana of the language which has suffered in the past from failure to give it official status.

5.10 There is not enough time available now to meet the educational needs of our children

This objection pre-supposes that official recognition means that Maori must be taught as a compulsory subject in schools. We do not see that compulsory education of this kind necessarily follows official recognition. Some subjects are recognised by society as being necessary for a sound education, others are not. We think it likely that Maori will be taught in the schools to the extent that parents want it to be taught to their children. Some will regard it as an important subject, others will take a different view, and the proportions of sectors in the community of one view or the other may vary from time to time as social circumstances change. Even geographical areas may be a factor—it may be more highly valued as a skill by parents in one district than in another. If a facility in the Maori language is regarded as more important than skill in French or in European history then those parents of that mind should be enabled to ensure that the curriculum is shaped accordingly. And more importantly, their children should be able to learn Maori if that is what their parents want.

5.11 If Maori is to be given official recognition, we will have to recognise other ethnic minority languages as well—Samoan, Tongan, Chinese, for example

We do not accept that the Maori is just another one of a number of ethnic minority groups in our community. It must be remembered that of all minority groups the Maori alone is party to a solemn treaty made with the Crown. None of the other migrant groups who have come to live in

this country in recent years can claim the rights that were given to the Maori people by the Treaty of Waitangi.

Because of the Treaty Maori New Zealanders stand on a special footing reinforcing, if reinforcement be needed, their historical position as the original inhabitants, the tangata whenua of New Zealand, who agreed to allow our European forebears to come and settle here with them.

5.12 If Maori is given official recognition it will cause divisions in the community

This objection assumes that divisiveness is caused by differences. We suggest that the true cause of divisiveness in any community is a lack of respect for other (different) groups and/or a lack of understanding of other groups. New Zealand's population has different groups within it today and will continue to have such groups in the future.

There need not be divisiveness because of differences. And in other parts of the world it has been recognised that to impose one language or culture on another is more conducive to divisive hostility than to allow two languages or cultures to exist side by side.

The International Commission of Jurists made this point in submissions presented to us and it was also referred to by the Secretary of Maori Affairs Dr Reedy (see paras 8.1.5 et seq).

6. EDUCATION

6.1 The claimants' criticisms

6.1.1 We spoke in the Manukau Harbour Finding of the bitterness we detected when Maori witnesses told us of the way they had been treated over their land.

It is sad to have to say that we have seen the same degree of bitterness in many of the people who came before us in this hearing when they spoke of the educational system and the way it has affected them and their children.

For reasons that will become clear a little later in this Finding we have decided to treat the question of education in a fairly general way, but to give some idea of what was made known to us we record a number of extracts from the evidence on which we comment as we go along.

6.1.2 Mrs June Te Rina Mead is a teacher of Maori in the New Zealand Correspondence School. She has been in the teaching profession for more than 35 years and has had wide experience at primary, secondary and tertiary levels of education. On the subject of the School Certificate Examination she said this:

“... The scaling system of the School Certificate Examination Board discriminates against Maori students by artificially controlling the number of students who pass, and has long been a major source of anger and despair among Maori people for a very long time ...”

In support of this opinion she produced a report from the *Evening Post* newspaper of June 12 1984 in which the Director-General of Education was reported as conceding that the system should be reviewed because it was unfair to candidates in Maori and some other subjects.

6.1.3 A measure of this unfairness was Mrs Mead's evidence that in the 1983 School Certificate statistics it was revealed that candidates sitting the Maori language examination had a pass rate of 37.35% while those sitting Latin, French and German had pass rates of about 80%. The scaling system in these cases operated in such a way that of those children sitting the foreign language examinations 80 out of every 100 candidates were allowed to pass. But of those sitting the Maori language only 38 out of every 100 candidates were allowed to pass.

In other words, out of every 100 children sitting Maori in School Certificate, 62 had to fail. The consequences for these children in loss of self-esteem and loss of self-respect was not disclosed to us, but it needs little imagination to guess at the reaction of themselves and their families.

If the same policy had been followed with pakeha children sitting the English examination, we venture to suggest that there would have been an uproar of protest throughout the community.

6.1.4 In further support of her opinion she produced another report from the *Evening Post* of October 2 1985 where the Minister of Education, speaking on the same subject, is quoted as saying:

“... No one in their right mind says Maori students are less intelligent than Pakehas. There is obviously something wrong with the system—the structure is wrong ...”

Steps have been taken recently to remedy the position on this particular point but the damage has been done—and for many years.

6.1.5 Mr Edward Te Kohu Douglas, a demographer with the Sociology Department of the University of Waikato, gave evidence on the same topic. He said to us:

“. . . Only just over one-third of pakeha school-leavers complete their schooling without certificated attainment of three passes in School Certificate or better, but three-quarters of all Maori pupils leave school as ‘uncertificated failures’ (37% and 76% respectively). This appalling but seemingly acceptable school failure is blamed on the children themselves, and it follows them throughout their lives, restricting their chances of sharing with any equity in the abundance they see around them but out of their reach . . .”

6.1.6. Those figures seem to be correct, from the graphs and other statistical data he produced. If a system that has been in existence for thirty years or more results in producing 76 out of every 100 Maori children who are not able to pass even three subjects in School Certificate Examinations, we conclude that something is seriously wrong with that system—and has been seriously wrong for a long time. Small wonder then that the system “has been a major source of anger and despair for Maori people for a very long time.”

6.1.7 Mrs Mead turned her attention next to structures within the school in our education system. She said:

“. . . The organisation and structures of the school are mono-cultural. They are designed for, and run by middle-class pakeha. One of the greatest difficulties a Maori teacher has to overcome is that of the attitudes of those in authority . . .”

She then went on to explain that the syllabus of a school is ultimately the responsibility of the Principal of that school.

If the Principal sees no need to include Maori in the syllabus, any child who wants to study the language must do it by correspondence course from the Correspondence School. She gave us plenty of examples to show how difficult it can be for a pupil to learn Maori trying to do pencil and paper exercises at the back of a classroom while some other subject is being taught in the same room at the same time, Such a task would require considerable effort from a mature adult pupil—for a child it must be unusually difficult. And that is all the more so when it is remembered that Maori is traditionally a spoken language best learned in conjunction with the culture and history of which it is an integral part, rather than as a “pencil-and-paper” test as described by one of the Education Department officials who gave evidence later.

6.1.8 We heard also from a young Maori woman who was recently at secondary school. She gave us a history of opposition put in her way by the Principal of her secondary school who saw no value in Maori and was not willing to include it in the school curriculum. We do not see any benefit in giving all the details of the matter in this Finding. But we can say that it was a striking example of the authority a school Principal seems able to wield in a matter of this kind. As a case history it underlined Mrs Mead’s later comment on school structures and learning the Maori language when she said:

“. . . A Principal should not be permitted to have a veto power over subjects which meet the educational and psychological needs of Maori students . . .”

6.1.9 Then to reinforce her criticism that our schools are mono-cultural, she offered a quotation from a paper by KM Tipene-Leach delivered to the Post Primary Teachers' Association:

“. . . It is a paradox to see a Principal berate two pupils for their absence on Friday and Monday (they had attended a family reunion) and five minutes later see the same Principal smilingly wish a bus load of pupils well as they set off to watch a rugby test . . .”

6.1.10 Next Mrs Mead turned her attention to the Correspondence School itself. She told us, for example, that children studying Maori are graded in their work and that those who fail to achieve satisfactory standards must be given a “D” grade signifying failure. She explained at some length how few of her pupils attending schools are supervised in their Correspondence School exercises and how discouraged many of them become because of this lack of help. She said too that although she had to give Maori pupils a “D” grade, other students learning English as a second language are not graded at all. “learning English” she explained, “is important for enculturation purposes and hence must not be thwarted by the imposition of grades.”

We wondered whether Departmental policy-makers have taken into account the adverse effect on Maori children of being graded in this way, especially when they have to work under such difficulties. But we make no specific recommendation on the point at this stage because of what we have to say generally on this matter of Education.

6.1.11 There was much other evidence that was in similar vein to Mrs Mead's contribution. For example we were handed a paper prepared by another Maori teacher on the frustrations of being a Maori language teacher. She wrote in part:

“. . . There are two big problems facing any Maori teacher . . . The first big problem is that schools basically are designed to teach pakeha, and middle-class ones at that. Bringing the system across half the globe hasn't altered that in any way. So a Maori teacher (and a Maori student) is compulsorily part of a system designed to treat her as if she is pakeha. And if she shows signs of forgetting that, to treat her as someone requiring to be made pakeha, to be assimilated. Whatever term you want to use it means the system wants Maoris to forget they are Maoris while they are in school. The second big problem is . . . that if the teacher's monocultural . . . then so is the class's work . . .

“. . . The frustrations of being a Maori language teacher are just the same as those of being a Maori in New Zealand society. The frustrations of being a Maori language teacher are essentially summed up in the feeling that the education system has invited you to be a mourner at the tangihanga of your culture, your language and yourself . . .” (Maika Marks)

We leave this *cri de coeur* to speak for itself.

6.1.12 The way in which Maori is taught in the schools attracted a great deal of criticism. There seem to be two broad complaints—one is that it is taught on a “pencil-and-paper test” basis which is unsuitable and calculated to produce inarticulate speakers of the tongue, and the other is that it is not taught widely enough (for most students begin their studies of Maori at secondary school).

6.1.13 To illustrate the first of these complaints we were told that at the School Certificate examination a pupil sits a written paper which is allocated 85% of the total marks and is asked in an oral examination a series of questions based upon a photograph which is allocated the remaining 15%.

(This was recently modified to allocate 20% of the oral part of the paper but the point of the criticism remains).

It was said that because Maori is by nature an oral rather than a written language the emphasis ought to be quite the other way around. And it was further said that it is unproductive to try to teach it like Latin or Greek have been taught—that it should be taught as an integral part of an education in Maori culture and history. The point was made again and again that the language cannot be learned in a vacuum. It must be part of a whole.

6.1.14 As to the extent to which Maori is taught it seems that the general rule is that serious classes do not begin until the secondary level of education is reached. We speak in generalisations on this point because some primary schools do have a course in Maori culture. But so far as the syllabus for School Certificate Maori is concerned it is programmed to begin in Form III. There may be some good reason for this approach but the Department did not explain the matter in the course of its evidence.

6.1.15 The beginning point in the system has become very important. We have already referred to the Te Kohanga Reo programme and its rapid development. As to its success we cite the evidence of Mr PW Boag, Deputy Chairman of the State Services Commission and a gentleman with personal experience in education, where he says:

“. . . The extraordinary success of Te Kohanga Reo is clear evidence that the Maori community sees that Maori language and culture are a necessary element for the self-esteem, dignity and mana of Maori people. The outcome is bilingual, bicultural children and a strengthened whanau. In this respect the Maori language cannot be viewed in isolation but within the context of broader social issues. . . .”

6.1.16 We are prepared to rely upon this opinion from the State Services Commission that Te Kohanga Reo is valuable and successful even though it has been operated for such a short period of time. Assuming that fact as correct, namely that small children set off to school with a good working knowledge of Maori, it is a pity to say the least, that they find themselves in a monolingual primary school atmosphere where, we were told, many lose their fluency within a few months because they are swamped by English and hear no Maori spoken at all.

6.1.17 As to the degree of success of Te Kohanga Reo, let us give another illustration of what was put before us on the subject. Mr Pou Temara gave evidence as a teacher of experience not only in the classroom but as an administrator in the head office of the Department. For some years, he said, he has been the administrator of the oral examination for Maori. He spoke scathingly of the inadequacy of the teaching policy on oral skills and brought before us a student who was to sit the School Certificate examination a short time later. He expressed the opinion that she was a good student who would probably get a good pass mark in the Maori language paper. But he put before her a coloured photograph used for the oral examination in 1984 on which she was required to answer

orally a series of questions in Maori relating to the subject of the photograph. The student struggled with the questions and battled her way through but with difficulty and a good deal of help from Mr Temara.

6.1.18 Then there was brought before us a small five-year-old boy from the Te Kohanga Reo across the road from the marae on which we were holding our sitting. He was shown the same photograph and asked the same questions. At first he was extremely shy and huddled back into the skirts of his Kaiako as she held his hand to reassure him. His answers to the first question or two were monosyllabic and hesitant but as he moved through to the third, fourth and fifth questions he gained confidence and became more voluble. By the time he had been through all the rest up to the fifteenth and last question there was a free ranging dialogue taking place between himself and his teacher.

The contrast between the fifth former and the five-year-old could not have been more striking. Of course one cannot read too much into an unsupervised exercise of this kind. But it seems reasonable to conclude that the State Services Commission's assessment, as expressed by Mr Boag, (together with many other witnesses who made the same assertion) is correct and Te Kohanga Reo is indeed a remarkable success story.

6.1.19 It is obvious that the knowledge gained by little children before they go to elementary school should not be lost to them. Like their elders they will suffer all the adverse effects of the monolingual society that surrounds them in ordinary social circumstances and in the media. Some steps ought to be taken to capitalise on the Te Kohanga Reo movement even if those steps required are new or even unorthodox. For example it may be quite unnecessary that teachers of the Maori language at the elementary or primary level should be fully qualified in all aspects of teaching. Many of those who educate the children in Te Kohanga Reo are not qualified teachers. They are usually Maori speaking mothers or grandmothers who have had no teaching experience at all. It does not seem too difficult a matter for Maori speaking teachers—let us give them their Maori name, Kaiako—to be engaged by the Education Department to deal with such children in the early stages of their primary schooling who have come from Te Kohanga Reo or who want to learn to speak Maori.

After all as some witnesses said to us quite pointedly, there are plenty of pakeha teachers who have done a brief course of ten days or so in Maoritanga and “who become instant experts in Maori culture and history”. It may be that actual policies require to be radically altered to conform to the Department's philosophy as officially described to us.

6.1.20 Mrs Peggy Wahatua Luke-Ngaheke gave evidence about the Te Kohanga Reo movement and spoke at length of the practical difficulties faced by the lack of official recognition of Kaiako (the fluent Maori speakers who teach the children in Te Kohanga Reo). She gave us much valuable information but perhaps her insight into the problem of Maori education was the most perceptive of all that we heard when she said:

“ . . . For years we, as Maori people, have been told that we are under-achievers in the education system, and perhaps it is because in order to succeed in that system, one is taught to be an individual first and put cultural values as a second priority. Te Kohanga Reo provides the children with two worlds, two views and two Reo. We see that it is the key to ensure that not only will our children retain their cultural heritage but they will also aspire to and achieve academic heights in the European world. The present system is not working and it is time for a change . . . ”

6.1.21 We end this summary of the claimants' criticisms of the education system by going back to an extract from the evidence of Sir James Henare. He said this:

“. . . The language is the core of our Maori culture and mana. Ko te reo te mauri o te mana Maori (The language is the life force of the mana Maori). If the language dies, as some predict, what do we have left to us? Then, I ask our own people who are we? I, and certainly we, don't want to be like the American negro who has lost his culture and has nothing.

“'Language' according to Oliver Wendell Holmes, 'is a solemn thing, it grows out of life, out of its agonies and its ecstasies, its wants and its weariness. Every language is a temple in which the soul of those who speak it is enshrined.' Therefore the taonga, our Maori language, as far as our people are concerned, is the very soul of the Maori people. What does it profit a man to gain the whole world but suffer the loss of his own soul? What profit to the Maori if we lose our language and lose our soul? Even if we gain the world. To be monolingual, a Japanese once said, is to know only one universe. . . .”

We have taken time to ponder these words. We think that much wisdom lies behind them.

Let us turn now to the Education Department's response to these criticisms.

6.2 The Department's Response

6.2.1 Our first three hearings took place in the weeks beginning June 24, October 8 and November 19 1985. (The last week began on November 26). During the third week Mr James Alexander Ross, Deputy Director-General of Education, produced evidence for the Department. He was accompanied by two other senior officers, Mr Cyril Peter Bryce, Assistant Secretary for Schools and Development and Mr Wiremu Kaa, Director of Maori and Pacific Islands Education. The evidence for the claimants had been completed by October 12,

6.2.2 Mr Ross presented to us a carefully prepared document running into almost twenty pages of typescript which set out the Department's policies and philosophy on Maori language, taha Maori (culture), bilingual education, syllabus development, advisory services, Teachers' College Maori language lecture courses and related matters. The impression we gathered from all this was that at the topmost levels in the Education Department there is an acute awareness of the complaints that we had heard, and administratively at the least, a genuine desire to remedy them. We rather gathered that since an important education hui in 1984 there have been a number of significant changes in the Education Department's attitudes.

6.2.3 For example we were told that at Teachers' Colleges there is a compulsory course for all primary teachers in Maori language and Maori culture occupying 100 hours per annum, and for secondary teachers a similar course of 50 hours per annum. (Other optional courses are available in addition to these). The lack of written resources was acknowledged and we were told of four books in Maori that are now available in the schools, while more are being written, illustrated or edited in preparation

for printing. Mr Ross gave us a schedule of the written texts now published and he added that the Education Department is the biggest publisher of Maori language books in the country, although the total production seems to be distressingly small.

6.2.4 He also told us that since 1955 the Department has been aware that

“... an understanding of Maori language and culture was necessary not only to develop the full personal development of Maori children but also to assist the pakeha to fully appreciate the history, achievements and character of Maori society.”

This statement accords so closely with the position of the claimants on this topic that it might almost have come out of the mouths of the claimants' own witnesses. We revert to this curious feature later.

6.2.5 After summarising very briefly the history of Maori education for the first half of this century (in which no mention was made of any departmental practice or policy prohibiting the use of Maori in the school or its playground) Mr Ross went on to record;

“... The change to English as the vernacular for the younger Maori generation has been accompanied by a strong and growing demand for Maori to be taught more extensively in the schools. One of the resolutions of the 1955 committee read:

‘The Committee supports the teaching of the Maori language and it recommends that everything possible be done to implement it.’”

He then went on to recount that in 1955 Maori was taught as a subject to about 1000 pupils through the Correspondence School, Maori district high schools and denominational Maori colleges. In 1974 Advisers in Maori Education were appointed together with itinerant teachers of Maori. By the same year 94 secondary schools were offering Maori to 9,111 pupils of Maori descent and 3,535 pupils of non-Maori descent. By 1984 the number of schools offering a course in Maori had increased to 179 with 14,950 Maori pupils taking the subject and 5,399 non-Maori pupils studying it. (By comparison from 1982 to 1985 the number of Te Kohanga Reo centres expanded from 1 to 416, and the number of children, from about 10 to start with to a latest total of over 6000.)

6.2.6 Mr Ross also explained that the Department encourages programmes in Maori culture (referred to as *taha Maori*) because respect for the Maori dimension has been officially acknowledged. He went on to add:

“... It is recognised by the Department however that a key element in all *taha Maori* programmes is the Maori language ...”

Again, we observed, the Department's view of the importance of the language coincided with that of the claimants, of the State Services Commission, of the Maori Affairs Department and other parties represented at the hearing.

6.2.7 A number of other departmental policies were detailed, designed to demonstrate that the Education Department was sensitive to Maori needs and actively responded to them to the best of its ability. Then Mr Ross produced an extract from the Department's Annual Report to Parliament for the year ending March 31 1984 in which we read and considered the following passage in the Maori Education section:

“... *Educational Attainment*. The main policies for raising educational attainments were put in place during the 1960's and early

1970's. They sought to increase the participation of Maori students at all levels of the system, from pre-school to university; to improve the quality of the teaching of English to Maori children; and to provide additional staffing and other resources in schools with large numbers of Maori students. They were, however, a first response to the educational inequalities which had been brought home to the New Zealand public by the Hunn Report (1960) and the Currie Report (1962). They tended to assume that the difficulties faced by Maori students were essentially the same as those faced by Pakeha students and would be overcome in the same way. This, as it later became apparent, was a mistaken view. Learning takes place in a cultural as well as a social setting, and, during the sixties it became clear that a greater prominence had to be given to Maoritanga and Maori language if their educational attainments were to improve.

"The record to date is mixed. The statistics show that gains are being made, but differences between the achievements of Maori and non-Maori students are still considerable. On the positive side are the successes of a quarter of a century of effort, backed by assistance from the Maori Education Foundation and other sources of bursary and scholarship support. Thousands of Maori boys and girls have been encouraged to stay at school longer to improve their educational qualifications and, in increasing numbers, to go on to further study at a technical institute, teachers college, or university. Many are now themselves parents and are better able to guide their own children in the ways of the education system than any previous generation of Maori parents. Many are also taking an active part in the various community organisations that are pressing for more to be done to meet the needs of Maori children for whom the education system is still not doing well enough. . . ."

6.2.8 To put the matter plainly, we think that passage does not fully or fairly face the problem uncovered at our hearing and is designed to put the best face on something that seems to have gone seriously wrong, namely the education of Maori children. When that passage is read against the fact that 76 out of every 100 Maori children left school in that year without passing even three subjects in School Certificate as compared with only 37 pakeha children out of every 100, it is a classic example of British understatement to say as the report does "The record to date is mixed."

We think the record to date is quite unmixd. It is a dismal failure and no amount of delicate phrasing can mask that fact.

6.2.9 We asked ourselves the obvious question. How can it be that the Department's philosophy and practice in educating children accords so closely with the aspirations and desires of the Maori people as described to us, and yet the results of its application be the object of such trenchant and bitter criticism?

6.3 Conclusions

6.3.1 We wish to make plain beyond any doubt that we have no criticism whatever to make of Mr Ross, Mr Bryce or Mr Kaa. All three gentlemen were open and candid in their evidence and we do not doubt their sincerity and their dedication to their task as educational administrators. Nor do we criticise in any way the dedication, even the devotion of many teachers at all levels of the education system. There was not the slightest

evidence to justify attaching censure or blame to any one part of the educational system.

6.3.2 Yet, something has gone wrong. Maori children are not being adequately educated. We think that the system is at fault and has been at fault for many years. We suspect that somewhere at some influential level in the Department, there remains an attitude—it may be in planning or in education boards, or at the level of principals or head teachers, we cannot say—a vestige of the attitude expressed by a former Director of Education who wrote in the middle of the first half of this century:

“... The natural abandonment of the native tongue involves no loss on the Maori ...” [See *Maori and Education*, ed, PM Jackson 1931 at p 193]

We have no reason to think that such an opinion is held in the topmost levels of the administration in the Education Department today, but whether it does exist at other strategic points in the system is a matter of concern. We say that opinion is wrong and should be rejected.

6.3.3 If the people of New Zealand want to avoid racial tension and racial violence in the future, the place to begin is in the schools. The more pakeha New Zealanders grow up knowing Maori culture and history (for which they must be familiar with the language) the more will adult New Zealanders relate warmly to one another as pakeha and Maori come to show each other mutual respect. The days of looking down on Maori values as being inferior or even worthless must be put behind us if we want peace and harmony. It is possible. It is necessary. It is urgent. And with goodwill from the community and good leadership from the highest levels in the Government and its administration it can be done to the great benefit of us all now and in the years ahead.

6.3.4 On the state of the evidence before us we do not feel able to make particular recommendations on many of the educational issues that were raised by the claimants. For example the claimants pressed for the rapid establishment of bilingual schools. The Department's response was to endorse that idea and to explain its current procedures to allow such schools to be established. But “These procedures stress that the school staff, the parents and the community must support such a proposal before approaching the Education Board. In turn, the Board must be satisfied about this support before recommending the proposal to the Department,” said Mr Ross.

It seems to us that this is not leadership by the Department. Rather it is the Department following along only where such support already exists. We urge that the Department take more positive steps and go beyond proposing policy to ensuring implementation. We have heard the criticism that Kohanga Reo were established not because of the Department, but in spite of it, and it did appear that that criticism had some foundation. We were referred as well to Maori endeavours to establish alternative (Maori) schools and consider that the Department needs to look at the funding of such schools or to establish special schools in particular areas that can cater more appropriately for Maori children.

We are not able to recommend positively that bilingual schools should be established immediately up and down the country, because important questions of finance, staffing and buildings arise at once, about which we are not informed.

6.3.5 Similarly there seems force in the claimants' argument that Maori language teachers need not be fully qualified in the sense that they are

trained to a standard where they can teach a variety of other subjects as well. The success of Kaiako in Kohanga Reo centres could be expanded upwards into the early years of education in the school system. It seems almost self-evident that the system should build on the movement and exploit the new opportunities it presents. One thing that could be done quickly is to ease the financial burden on parents.

Mrs Mead also complained at the lack of status of Maori language teachers in the Correspondence School and elsewhere in the system, but we do not have a clear picture of whether this is so and if it is, what should be done about it.

6.3.6 Our primary task is to interpret the Treaty of Waitangi and identify circumstances where the law or government policy is in conflict with it. We are not sufficiently well informed or experienced in the intricacies of the education system to make specific recommendations on many of the important matters that were raised before us. The extent of importance attached to these issues by the claimants was apparent from the fact that more witnesses gave evidence on this subject of education than in all the other matters—health, broadcasting, justice etc.—put together.

6.3.7 We have therefore decided to recommend to the Minister of Education that there should be an urgent inquiry conducted almost at once into the way Maori language and culture is taught in the schools, (and all matters related to them) so that detailed advice can be offered to him by persons best qualified to give it, and so that the serious complaints of practice, procedure and attitudes on which the claimants have produced such a body of evidence can be fully and thoroughly investigated. But we add such a report should be in the hands of the Minister well before this year is out. There is no time for further procrastination or delay.

6.3.8 The education system in New Zealand is operating unsuccessfully because too many Maori children are not reaching an acceptable standard of education. For some reason they do not or cannot take full advantage of it. Their language is not adequately protected and their scholastic achievements fall far short of what they should be. The promises in the Treaty of Waitangi of equality in education as in all other human rights are undeniable. Judged by the system's own standards Maori children are not being successfully taught, and for this reason alone, quite apart from a duty to protect the Maori language, the education system is being operated in breach of the Treaty.

6.3.9 When such a system produces children who are not adequately educated they are put at a disadvantage when they try to find work. If they cannot get work that satisfies them they become unemployed and live on the dole. When they live on the dole they become disillusioned, discontented and angry. We saw such angry people giving evidence before us. They are no more than representatives of many others in our community. When one significant section of the community burns with a sense of injustice, the rest of the community cannot safely pretend that there is no reason for their discontent. That is a recipe for social unrest and all that goes with it. Recent events in other places illustrate this fact with tragic vividness.

7. BROADCASTING

7.1 Background

7.1.1 Although the largest single topic covered in the evidence before us related to Education, the next largest body of evidence was directed at radio and television broadcasting. We heard evidence in support of the claimants' case from a number of experienced and prominent broadcasters which was directed to persuading us that the Broadcasting Corporation had not provided adequately for Maori radio listeners and television viewers. Before we deal with that we must make two important preliminary points. One concerns our jurisdiction as a tribunal and the other relates to the concurrent jurisdiction of two other bodies, the Broadcasting Tribunal, a statutory body duly constituted under the Broadcasting Act 1976, and the Royal Commission created by Order-in-Council on 7 February 1985.

7.1.2 As to our jurisdiction, the Broadcasting Corporation exists under the Broadcasting Act and is a statutory body having the powers and functions laid down by that Act. A preliminary question we have to decide is whether or not it "acts on behalf of the Crown" within the meaning of Section 6 of the Treaty of Waitangi Act 1975. We have had the benefit of very careful and thorough submissions on this point from Mr PJ Downey, Counsel for the Corporation, and from Mr AJ Frame, Senior Lecturer in Law, who presented a legal argument on behalf of the claimants.

7.1.3 Mr Frame traced the history of broadcasting legislation and emphasised how the Crown acting through the Minister of Broadcasting has always retained a measure of control, pointing out that this control has fluctuated from time to time. He said that from 1936 to the present day, broadcasting has been a government function in New Zealand and that apart from a period between 1973 and 1976 the Minister has always had power to give directions to the Corporation which "shall have regard to . . . the general policy of the Government in relation to broadcasting . . ." (Sec 20). He then cited a quotation from a speech delivered by the Minister of Broadcasting the Hon HC Templeton, when Parliament was debating the Broadcasting Bill 1976 (which is now the Act in force):

"We want the Corporation, which is established as a major agency of the State—one amongst a dozen others in which the Government, and I believe this House, has confidence—to operate as trustees in the public interest. In the Committee the PSA (Public Service Association) refused to admit that it was a State agency. We have tried to clarify that, not only by reference to clause 40 or clause 39, which provide for contracts of service dissimilar from those of any department that I know of, but also by spelling out in clause 97 (now section 99 (2)) that Broadcasting is not part of the Executive. It is certainly not a Government department in the Bill . . . it is, in short, a major State agency: and I refer again to those key clauses 39 and well as 40, and 97 as well . . ." (NZPD 1976, vol408, p4303)

7.1.4 Mr Frame then made the point that the term "State agency" occurred three times in that part of the Minister's speech when Sec 99(2) was under discussion. This subsection is important and it reads as follows:

". . . (2) The Corporation is not an instrument of the Executive Government of New Zealand."

(Sec 99 (1) provides that an employee of the Broadcasting Corporation is not to be deemed to be a public servant for the purposes of the State Services Act 1962 and other statutes.)

7.1.5 Furthermore he cited again from the parliamentary debate when Mr Brill MP, as Chairman of the Select Committee, reported to Parliament on the Bill and speaking of the control created by Sec 20 said:

“The formula of suitable wording was no easy matter as it was also emphasised that the Government retained the right to implement policy on such matters as Sunday advertising, educational or religious programmes, *Polynesian or language content*, and liquor or cigarette advertising . . . ”(emphasis supplied) (Mr Brill, Chairman of Committee, NZPD 1976, vol 408, p 4296)

From this, Mr Frame argued, it was clear that Parliament intended that the Government was to have the right to implement policy by retaining control over “Polynesian or language content”.

7.1.6 Mr Downey responded by pointing out that Sec 20 (2) prohibits directions being given in a number of areas—especially in presentation of news or particular programmes—and emphasised heavily the public importance of preserving the independence of broadcasting. He laid special stress upon Sec 99 (2) and argued that this provision alone made it abundantly clear that the Broadcasting Corporation could not be said to be acting “on behalf of the Crown” and that therefore its activities were outside our jurisdiction and that we had no statutory right to comment upon them.

7.1.7 Sec 99(2) has not been interpreted by the Courts. We see at least two possible interpretations that could be put upon the words of the subsection which must be interpreted taking into account the whole of the statute, which means that regard must be had to Sec 20 when deciding the correct meaning to be attributed to the provision in Sec 99(2).

7.1.8 We have decided to resist the invitation to give our interpretation of Sec 99 (2) because we can come at this matter by another way.

7.1.9 Whether the Corporation acts on behalf of the Crown can be set to one side if we concentrate upon the statutory authority of the Minister. By Sec 20 he can direct the Corporation to have regard to general government policy. That statutory power he can exercise or not exercise as he thinks fit. If we were to conclude that the Maori language has been harmed by the predominance of English on radio and television, and if we were to conclude further that Article II of the Treaty promises that the Maori language was not only to be guaranteed but to be protected by the Crown by virtue of the provisions of the Treaty, then we could well conclude that the Minister has “omitted to do” an act within the meaning of Sec 6 of the Treaty of Waitangi Act 1975, viz that he has omitted to exercise his power to give a direction under Sec 20 by which that harm could be alleviated. This we say would give us the statutory right to intervene in this matter. But before we exercise our authority we must consider the concurrent jurisdiction of the Broadcasting Tribunal and the Royal Commission.

7.2 The Royal Commission and the Broadcasting Tribunal

7.2.1 As we said earlier the jurisdiction of the Royal Commission and that of the Broadcasting Tribunal exists concurrently with our own. At the present time the Tribunal is conducting a hearing as to the granting of a licence to operate a third television channel. One of the applicants for that

licence has raised directly the extent to which Maori television programmes ought to be broadcast. That matter may well be relevant to the Tribunal's decision.

7.2.2 At the same time the Royal Commission has been conducting hearings into a wide range of matters relating to broadcasting and again there has been put before it the question of programmes in Maori. It has not yet presented its report to the Governor-General and is not required to do so until later in the year.

7.2.3 We have quickly come to the conclusion that we must avoid trespassing into areas that are properly the primary concern of both the Tribunal and the Royal Commission. We are quite clear in our view that Article II of the Treaty guarantees protection to the Maori language as we have said, and we are also quite clear in our view that the predominance of English in the media has had an adverse effect upon it. We might very easily further conclude that we should make recommendations of a positive kind as to how this harm could be reduced or eliminated but to do so we would necessarily be discussing what part radio and television stations should be required to play in achieving that result. For example, it might be said as the claimants urged us to recommend, that particular radio stations ought to be converted entirely to Maori language transmissions, or that one or other of the television channels ought to broadcast a minimum number of hours each day or each week devoted solely to Maori language and cultural interests.

7.2.4 To make these kinds of recommendations or variants of them (because many variations are possible) would inevitably impinge upon the functions of the Royal Commission and the Tribunal. We have decided therefore to wait until these bodies have made their decisions and if after giving those findings the careful consideration that they deserve, our Tribunal decides to make additional recommendations we can convene again for the purpose and deliver a supplementary finding on the matter if that becomes necessary or desirable.

7.2.5 For the moment we confine ourselves to making broad observations within our particular competence. In its widest sense the Treaty promotes a partnership in the development of the country and a sharing of all resources. It is consistent with the principles of the Treaty that the language and matters of Maori interest should have a secure place in broadcasting. If there is any impediment in the statute that governs the Broadcasting Corporation, then it is the statute itself that must be called into question. But having made these observations we consider that in light of the terms of reference of the Royal Commission on Broadcasting we should refrain from making specific recommendations as to how those objectives might be achieved.

7.2.6 The result of these observations is that we have decided that although we have jurisdiction to make detailed recommendations under section 6 of our statute we will not exercise the power given to us by that section in that way at the present time. We will confine ourselves to a general recommendation in broad terms linked to the provisions of section 20 of the Broadcasting Act 1976.

7.3 The Claimants' Criticisms of Radio and Television Broadcasting Policy

7.3.1 Some of the evidence on this general topic was directed at radio and television programming policy. It was said that Maori staff members

in both media were not given adequate opportunity to meet their reasonable aspirations and that this lack of fair consideration for their wishes and desires was a result of official attitudes that were inimical to them and the Maori people generally.

7.3.2 We had submissions from learned counsel for the Broadcasting Corporation and the entire Board of the Corporation attended our hearing to be present when evidence was put before us by their Chairman, Mr Heughan Rennie, by the Director-General of Radio, Miss Beverley Wakem, and by the Director-General of Television, Mr Allan Martin.

7.3.3 We are left in no doubt that as a matter of broad policy the Board, Miss Wakem and Mr Martin are conscious of the impact the broadcasting media have on Maori interests (as well as on other sectors in the community) and do not overlook the importance to be placed upon catering for all aspects of the public welfare as it is affected by broadcasting. We should go further and say that the diligence and care in presenting this evidence was impressive and left us with the belief that those views were genuinely held by the Corporation's witnesses and genuinely pursued.

7.3.4 At the same time we must also record that the witnesses for the claimants on this topic were equally effective, and we were given a great deal of food for thought by what they had to say. The strong feelings exhibited led us to wonder whether we should make some direct findings on the issues raised as complaints but after careful reflection we have decided not to do so for the following reasons.

7.3.5 In the first place, we point out that we are authorised by our statute to interpret the Treaty of Waitangi and to identify any acts or omissions by the Crown in respect of it. We are not authorised in a particular way to solve any and every problem that any claimant suffers. In identifying any act or omission by the Crown we may be required in the circumstances of the case to make recommendations that carry us into various areas, but we do not have the power to solve any and every problem that a claimant has to meet.

7.3.6 Some of the criticisms levelled against the Corporation were of a very detailed kind. The persons and officials who were the subject of those criticisms were not before us. They had no opportunity to speak for themselves. It would not be right for us to reach conclusions on such criticisms unless those particular persons or officials had had an opportunity to reply and give their version of the facts in each case.

7.3.7 Others of the criticisms related to the structures and systems within the Corporation. We are not equipped nor have we the expertise and experience to weigh such matters satisfactorily so that justice is fairly and properly done between the critics on the one hand and the Corporation on the other. Far better that such matters are handled by the mechanisms of internal investigation within the Corporation itself.

7.3.8 But having said all this and having decided to make no findings on these individual complaints, we are prepared to say that, on the face of it, like the education system, there may be some breakdown between the topmost levels of policy making and the ultimate administration at the middle and lower levels of the broadcasting system. This leads us to suggest by way of assistance to the Corporation that an enquiry into the complaints raised before us would not be out of place. We leave the Corporation to govern its own affairs.

8. OFFICIAL RECOGNITION OF MAORI LANGUAGE

8.1 The Advantage of Recognition

8.1.1 The claimants referred to s77A of the Maori Affairs Act 1953 and complained that it is ineffective. This section provides:

“S 77A(1) Official recognition is hereby given to the Maori language of New Zealand in its various dialects and idioms as the ancestral tongue of that portion of the population of New Zealand of Maori descent.”

Section 77A(2) empowers the Minister of Maori Affairs “to take such steps as he deems appropriate for the encouragement of the learning and use of the Maori language.”

8.1.2 It needs only a moment’s reflection to realise that s77A(1) achieves nothing. It does no more than state the obvious that the Maori language is the ancestral tongue of the Maori people of New Zealand. It is really an empty provision. Counsel for the Maori Affairs Department informed us in his closing submissions that the official view of the Department was to agree with the claimants on this matter. The Department then submitted that because of the phrase “o ratou taonga katoa” in Article II of the Treaty, to which we have already referred, the Crown has to accept responsibility for “the stewardship of the language.”

8.1.3 The Secretary of Maori Affairs and permanent head of that Department, Dr Tamati Maturangi Reedy, came before us and deposed strongly as to the importance of the language to the Maori people. He said:

“... Maori oral literature abounds with expressions of the regard for their language by the Maori people, eg, ‘ko te reo te mauri o te mana Maori’ (The language is the heart and soul of the mana of Maoridom). This language as a separate but integral part of Maoritanga is significant—it is not reflected to the same degree in pakeha culture. Language, te reo Maori, is an asset in itself not merely a medium of communication... It is sufficient for me to say that it is inconceivable that Maori people can retain any measure of (their) identity without the language...”

This commentary encapsulates all that we were told by speaker after speaker from among the kaumatua who appeared before us in the early weeks of our hearing. We think it is an expression of view that pakeha New Zealanders need to weigh carefully when considering the issue of official recognition.

8.1.4 But Dr Reedy went further a little later in his evidence when he made the following points:

“... A few short years ago, prominent linguists were predicting that Maori would decline to the extent that it would be used only on ceremonial occasions. However Maori people have not accepted that fate for their language.

“The history of New Zealand is testimony to the fact that language is both divisive and unifying. English has always been seen by the British colonists as the language for unifying Maori and pakeha and Maori the language that kept the two people apart. The unifying force of Maori language among the Maori—or for the nation—was seen as neither desirable nor necessary and consequently all past

policies have forcibly or tacitly been directed at its demise. The devastating effects of language loss are reflected throughout Maoridom today—grasping for an identity through language. Compounded by the effects of low socioeconomic status, continuing under-achievement, unemployment, high criminal youth offending, the sense of ‘being Maori’ for most New Zealanders is completely negative.

“The fact that English is now the only working language for the vast bulk of Maoridom has not brought about the social unity promised by the anti-Maori language policies of the past 150 years.

“Maoridom today appears to be more bent on remaining Maori despite the poor self-image that post-European history has bestowed on the label ‘Maori’. Clearly, Maori language is being seen by many as a rallying-point for a restructuring and piecing together of a much broken and damaged people.

“It serves to restore an identity for people who see themselves as Maori and want to be recognised as such.

“The principal reasons for declaring Maori an official language of New Zealand are national identity and national unity . . .”

8.1.5 In this passage of his evidence Dr Reedy emphasised three main points:

- (a) Our past policies of suppressing the use of Maori language in favour of emphasising the value of English has not brought us unity—if anything it has proved divisive; and
- (b) Maori language and its survival has become a rallying-point for Maori New Zealanders: and
- (c) If the language is given proper status and recognition, it will help to restore the self-respect of Maoridom and make Maori people proud to be Maori, while pakeha New Zealanders will come to see the unique nature of the New Zealand nationality that will develop as a result of the restoration of the language and the culture to their proper place in our national heritage.

8.1.6 Similar observations were made to us by Mr Martin Dowson, representing the New Zealand Section of the International Commission of Jurists. In a meticulously prepared submission that crystallised many of the issues raised in this matter, he referred us to the Universal Declaration of Human Rights and to several other international covenants and reports. In one of these the following comments appear:

“124. The argument that a single prevailing language leads directly to unification has not been proved in practice.

“125. It is obvious that the choice of one national or official language puts at a disadvantage persons whose mother tongue is not the one chosen and privileges those who speak the chosen language. If such policies are not applied with great care, they may constitute a factor for division rather than unification.

“126. The opinion that the use of a multiplicity of recognised languages constitutes an obstacle to national unity has no firmly established factual basis anywhere.”

(Martinez Cobo, UN Special Rapporteur).

8.1.7 After all we have heard, Dr Reedy’s opinion is the very conclusion to which we have come. The act of official recognition need not be the

empty thing now found in s77A of the Maori Affairs Act 1953. It should be an act that publicly demonstrates that preservation of the Maori language is important to all of us, Maori and pakeha alike. It should be an act that restores proper status to the Maori language as something valuable that we acknowledge to be valuable. It should be an act that puts the language, and therefore the culture, on to a pedestal so that our children will see “being Maori” as something to be proud of, not something to be treated as worthless. And it should be an act that will enable us to adapt ourselves so that we become truly unique in the world—a people whose history combines the centuries of Polynesian culture with all its admirable qualities in literature, sculpture, navigation and heroism that are also to be found in our European traditions. At that time we will be quite distinct from our Canadian, Australian and English cousins—a unique people in the world—New Zealanders in whose veins run all that is good in our Maori and pakeha heritage. The ideal towards which we can properly strive is not to have the pakeha assimilate the Maori, nor to have the Maori assimilate the pakeha, but a rich blending of the two races to produce the unique result to which we have referred. To begin with, we must give the Maori language its rightful place in our community.

8.2 The Extent of Recognition

8.2.1 As the record of our hearing shows, notice of the claim was circulated widely among Government departments and elsewhere. Four departments made submissions on the matter: Justice, Education, Health and Maori Affairs, while the State Services Commission was represented by its Deputy Chairman, Mr PW Boag, as we have already mentioned.

8.2.2 Not one of these official representatives opposed the idea of official recognition of the Maori language.

8.2.3 Mr Stanley James Callaghan, the Secretary for Justice and head of that Department, explained the present position regarding the use of Maori in the Courts, the efforts being made by his Department to adjust to Maori needs and the implications, financial and otherwise, if Maori is recognised as an official language in New Zealand. He said:

“... The present interpretative facilities when English is not understood and the various programmes which promote a much greater recognition and understanding of Maori culture do not of course meet the demands of the claimants that the Maori language be given some official status in our courts of law. While the present arrangements may provide for justice to be done in a strict, legalistic sense, a Maori may have an overwhelming sense of grievance and loss of dignity felt through being unable, because of fluency in English, to speak Maori in a court in his own land. That may give rise to such a deep-seated sense of injustice as to prejudice the standing of the courts in some Maori eyes. It seems to us that despite the strict logic of the present situation the time is now appropriate to consider change. Certainly the present situation is at odds with our bicultural foundation at Waitangi in 1840...”

That passage from the Secretary’s evidence seems to us to put the matter with crisp and brilliant clarity.

8.2.4 Later Mr Callaghan having referred to the Welsh Language Act 1967 (UK), and to the fact that many persons in Wales were bilingual, gave the Department’s official position on the matter of recognition of Maori when he said:

“. . . the Department accepts that it would be practicable and not prohibitively expensive to proceed along the lines of the Welsh Language Act provided that the right given is limited for the time being to a right to address the Court or give evidence in Maori. This would exclude an obligation to provide for transcripts and court documents in Maori as a consequence . . . The time has come for change and we look forward to these developments as representing an important forward step in recognising the deep-seated wish of many Maori people for their language and culture to flourish through its daily use in New Zealand . . .”

It can be seen from this that the Department of Justice supported the claimants in their case for official recognition of the Maori language in the Courts.

8.2.5 We have already mentioned the attitude of the Education Department, which has a policy of fostering the use of the Maori language and education in Maori culture. The Health Department took a similar stance. Mr Hugh David Evans gave evidence on behalf of the Director-General of Health who was unable to be present at the hearing. Mr Evans spoke in some considerable detail of the efforts made by the Health Department to improve standards of health among Maori people and of the importance placed by the departmental administration on recognising the significance of Maori culture in treating Maori patients. He said:

“. . . The Department of Health sees its responsibilities in terms of the Treaty of Waitangi to extend beyond the question of providing access to services for Maori speakers. It sees that particular responsibility as less urgent than the need to encourage a context of health care within which Maori institutions can flourish . . .”

A little later he referred us to the following extract from the department's Annual Report to Parliament for the year ended March 31 1985:

“. . . The aim of the programme is to support Maori people in their efforts to achieve the highest possible level of spiritual, mental, family and physical well-being. The programme recognises the holistic philosophy of health embraced by Maori and many other people . . .”

Then having explained efforts that his department had made in recent years to adapt itself to the needs of Maori patients, he spoke of the language and said:

“. . . Most of the activities that have been mentioned have directly or indirectly involved use of the Maori language. The emphasis however is on health with language becoming a factor where culturally appropriate. Our experience is that the recent emphasis on Maori health within the health services is leading to a greater interest in and use of the language. This is because health workers recognise the advantage of using the language in certain situations . . . The department believes that the use of the Maori language within the health services has followed greater awareness of the Maori view of health and the need to assist Maori groups in promoting community welfare . . .”

He spoke of the need to revise both the Health Act and the Hospitals Act which were enacted more than 30 years ago, but cautioned that “. . . in health it is the attitudes of people that must change. Changing the Act will not change attitudes but changing the Act can make a framework within which changed attitudes can flourish . . .”

8.2.6 We have already mentioned that there are quite a number of countries which have more than one official language. Canada, Wales, Ireland, Sweden and Switzerland immediately come to mind. But another country visited recently by the Secretary of Maori Affairs, Dr Reedy, was Paraguay where Spanish and Guarani are both national languages. Singapore, Malaysia and Finland are also multilingual or bilingual countries, as are Israel and Belgium. This list is not exhaustive but we name these various bilingual nations only to show that monolingual countries are not universal throughout the world as some might think them to be.

8.2.7 An important aspect of this matter of official recognition is the extent to which recognition should go. Some would argue that for a language to be official it should be used in all public documents, (all Statutes, Regulations, Gazette notices etc.) and be found on all public signs, public newspapers and similar places. We do not agree. The cost of such extensive use would be very great (the figure of \$19 million annually was mentioned for the translation and printing of all public documents) and while official recognition would be very significant if it extended in this broad and general way, we think that at this stage of our development such a large sum could be better spent in other ways. To have every Act of Parliament translated and printed in both English and Maori would not be practical nor a worthwhile expense, and to have every international treaty and agreement made by New Zealand translated each year would keep a translator fully occupied for about six months of every year (according to an estimate from the Ministry of Foreign Affairs). This kind of expense is not worthwhile now, even wasteful, and such money could be put to much better use—financing a Maori Language Board to foster the use of the language, for example.

8.2.8 But one area where Maori ought to be recognised forthwith is in the Courts and in dealing with any Government department or local authority. Legislation ought to be introduced to enable any person to speak or write in Maori if he or she wants to do so. It will be for the Courts, the public service and local bodies to adjust their affairs to enable this to be done. Such a step will involve expense in employing interpreters, for example, but there is no point in doing no more than what s77A of the Maori Affairs Act achieves now, which is nothing at all. Official recognition must be seen to be real and significant which means that those who want to use our official language on any public occasion or when dealing with any public authority ought to be able to do so. To recognise Maori officially is one thing, to enable its use widely is another thing altogether. There must be more than just the right to use it in the Courts. There must also be the right to use it with any department or any local body if official recognition is to be real recognition, and not mere tokenism. So far as use in the Courts is concerned we suggest that the Welsh Language Act 1967 is a useful model on which legislation could easily be patterned.

8.2.9 The creation of absolute rights to use the language is however a political or judicial response to the issue. We could go further and promote for example, the Canadian model, which requires full bilingualism in all official documents. We do not think that approach is entirely appropriate to our New Zealand way or the principles of the Treaty whereby greater cultural sensitivity may be sought, not by prescriptive laws, but in an appeal to the strong New Zealand sense of fair play. Official recognition is one thing but popular recognition will depend upon successful establishment of a body to promote the language for both Maori people and New Zealanders as a whole, to watch over progress and suggest strategies that overcome the difficulties that are bound to arise.

8.2.10 There remains for consideration the additional question—what is Maori? There are, after all, many dialects in New Zealand and we put this question—What is Maori?—to Bishop Manu Bennett who made strong representations to us. He told us without hesitation that Biblical Maori is the standard for the whole of New Zealand. He said that although different dialects can be found in different parts of the country yet Biblical Maori is understood everywhere.

8.2.11 We do not see the dialect factor as being in any way decisive on the issue of official recognition or not. After all, one can say—what is English? The language spoken by an American, a Scotsman, a Welshman, an Irishman or a New Zealander; each has distinctive features, while the English spoken by an Australian may be the most distinctive of all. But to quote the words of the playwright—“Hear a Yorkshireman or worse/Hear a Cornishman converse/I’d rather hear a choir singing flat”—serves only to illustrate that the English spoken by a citizen of Liverpool will differ from that of a farmer in Devon, while both may have acute difficulty in understanding the English spoke by a native of Glasgow or a Highland Scot or even someone born within sound of Bow Bells in the City of London.

8.2.12 But even if standard Maori might well be settled by the usage to be found in the Maori Bible there needs to be a supervising body to declare those standards and to foster, even supervise the use of the Maori language. The claimants urged that there ought to be a statutory body created which they suggested could be called the Maori Language Commission, or perhaps the Maori Language Board—the name does not seem to be critical—which, properly funded by the Government and with adequate staff and resources, could discharge its functions on behalf of the whole community.

8.2.13 We do not see a need to be too detailed in our recommendation on this particular point—the number of persons appointed to such a body, the precise extent of its powers, the kind of support staff it should have, are all matters on which opinions might differ widely. We simply say that the Maori language should be officially recognised so that it can be used on any public occasion and in dealing with any public body, and that there should be a supervisory body to set proper standards for its use and to take appropriate action to foster its proper development.

8.2.14 If these things are done, we will have taken an important step along the road to restore the Maori part of our national heritage to its proper place in our country and we will have begun to destroy the belief that ‘being Maori’ is something to be regarded as insignificant—a quality of little or no value.

9. CONCLUSION

9.1.1 The claimants sought many specific recommendations, but a large number of them related to Broadcasting and Education. We have already explained that we do not feel able to deal with those topics in other than a general way and we have given our reasons for that conclusion.

9.1.2 Another section of the recommendations put before us related to State Services appointments in which the claimants wanted amendments to the State Services Act 1962 and the State Services Conditions of Employment Act 1977. The purpose of these particular recommendations was to require fluency in Maori as a condition of appointment to a number of Public Service positions. For example, it was asked of us that we recommend that statutory provision be made to require the permanent head of every department to be made "responsible to the Minister for the time being in charge of that department for ensuring the survival of Maori language and for promoting Maori as a living language under the control of Maori people." How this duty would be discharged by the Secretary of the Treasury, the Secretary of the Ministry of Energy, the Solicitor-General, the Controller and Auditor General, the Government Statistician and many other permanent heads was not explained.

9.1.3 But while some of these specific recommendations were too explicit and restricted for general application to the Public Service, there remains room for us to recommend more generally to the Minister in Charge of State Services that steps should be taken to re-assess all conditions for appointment to the Public Service and that fluency in Maori should be a requirement in some positions and a qualification to be encouraged in others. We do not see that we can give an exhaustive list of officials who should be bilingual in English and in Maori. It is impractical to require such linguistic skills overnight, so to speak, but it may not be impractical to require that level of education over a period of five or ten years from now.

9.1.4 When Maori has been made an official language for use in the Courts, in dealings with all Government departments and all local bodies, it will be appropriate to require bilingual qualifications in many positions in the public service. We therefore will recommend to the Minister for State Services that the State Services Act 1962 and the State Services Conditions of Employment Act 1977 be amended to make provision for bilingualism in Maori and in English to be a prerequisite for appointment to such positions as the State Services Commission deems it necessary or desirable. A mere policy change might achieve this result but we recommend an appropriate statutory provision to give further public recognition of the need to demonstrate that in the Public Service bilingualism is a qualification that should be encouraged.

9.1.5 The recommendations we make are based on our statutory authority because the Crown has failed to protect the Maori language as required by Article II of the Treaty. And yet there are practical reasons that lead us to recommend as we do, quite apart from the provisions of the Treaty. We have explained how the face of New Zealand society is changing and how in the next few decades it will change even more. If those changes proceed at the pace that is now predicted there will be a much bigger percentage of New Zealanders who are of Maori descent than there is today. Whether Maori New Zealanders will one day exceed their pakeha fellow countrymen in absolute numbers remains to be seen. That may yet prove to be the case but as matters stand we cannot say for certain. But we

think it is safe to say that Maori New Zealanders will soon become such a significant proportion of our community that their aspirations and their desires, quite apart from their rights under the Treaty of Waitangi, must be recognised and fulfilled by all New Zealanders who have at heart the welfare and the best interests of our country.

9.1.6 We are indebted to Mr Downey, Counsel for the Broadcasting Corporation, for drawing to our attention an article written by the late Professor RQ Quentin-Baxter in which he said:

“. . . If New Zealand has a destiny as a separate nation, rather than as a detached part of Australia, it will be principally because these islands were a meeting-place of two great races, and because—even in the worst times—their dealings with each other never lacked a certain grandeur. It is of course a flawed record; but the world has no better record and can ill afford to lose this one. In return, the theory and practice of the modern international law of human rights can reinforce our resolution to do whatever may be needed to reduce, and finally to eliminate margins of disadvantage suffered by the Maori . . . people in health, in education and in professional and other attainments. In richness of culture they will have the advantage; but it will be a shared advantage for Maori cultural tradition has never been exclusive . . . When the first European settlers came to New Zealand, they brought with them everything except the stratified class society of England and Europe. The characteristic New Zealand demand, now taken up by the Maori was always for fairness and equality of opportunity—an affirmation of the intrinsic worth of every human being, found also in the Universal Declaration of Human Rights.” [1984] NZLJ 207

9.1.7 The Professor’s observations are worthy of reflection. What the claimants seek in this case is fairness and equality of opportunity. We think that no fair-minded New Zealander would deny them what they ask for.

10. RECOMMENDATIONS

We recommend to THE MINISTER OF MAORI AFFAIRS in each case and:

1. TO THE RIGHT HONOURABLE THE PRIME MINISTER that legislation be introduced enabling any person who wishes to do so to use the Maori language in all Courts of law and in any dealings with Government Departments, local authorities and other public bodies (refer para. 8.2.8).

2. TO THE HONOURABLE THE MINISTER OF INTERNAL AFFAIRS that a supervising body be established by statute to supervise and foster the use of the Maori language (refer para. 8.2.12).

3. TO THE HONOURABLE THE MINISTER OF EDUCATION that an enquiry be instituted forthwith into the way Maori children are educated including particular reference to the changes in current departmental policies which may be necessary to ensure that all children who wish to learn Maori should be able to do so from an early stage in the educational process in circumstances most beneficial to them and with financial support from the State (refer para. 6.3.7).

4. TO THE HONOURABLE THE MINISTER OF BROADCASTING that in the formulation of broadcasting policy regard be had to this Finding that the Treaty of Waitangi obliges the Crown to recognise and protect the Maori language, and that the Broadcasting Act 1976 (section 20) enables this to be done so far as broadcasting is concerned (refer para 7.1.9).

5. TO THE HONOURABLE THE MINISTER IN CHARGE OF STATE SERVICES that amendments be made to the State Services Act 1962 and the State Services Conditions of Employment Act 1977 to make provision for bilingualism in Maori and in English to be a prerequisite for appointment to such positions as the State Services Commission deems necessary or desirable (refer para 9.1.4).

DATED at WELLINGTON this 29th day of April 1986.



ET Durie - Chief Judge
Chairman

Sir Graham Latimer
Member

PB Temm QC
Member

LIST OF REPORTS OF THE WAITANGI TRIBUNAL

Wai-1	Fishing Rights (Hawke)	March 1978
Wai-2	Waiau Pa Power Station	February 1978
Wai-4	Kaituna River	November 1984
Wai-6	Motunui-Waitara	March 1983
Wai-8	Manukau	July 1986
Wai-9	Orakei	November 1987
Wai-10	Waiheke Island	June 1987
Wai-11	Te Reo Maori	April 1986
Wai-12	Motiti Island	May 1985
Wai-15	Fishing Rights (Te Weehi)	May 1987
Wai-17	Mangonui Sewerage	August 1988
Wai-18	Fishing Rights (Lake Taupo)	October 1986
Wai-19	Maori 'Privilege'	May 1985
Wai-22	Muriwhenua Fishing	June 1988
Wai-25	Maori Representation (ARA)	December 1986