

THE WANANGA CAPITAL ESTABLISHMENT REPORT

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ESTABLISHMENT REPORT

WAI 718

WAITANGI TRIBUNAL REPORT 1999



The cover design by Cliff Whiting invokes the signing
of the Treaty of Waitangi and the consequent interwoven development
of Maori and Pakeha history in New Zealand as it continuously
unfolds in a pattern not yet completely known

A Waitangi Tribunal report

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The Waitangi Tribunal
Wellington

The Honourable Tau Henare
Minister of Maori Affairs

and

The Honourable Max Bradford
Minister for Tertiary Education

Parliament Buildings
Wellington

Tena korua

This report relates to a claim by three wananga Maori established as tertiary education institutions under the Education Act 1989 (as amended by the Education Amendment Act 1990). The claim concerns the failure of the Crown to recognise the right of Maori, in terms of the Treaty of Waitangi, to receive capital funding, in order to provide properly for the education of Maori through programmes, and in an environment, designed to enhance their tertiary educational opportunities.

The claim is brought by Rongo Herehere Wetere on behalf of Te Tauihu o nga Wananga Association, which represents the three claimants, Te Wananga o Raukawa, Te Wananga o Aotearoa, and Te Whare Wananga o Awanuiarangi.

Urgency was accorded the hearing of this claim because two of the wananga are at serious risk of financial collapse, owing to a lack of capital funding. It was clearly important that the Tribunal should hear this claim and report to you, as a matter of urgency, in order to prevent the collapse of an enterprise that the Tribunal is satisfied is a most significant and successful Maori educational initiative.

Heoi ano

EXECUTIVE SUMMARY

ES.1 PURPOSE

The purpose of this summary is to provide a brief overview of the claim by Rongo Herehere Wetere on behalf of Te Tauihu o nga Wananga Association. The association represents Te Wananga o Aotearoa, Te Wananga o Raukawa, and Te Whare Wananga o Awanuiarangi.

The claim concerns the funding of three tertiary education institutions (TEIS) established as wananga under the Education Act 1989 (as amended by the Education Amendment Act 1990). The claimants allege that the Crown has failed to fund wananga equitably when compared to other TEIS, such as universities, polytechnics, and colleges of education.

Although recently established as TEIS, wananga commenced their teaching programmes as education providers as follows:

- Te Wananga o Raukawa, on land leased from the Otaki and Porirua Trusts Board at Otaki, in 1981;
- Te Wananga o Aotearoa (then known as the Waipa Kokiri Arts Centre and initially funded by the Department of Maori Affairs), on a former dumpsite, in 1984; and
- Te Whare Wananga o Awanuiarangi, on a shared site at Whakatane, in 1992.

ES.2 THE CLAIMANTS' POSITION

The claimants allege that they have been prejudiced by the amendments made to the Education Act 1989 by the Education Amendment Act 1990, which do not provide for capital establishment funding for any TEI established since 1990. The three claimant wananga are the only TEIS established since 1990.

All universities, polytechnics, and colleges of education established before 1990 received establishment funding from the Government. At the time of the 1990 amendments, the Crown was committed to transferring the ownership of TEIS' assets to which it then held title to the institutions themselves. This effectively handed capital assets to pre-1990 TEIS free of charge. In accordance with the amendments, wananga, as post-1990 established TEIS, have not received any funding for establishment purposes.

The claimants allege that it is contrary to the Treaty of Waitangi that other TEIS should inherit substantial capital assets from the Crown while wananga are not entitled to anything in the way of capital establishment.

Wananga are statutorily charged with all the responsibilities of other TEIs, and have the added responsibility of carrying out teaching and research that assists the application of knowledge regarding ahuatanga Maori and tikanga Maori.

The principal area of concern that the wananga have sought a Waitangi Tribunal finding on is whether they have been disadvantaged relative to other TEIs in the area of capital funding support from the Government. Their stated position on this issue is:

- That their recent establishment placed them at a disadvantage by being accepted and registered in the mid-1990s as TEIs in terms of the Education Act.
- The 1990 amendments provided for a system of funding TEIs based on annual equivalent full-time student (EFTS) payments. With these payments came the end of capital grants (other than in 'special' circumstances). While the EFTS payments initially contained a capital component (originally calculated by the Ministry of Education as \$1030 per equivalent full-time student, or around 15 percent of an EFTS grant), there is concern about how this equates with the actual capital cost of the facilities required to operate a TEI. In the claimants' view, this component of the EFTS payments originally appears to have been set more as a maintenance grant for existing facilities than at a level that would enable new institutions to be established largely from scratch. This view is reinforced by the fact that the small number of State institutions that have had to relocate and rebuild have been awarded special capital grants to do so.
- While wananga have sought special grant assistance for capital purposes under the Government-wide capital injections policy, they have to date been unsuccessful, while a number of other institutions have succeeded in getting substantial grants for new works and rescue situations. There is concern that the implementation of the special assistance grants criteria has not been even-handed.

The claimants argue that, without immediate capital injection by the Crown, wananga will fail.

ES.3 THE CROWN'S POSITION

The substance of the Crown's position is as follows:

- The wananga have not been treated differently from other TEIs with regard to capital injections.
- There are no capital grants available for the establishment of TEIs, and since 1990, and the advent of the EFTS system, the Crown has not made any capital injections for establishment purposes.
- Prior to 1990, capital funding was by way of special capital injections, with the result that, at that time, the amount required to fund operational costs was low in comparison to that required in the post-reform EFTS capital-inclusive payments.

- Post-1990 capital injections could be paid only in special situations, and then for factors that had nothing to do with the institution's establishment.
- TEIs that received establishment grants were established under a very different funding policy regime.
- Comparisons between the way that TEIs were funded before and after 1990 are not valid because the pre- and post-1990 policies are entirely different.
- Since 1990 and the EFTS system, TEIs have been funded according to an agreed number of students (and EFTS categories) at the EFTS rates, which included provision for capital of \$1030.
- All TEIs, including wananga, have had access to the base grant of \$250,000 per annum for infrastructural purposes.
- Capital contributions from the Crown are very much the exception to the rule. The guidelines for such contributions require the support of a strategic business plan and a robust business case, which must demonstrate why capital funding outside the normal EFTS funding process is justified.

ES.4 THE PRINCIPLE OF PARTNERSHIP

Read as a whole, the Treaty of Waitangi created a partnership between the Crown and Maori. This partnership was a compact between two distinct peoples with their own culture, language, values, treasures, forms of property, and so forth. The Crown now acknowledges the concept that New Zealand is a bicultural polity and society. Biculturalism is an integral part of the overall Treaty partnership. It involves both cultures existing side by side in New Zealand, each enriching and informing the other. Under this overarching Treaty principle, therefore, the Crown's obligation to foster and support wananga is a clear and powerful one.

ES.5 THE PRINCIPLE OF RANGATIRATANGA

Rangatiratanga involves, at the very least, a concept of Maori self-management. This can be seen in many of the Tribunal's previous reports. The wananga that have been recognised as TEIs have all developed out of the efforts of Maori iwi groups to provide tertiary education to, in the first instance, their own people; in the second instance, Maori students; and, in the third instance, anyone who wishes to embrace this particular form of education. As such, the efforts of these tribal groups to create and sustain TEIs are a vital exercise of rangatiratanga. The establishment of wananga as TEIs recognised by the State represents an attempt to engage actively with the Crown in the exercise of rangatiratanga in the management of new forms of tribal and Maori education. The Crown's Treaty obligation is to foster, support, and assist these efforts. In doing so, the Crown needs to ensure that wananga are able to remain accountable to, and involved in, the communities that created them.

ES.6 THE PRINCIPLE OF ACTIVE PROTECTION

In assuming the right to govern, the Crown took upon itself the duty actively to protect Maori interests. It is clear that te reo and matauranga Maori are taonga. It is also clear that the three wananga are playing an important role in studying, transmitting, and preserving these taonga. To meet its Treaty obligation to protect these taonga, the Crown should provide wananga with adequate support and resources in an appropriate manner.

ES.7 CONCLUSION

This claim was directed at the Crown in its operation of the Education Act 1989 (as amended by the Education Amendment Act 1990). We have found that the Crown's tertiary education policies have served to disadvantage wananga and place their operations at risk. Wananga now lack a stable capital base from which to deliver their educational services. The evidence clearly shows that this has served to compromise both their financial viability and their integrity as a significant Maori educational initiative.

We therefore recommend that a one-off payment of a capital sum be made to each of the wananga sufficient to cover the following objectives:

- (a) to compensate the claimants, as a matter of urgency, for the expenditure of capital and labour that they have invested in the land, buildings, plant, and equipment on the various sites that they occupy, and on which they operate their teaching programmes and provide accommodation and other necessary amenities for their staff and students;
- (b) to make a payment to each of the claimants that will be sufficient to cover the real cost of bringing the buildings, plant, and equipment of the various establishments up to a standard comparable to other TEIs and commensurate with the needs of their existing and anticipated rolls over the next three years; and
- (c) to meet the proper costs and disbursements of the claimants incurred in the preparation and presentation of their claims.

ES.8 THE STRUCTURE OF THE REPORT

The structure of this report is as follows. Chapter 1 introduces the claim and the claimants, explains the substance of the claim, and reveals the findings and recommendations sought by the claimants. The process undertaken to hear the claim under urgency is also briefly outlined.

Chapter 2 provides a historical overview of Maori education in New Zealand since 1840. This chapter provides a brief illustration of the impact of the historical imposition of the education system upon Maori and provides the context within which wananga Maori must operate: namely, the low participation rates and

underachievement of Maori in tertiary education, and the efforts to revitalise matauranga Maori.

In chapter 3, we examine the distinct nature of the modern TEIs known as wananga. Wananga are an educational initiative developed and initiated by Maori people to address the needs of Maori but embracing the educational aspirations of all New Zealanders.

Chapter 4 charts the development and eventual implementation of the 1990 amendments to the Education Act 1989. These amendments governed the provision of tertiary education in New Zealand from 1990 and radically reformed previous tertiary education policy. It is in this chapter that we look at the particular policies, acts, and omissions of the Crown that led to Rongo Wetere bringing this claim to the Waitangi Tribunal.

In chapter 5, we discuss those principles of the Treaty of Waitangi that the Tribunal sees as being relevant to this claim.

Chapter 6 records our conclusions, a summary of our findings, and our recommendations.

In the appendices, we reproduce the statement of claim and the record of inquiry.

LIST OF ABBREVIATIONS

| | |
|-------|---|
| AJHR | <i>Appendix to the Journals of the House of Representatives</i> |
| app | appendix |
| CA | Court of Appeal |
| CEO | chief executive officer |
| doc | document |
| EFTS | equivalent full-time student |
| GST | goods and services tax |
| JPS | <i>Journal of the Polynesian Society</i> |
| ltd | limited |
| NZLR | <i>New Zealand Law Reports</i> |
| NZPD | <i>New Zealand Parliamentary Debates</i> |
| p, pp | page, pages |
| PC | Privy Council |
| PSET | post-secondary educational training |
| pt | part |
| PTE | private training establishment |
| sec | section (of a book, report, etc) |
| trans | translator |
| TEI | tertiary education institution |
| UTTA | universal tertiary tuition allowance |
| vol | volume |
| Wai | Waitangi Tribunal claim |

CHAPTER 1

THE CLAIM

1.1 INTRODUCTION

This claim was filed with the Waitangi Tribunal on 11 May 1998 and registered as Wai 718 on 19 May 1998. The formal claimant is Rongo Herehere Wetere of Ngati Maniapoto. Mr Wetere brings this claim on behalf of Te Tauihu o nga Wananga Association, comprising Te Wananga o Raukawa (which has its principal campus at Otaki), Te Wananga o Aotearoa (principal campus at Te Awamutu), and Te Whare Wananga o Awanuiarangi (principal campus at Whakatane).

The claim concerns the funding of three tertiary education institutions (TEIS) established as ‘wananga’ under the Education Act 1989. It is alleged that, in comparison with other TEIS, the Crown has failed to fund the wananga equitably and that, consequently, Maori have been, and are still being, seriously disadvantaged.

The claimants state that, having formally approved wananga status for each of the three claimant wananga under the Education Act 1989 (as amended by the Education Amendment Act 1990), the Crown has failed to resource those wananga on a similar basis to all other TEIS that were established prior to the 1990 amendments or that had received capital injections subsequent to those amendments. The claimants also allege that the Crown has failed to resource Te Wananga o Aotearoa, Te Wananga o Raukawa, and Te Whare Wananga o Awanuiarangi on an equitable basis when compared to other TEIS. The wananga are the only TEIS established following the 1990 legislative amendments.

1.2 FINDINGS AND RECOMMENDATIONS SOUGHT

The claimants seek the following recommendations:

- (a) that the Crown, as a matter of urgency, adequately resource Te Wananga o Aotearoa, Te Wananga o Raukawa, and Te Whare Wananga o Awanuiarangi on an equitable basis comparable to the capital funding provided for all other TEIS; and
- (b) that, in particular, capital grants be made to the claimants to enable them to purchase, expand, and improve the existing facilities of the wananga, so that those facilities are brought to a standard comparable to those of other TEIS.¹

1. See claim 1.1, paper 2.5

1.3 THE HEARINGS

On 28 May 1998, the claimants requested that urgency be granted on the ground that all three wananga were seriously affected by the Crown's failure to resource adequately a major and important Maori education initiative.

The claimants argued that the Crown's failure to provide adequate capital funding for wananga now placed the institutions, and their drive to attain greater Maori participation in tertiary education, in grave financial risk. The claimants argued that quality education provided through wananga Maori is compromised by a lack of resources, such as libraries, buildings, computers, classroom equipment, and teaching aids, needed to cater for growing student numbers.

The claimants allege that this is discriminatory and that the Crown's failure to resource wananga on a similar basis as TEIs established before 1990 is in clear breach of the Treaty principle of partnership. The claimants were the only TEIs to be denied capital establishment funding by the legislative amendments. The claimants further allege that other existing TEIs were provided with significant capital funding after the date at which the 1990 amendments came into force.

A conference was held on 30 June 1998 to hear the application for urgency. Having heard submissions from claimant and Crown counsel, Judge Richard Kearney granted urgency. The first hearing of the claim was held at Raukawa Marae in Otaki from 19 to 23 October 1998, before a Tribunal consisting of Judge Kearney, Josephine Anderson, and Keita Walker. Bishop Manuhuia Bennett attended as the Tribunal's kaumatua adviser.

A second hearing was held at the same venue on 4 and 5 November. The final hearing of the claim was held in Wellington on 7 December 1998, when all parties made closing submissions to the Tribunal.

Counsel appearing were Carolyn Wait, representing Te Wananga o Aotearoa and Te Wananga o Raukawa; Joseph Williams and Gillian Warren, representing Te Whare Wananga o Awanuiarangi; and Mike Doogan and Helen Carrad, representing the Crown.

We wish to record our gratitude to counsel for the assistance that they provided to the Tribunal in the hearing of this claim. The matter was one of urgency, but despite this, the Tribunal was provided with significant briefs of evidence and exhibits, and comprehensive and helpful submissions.

CHAPTER 2

MAORI EDUCATION IN NEW ZEALAND: A HISTORICAL OVERVIEW

2.1 INTRODUCTION

This is a contemporary claim that has been granted urgency to deal with specific funding issues of TEIs known as wananga. Wananga are modern tertiary education providers based on an ancient Maori institution of advanced learning known as whare wananga.

Despite the narrow terms of reference of this claim, the Tribunal has found it impossible to look at the funding of wananga without examining the services that wananga provide and the objectives that wananga are both achieving and attempting to achieve. One of the principal objectives of wananga Maori is to establish a Maori-controlled system of tertiary education with an emphasis on the key principle of matauranga Maori.

The claimants assert that wananga are assisting to reverse the negative statistics of Maori in education and employment. In May 1998, the then Minister of Education, the Honourable Wyatt Creech, stated that wananga have made a positive contribution to addressing the tertiary education needs of Maori.¹ The underachievement of Maori in mainstream education and the low percentage of Maori pursuing tertiary education are of great concern to the Government, the Ministry of Education, and Maori educationalists.

Crown counsel noted that, owing to the urgent nature of this claim, it would not be able to engage fully with evidence presented by the claimants regarding perceived historical failures in relation to education generally.² The Tribunal accepts the Crown's position on this issue at this time, and accordingly will not make findings on these general issues. Nevertheless, in order to understand the claimants' argument that wananga are an essential component of Maori education, we have found it useful to receive and consider historical evidence on past Government initiatives in Maori education.

1. Document A9

2. Document A75, paras 12–15

2.2 BACKGROUND

The confines of this short report preclude a thorough examination of pre-European education in New Zealand. More in-depth accounts of pre-European Maori education can be found elsewhere.³ The Tribunal makes several observations below to assist readers to better understand this claim. These are drawn largely from claimant evidence and submissions and from knowledge held by the Tribunal.

Maori have always embraced the acquisition of knowledge as a means of maintaining their mana and enhancing their quality of life. This is common sense. Maori society valued knowledge and maintained various institutions for its preservation and its dissemination at different levels. The teaching of essential everyday tasks was a day-to-day activity and individuals learnt through observation and practical experience. Learning took place while tending gardens, gathering seafood, and performing other tasks essential to the welfare of the people.

In a very real sense, Maori were aware of the old adage that knowledge is power. Certain types of knowledge were regarded as tapu, and where wananga and other institutions closely guarded access to tapu knowledge. Where wananga, and in some areas more advanced institutions known as where kura, facilitated higher learning for those of high rank and standing. Where wananga taught iwi and hapu leaders advanced forms of knowledge essential to the welfare of their people. Examples of such knowledge included tribal whakapapa, the arts of warfare and peace, astronomy, navigation, agriculture, and whakairo (carving), to name a few. There are many others, all deserving of more detailed discussion than that raised in this report.

The ancient concept of where wananga related to a mental process of learning, rather than a physical institution where learning took place. When an individual undertook instruction at where wananga, their classroom was the world they lived in and learning could take place anywhere, at any time. Wananga education focused on developing mental discipline and adeptness in several different fields of study.

Through wananga, Maori educated their historians, keepers of whakapapa, tohunga with their specialist knowledge, teachers, manual labourers, conservators, and leaders. Maori education was, and still is, a graduated process of learning. Individuals with the appropriate skills would instruct those chosen for specific roles. Students would not progress until they had mastered each level of the learning process. The proper maintenance and transmittal of knowledge to succeeding generations was vital to the survival of iwi and hapu.

Maori were eager to participate in an exchange of knowledge with Pakeha on their arrival in New Zealand. The historical record is replete with Maori demonstrably adapting new forms of knowledge for their own use, as well as incorporating ancient traditions with imported knowledge to improve their own situation.⁴ The arrival of Christianity offered Maori new ideas about religion and also introduced literacy, a

3. For example, see S Percy Smith (trans), *The Lore of the Whare-Wananga: or Teachings of the Maori College on Religion, Cosmogony and History*, 2 vols, New Plymouth, Polynesian Society, 1913

4. See, for example, James Belich, *Making Peoples: A History of the New Zealanders from Polynesian Settlement to the End of the Nineteenth Century*, Penguin Books (NZ) Ltd, 1996

skill that Maori were quick to learn. An early example comes from the East Coast, where Ngati Porou established informal schools at which whalers and traders taught reading. Another example was the rapidity with which Maori adopted reading and writing in the Maori language. Missionaries first introduced reading and writing to New Zealand, and by the 1830s, Maori were flocking to the mission schools to learn these new skills.

The above brief background demonstrates that the concept of advanced learning was well established in traditional Maori society. The arrival of Europeans brought new ideas and knowledge, as well as the tools of literacy. Maori quickly engaged with the new ideas and tools and incorporated them within their own knowledge systems.

2.3 DR SIMON'S EVIDENCE

Dr Judith Simon, a research fellow with the International Institute for Maori and Indigenous Education at the University of Auckland, presented evidence to the Tribunal on behalf of the claimants.⁵ Her evidence provided an account of the history of State provision of education for Maori since 1840. While Dr Simon's evidence did not deal specifically with tertiary education, it argued that past legislative action played a significant role in disadvantaging Maori within the State's education system, leading to their under-representation in the statistics by which educational success is usually measured. A review of the legislation, based largely on Dr Simon's submission, is provided below.

2.4 THE EDUCATION ORDINANCE 1847 AND NATIVE SCHOOLS ACT 1858

The Education Ordinance of 1847 first provided for Government funding of mission schools. The support for mission schools continued via the Native Schools Act 1858. Dr Simon believed that the Government was using the schooling of Maori as a means of social control and assimilation, and for the establishment of British law. She provided as evidence a report by school inspector Hugh Carleton, who said in 1862 that schools were 'aiming at a double object, the civilisation of the race and the quietening of the country'.⁶ She also presented a report by George Clarke, the Civil Commissioner for the Bay of Islands, who had stated that 'schools will give the Government an immense moral influence in the country, such as is not to be attained in any other way'.⁷

Dr Simon argued that mission schools were used in an effort to replace traditional Maori culture with European concepts and ideals. This assimilative agenda was apparent in the report of school inspector Henry Taylor in 1862:

5. Document A51

6. AJHR, 1862, E-4, p 17 (doc A51, para 6)

7. AJHR, 1863, E-9, p 18 (doc A51, para 6)

In carrying out the work of civilisation among the aboriginal Native race, through the medium of school, some impediments to progress [could be] gradually overcome by a diligent course of training . . . and the first and most serious of all is that state of communism in which all kinds of property are held amongst them. Their present social condition bears testimony to the ill effects of such a system. Tribal rights destroyed personal ownership . . . few attempts have been made by the Natives to individualise property. In the school-room, by a careful and persevering system of appropriation we may gradually train them to a proper perception of and regard for the meum and tuum.⁸

Dr Simon asserted that the amount and type of knowledge made available to Maori through schooling was controlled. Intellectual development was afforded a low priority; manual instruction was high. She believed that this was a deliberate effort to make Maori a labouring class, and cited as evidence a report by Henry Taylor in 1862:

I do not advocate for the Natives under present circumstances a refined education or high mental culture: it would be inconsistent if we take account of the position they are likely to hold for many years to come in the social scale, and inappropriate if we remember that they are better calculated by nature to get their living by manual than by mental labour.⁹

2.5 THE NATIVE SCHOOLS SYSTEM

From 1867 to 1869, Maori received Government approved and funded education through the native schools system, which was established by the Native Schools Act 1867. Dr Simon believes that, in most cases, Maori provided land and finance for the native schools. The Department of Native Affairs administered the Act until 1879, from which time the schools operated under the Department of Education (which was established in 1877) as a separate system parallel to that of public schools.¹⁰

During readings of the Maori Schools Bill in 1867, some politicians expressed genuine concern to protect and promote Maori interests. Others, according to Dr Simon, were motivated by the opportunities that schools presented as vehicles of social control. She again cited Hugh Carleton, who asserted that ‘things had now come to pass that it was necessary either to exterminate the Natives or to civilise them’, as well as Major Heaphy, who stated that ‘Any expenditure in this direction would be true economy, as the more the Natives were educated the less would be the future expenditure in police and gaols’.¹¹

According to Dr Simon, the structure of the native schools system served to promote Pakeha knowledge as more important and valid than Maori knowledge. She believed that Maori cultural values and institutions were both consciously and unconsciously denigrated, while Pakeha-dominant class ideas and values were

8. AJHR, 1862, E-4, p 35 (doc A51, para 7)

9. Ibid, p 38 (doc A51, para 8)

10. Document A51, para 9

11. 10 September 1867, NZPD, 1867, vol 1, pt 2, p 863 (doc A51, para 10)

promoted.¹² Central to the native schools' philosophy was the limitation of the curriculum, designed to restrict Maori to working-class employment.

Efforts to subvert the limited curriculum were made at Te Aute College in the 1880s. John Thornton, the headmaster of the college, coached his most promising pupils for the matriculation examination of the University of New Zealand. In the 1890s, this produced the first wave of Maori university graduates, including Apirana Ngata, Te Rangihiroa (Peter Buck), Maui Pomare, Tutere Wirepa, and others. In 1906, a royal commission was established to inquire into Te Aute College. The commission put pressure on Thornton to abandon his academic curriculum and adopt a technical one centred on agricultural studies. Thornton refused, prompting the Department of Education to curtail financial scholarships. Some years later, Thornton's successor capitulated to official demands and replaced the academic curriculum with an agricultural one.¹³

Dr Simon stated that, following the release of the commission's report, major emphasis was placed on manual and domestic training for Maori. She quoted George Hogben, the Inspector-General of Education, who countered objections by Maori to a technical curriculum with the claim that it was necessary to make Maori recognise 'the dignity of manual labour'.¹⁴ Dr Simon also quoted W W Bird, the Inspector of Native Schools, who declared that the purpose of Maori education was to prepare Maori for life amongst Maori, not to encourage them to mingle with Europeans in trade and commerce.¹⁵ In 1915, Bird affirmed the Department of Education's assimilative policy in his annual report:

So far as the Department is concerned, there is no encouragement given to [Maori] boys who wish to enter the learned professions. The aim is to turn, if possible, their attention to the branches of industry for which the Maori seems best suited.¹⁶

Dr Simon found that, in 1931, T B Strong, the Director-General of Education, reaffirmed the policy of limiting the Maori curriculum:

Whenever I have come into contact with the education of dark races, . . . I have noted with surprise their facility in mastering the intricacies of numerical calculations. This fatal facility has been taken advantage of in the Mission Schools and even in the schools manned by white teachers to encourage the pupils to a stage far beyond their present needs or their possible future needs.¹⁷

Strong also claimed that education should lead the Maori boy to be a good farmer and the Maori girl to be a good farmer's wife.¹⁸

12. Document A51, paras 12–13

13. Ibid, para 13

14. AJHR, 1906, G-5, p 84 (doc A51, para 14)

15. Ibid, pp 94–95 (doc A51, para 14)

16. AJHR, 1915, E-3, p 10 (doc A51, para 14)

17. T B Strong, 'The Education of South Sea Island Natives', in Patrick M Jackson (ed), *Maori and Education: or the Education of Natives in New Zealand and its Dependencies*, Wellington, Fergusson and Osborn Ltd, 1931, p 194 (doc A51, para 15)

18. Ibid, p 192 (doc A51, para 16)

Dr Simon noted that, in the 1930s, the assimilation policy in Maori education was questioned by the Maori cultural revival inspired by Apirana Ngata. As a result, policy was changed to permit selected elements of Maori culture to be included within the curriculum of the native schools. It was, according to Dr Simon, the Department of Education that selected these elements, thus reserving the right to determine what constituted valid Maori knowledge. Deemed appropriate for inclusion in the curriculum were traditional myths and legends, arts, crafts, and music. Maori language was not included.¹⁹ Dr Simon quoted the Senior Inspector of Maori Schools, E W Parsonage, who stated that this policy change resulted from the ‘need for a regenerative force and a new approach to the Maori problem’. Selecting Maori cultural aspects, according to Parsonage, was the ‘surest way of reviving Maori pride in themselves . . . [to lift it] from the despondency into which it had retreated’. Parsonage demonstrated, according to Dr Simon, the hegemonic intentions of the Government’s policy when he wrote that ‘the policy also fully appreciated the fact that the Maori had to be fitted to live under prevailing conditions, where the Pakeha way was dominant’.²⁰

Further insight into the kind of life that the Government envisaged for Maori was provided in Dr Simon’s submission. Upon the opening of the first native district high schools, the Senior Inspector of Native Schools, T A Fletcher, offered his thoughts on what the curriculum should concentrate on:

home-making, home-making in the widest sense, including building construction and all its features, furniture-making, metal-work, and home gardening for the boys, and home-management, including cookery, home decorating, and infant welfare for the girls. The aim is to teach the skills and to develop the tastes that make the house not merely a place of habitation, but a home in the best sense of the word.²¹

It was not until 1945, Dr Simon noted, that school certificate or matriculation courses were offered at native district high schools. Increasingly, more and more Maori attended public schools rather than native schools. Dr Simon believes that Maori children in these schools were disadvantaged because there were no programmes to teach them English and their teachers often had low expectations of their potential. Maori children also faced racial discrimination from both teachers and fellow pupils.²² Meanwhile, the native school’s curriculum remained dominated by assimilative features. However, according to Dr Simon, from the 1950s the Government did attempt to include aspects of Maori knowledge, but assimilation agendas and, from 1960, ‘integration’ agendas (courtesy of the Hunn report) prevailed for each initiative. From 1969, native schools were discontinued and their pupils were taught the national curriculum. Although Maoritanga and taha Maori components of the curriculum, for example, received support and guidance from

19. Document A51, para 20

20. E W Parsonage, ‘The Education of Maoris in New Zealand’, JPS, vol 65, no 1, March 1956, p 6 (doc A51, para 21)

21. AJHR, 1941, E-3, p 3 (doc A51, para 17)

22. Document A51, para 23

Maori, Dr Simon believed that the content was always determined and controlled by Pakeha.²³ Government support was never offered to Maori to establish a Maori-controlled education environment or system.

As a result of past education policies, Dr Simon believed that Maori have been affected in the following ways:

- traditional Maori knowledge and methods of teaching that knowledge have been undermined and threatened;
- career options have been limited;
- resistance, negativity, and apathy towards school and education have developed;
- educational aspirations have been lowered;
- there has been an acceptance of manual labouring as a natural vocation; and
- teacher expectations of Maori achievement have been lowered.²⁴

In conclusion, Dr Simon noted that since the 1950s many policy changes had attempted to reverse the trend of underachievement amongst Maori at school. But despite some genuine efforts from educationalists to accelerate the performance of Maori pupils, little improvement in the statistics is evident.²⁵

2.6 THE MODERN ERA

This is not the first time that the Waitangi Tribunal has examined a claim concerning education. In 1986, the Tribunal inquired into a claim about the Maori language (Wai 11). Its report found that Maori children were not being successfully taught, and that the education system was being operated in breach of the Treaty. That report went on to state:

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. This is a recipe for social unrest and all that goes with it.²⁶

In this Tribunal's opinion, this analysis remains as true today as it was in 1986. Evidence of rising crime, suicide, substance abuse, and welfare dependency and negative health statistics indicate that a general sense of hopelessness exists among many young Maori. A large number of young New Zealanders are being left to fall through the cracks of our education system and made to fend for themselves, often

23. Ibid, para 22

24. Ibid, para 24

25. Ibid, para 28

26. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Maori Claim*, 3rd ed, Wellington, Brooker's Ltd, 1993, sec 6.3.9

ending up in prison. We know that the Government, and its agencies, will share our concern that this trend not be allowed to continue.

In 1998, Te Puni Kokiri, the Ministry of Maori Development, published a report to the Minister of Maori Affairs entitled *Progress towards Closing Social and Economic Gaps between Maori and Non-Maori*. This report provided a ‘helicopter view’ of Maori progress across the education, employment, economic, and health sectors, and an assessment of progress made over time. When addressing economic status, the report said:

Since the mid 1980s Maori participation in all sectors of education has increased markedly. Despite this, disparities persist between Maori and non-Maori for most indicators of educational status. Historically, the scale of disparities between Maori and non-Maori participation and achievement have been so wide that improvements by Maori have had a minimal impact on reducing the difference. Compared to non-Maori, Maori are less likely to attend early childhood education, are less likely to remain to senior levels of secondary school, and are less likely to attain a formal qualification upon leaving secondary school. Maori are also less likely to undertake formal tertiary training, particularly in universities. Maori who are in tertiary training are more likely to be enrolled in second chance programmes.²⁷

Maori currently rank highly in the negative statistics of all social indicators from education to health. It would not be difficult to argue that the seeds of Maori underachievement in the modern education system were sown by some of the past education policies outlined in Dr Simon’s evidence.

As will be shown in this report, one reason Maori developed modern wananga was to address the current underachievement of Maori in tertiary education. Another primary reason was to help revitalise te reo Maori and matauranga Maori. To help achieve these aims, wananga Maori have successfully sought TEI status. Wananga believed that this recognition would secure a successful future, thereby enabling them to provide significant help in the development and advancement of Maori society. Chapter 3 goes on to describe the principles behind wananga and to give examples of the courses that they teach.

27. Te Puni Kokiri, *Progress towards Closing Social and Economic Gaps between Maori and Non-Maori: A Report to the Minister of Maori Affairs*, Wellington, Te Puni Kokiri, 1998 (doc A74(c)), p 6

CHAPTER 3

MODERN WANANGA

3.1 INTRODUCTION

In this chapter, we will briefly describe the origins of modern wananga. We will examine the principles upon which they have developed and devote some time to each of the three wananga in existence. By doing so, we hope to establish just how important wananga are for Maori, in particular, and for New Zealand.

Wananga form an integral part of the current Maori education system. Wananga are the Maori TEIs in existence today and follow on from kohanga reo (pre-schools), kura kaupapa Maori (primary schools), and whare kura (secondary schools) in the chain of Maori education. Wananga offer tertiary courses in a Maori-controlled environment; their core focus is the delivery of te reo and matakura Maori to their pupils. Because of this, wananga play a critical role in the ongoing educational development of Maori.¹

3.2 STATUTORY RECOGNITION OF WANANGA

Wananga are given statutory recognition under section 162 of the Education Act 1989 (as added by section 36 of the Education Amendment Act 1990). As such, wananga are regarded as the peers of universities, polytechnics, and colleges of education. Section 162(4)(b)(iv) states that:

A wananga is characterised by teaching and research that maintains, advances, and disseminates knowledge and develops intellectual independence, and assists the application of knowledge regarding ahuatanga Maori (Maori tradition) according to tikanga Maori (Maori custom).

This definition places a statutory responsibility upon wananga to teach and conduct research within traditional Maori social structures.

Three wananga are currently recognised as TEIs under the Education Act. Te Wananga o Raukawa and Te Wananga o Aotearoa were established in 1993, and Te Whare Wananga o Awanuiarangi was given statutory recognition in 1997.

1. Document A45, p 1

3.3 WHAKATUPURANGA RUA MANO

The Raukawa trustees, a body representing the tribal confederation of Te Ati Awa, Ngati Toarangatira, and Ngati Raukawa (the ART confederation), established Te Wananga o Raukawa in 1981, in response to an iwi-based experiment initiated six years earlier.

In 1975, the Raukawa trustees began a tribal planning experiment entitled Whakatupuranga Rua Mano, or Generation 2000. The purpose of this experiment was to prepare the ART confederation for the twenty-first century. The programme called for the establishment of a new TEI, a trustee for the Maori language, and an academy of Maori arts.²

The entire Whakatupuranga Rua Mano programme was underpinned by four key principles:

- (a) the principle that the Maori language is a taonga;
- (b) the principle that people are our greatest resource;
- (c) the principle that the marae is the principal home of the iwi; and
- (d) the principle of rangatiratanga.

These principles are discussed in more detail below.

- (a) *Te reo Maori*: In 1975, a census was conducted in the region occupied by the ART confederation revealing a seriously low number of speakers of te reo Maori under 30 years of age. This census found that no people in that age range had any significant knowledge of the Maori language. Whakatupuranga Rua Mano took heed of this alarming fact and took action to raise the number of speakers of te reo Maori.
- (b) *People*: Whakatupuranga Rua Mano signalled an intention by the ART confederation to improve the position of its people, and great effort has been expended in upskilling and educating the people of the confederation.
- (c) *Marae*: By locating the activities of Te Wananga o Raukawa and Whakatupuranga Rua Mano upon marae, the confederation was again locating the programmes in a unique paradigm. Locating activities at marae facilitated student access to education, the rejuvenation of marae through their redefinition as educational centres, and the revitalisation of knowledge and concepts related to marae, including management, conflict resolution, arts, whakapapa, and other matters.
- (d) *Rangatiratanga*: Whakatupuranga Rua Mano was an exercise in self-determination on the part of the ART confederation. According to the confederation, rangatiratanga relates to the responsibility of Maori to govern themselves and to take on the responsibility to improve their lives. Te Wananga o Raukawa represents the serious determination of the ART confederation to take on these responsibilities.

2. Document A44, sec 4.1.1

3.4 TE WANANGA O RAUKAWA

The Raukawa trustees established Te Wananga o Raukawa as a vehicle to put into practical effect the ideas and the four principles articulated in Whakatupuranga Rua Mano. These principles continue to influence the work of Te Wananga o Raukawa today. The wananga was located on a property owned by the Otaki and Porirua Trusts Board just outside the boundary of the Otaki township. It pays a market rent to the trusts board to use this land. Through the dedication and drive of the trustees and the support of a committed group of unpaid tutors, the kaiawhina, Te Wananga o Raukawa was established and commenced its teaching programme in 1981.

The Tribunal was glad to receive evidence from claimant witnesses about the history of Te Wananga o Raukawa. Clearly, there were a number of dedicated, well-qualified, and far-sighted people who took responsibility for launching this ambitious initiative. Some original staff and their successors have steadfastly and loyally nurtured both the quantity and the quality of courses offered over the past 18 years. That their vision succeeded, and continues to expand and succeed, is, in great measure, a tribute to those founders and to the dedication and selfless support of a significant number of kaiawhina, who, without reward, have provided expert tuition to the students of Te Wananga o Raukawa ever since. It is abundantly clear from the evidence that, without that support (which has been replicated by the other claimant wananga), the wananga initiative would not have been the success time has proved it to be.

Today, Te Wananga o Raukawa offers one-year diplomas and three-year bachelor degrees in health studies, iwi and hapu studies, Maori laws and philosophy, administrative studies, design and art, hapu development, and matauranga Maori. Maori language studies are a compulsory aspect of every course at Te Wananga o Raukawa, which also runs masters programmes in Maori and management and matauranga Maori. In the case of the masters of matauranga Maori, all seminars are delivered in te reo Maori, and a thesis must be produced, exploring an aspect of matauranga Maori and written in Maori.³

Te Wananga o Raukawa was formally registered as a wananga in 1993, 12 years after the commencement of its education program.

3.5 TE WANANGA O AOTEAROA

Te Wananga o Aotearoa also has a long history of struggle from a humble beginning – located on the Te Awamutu College rubbish tip – to statutory recognition as a TEI. Rongo Wetere, of Ngati Maniapoto, conceived the idea for Te Wananga o Aotearoa in 1983, following a successful initiative to build a marae at Te Awamutu College. The success of this project, using unemployed former students of the college, led to the first incarnation of Te Wananga o Aotearoa as the Waipa Kokiri Arts Centre. The centre was built on the rubbish tip in 1984, using an \$80,000 kokiri centre grant from

3. Document A74(b)

the Department of Maori Affairs. This site had been a last resort since opposition from local residents had foiled plans to build on other sites. Witnesses, such as Marie Panapa, gave evidence of that opposition, which was allegedly based on prejudice and lacked an understanding of what would ultimately be achieved on the unlikely site.⁴

Banks were reluctant to lend the organisation money for the project, forcing the centre to arrange an \$80,000 short-term loan through a finance house, at 27.5 percent interest. When the money ran out, some committed individuals mortgaged their houses to provide funds for the centre. The Tribunal expresses its admiration for their courage and conviction. In 1984, the Te Awamutu Borough Council provided a guarantee for a loan of up to \$30,000. Using the hard-won money, volunteer labour, and recycled materials from old demolished buildings, the staff and students of the Waipa Kokiri Arts Centre provided themselves with their own facilities. The Tribunal believes that this was an amazing achievement.

By 1987, the centre had plans to apply for TEI status. It then had a roll of 212 students, of whom 86 were Pakeha and 126 Maori. It was believed that full TEI status could facilitate the provision of the best education for the growing clientele. The centre's trustees wanted to create a TEI that had no entry barriers, was user friendly, and was accessible. The centre won building contracts within the community, as well as plumbing and drainlaying contracts. The carving and weaving module completed work on over 50 marae throughout New Zealand. A demolition team was set up that eventually pulled down about 18,580 square metres of buildings, the materials being recycled for the centre's building projects. Over time, the diversity of projects expanded to include an aluminium boat building module, which completed over 200 boats. These commercial projects, along with Government grants such as MACCESS (Maori Access) funding, effectively provided the finance to continue and expand.

A key element in the Waipa Kokiri Arts Centre's philosophy was to expand to meet demand for its services. The centre experienced such dramatic growth and demand that by 1988 it had opened campuses in Hamilton and Manukau, where it set up a waka-building module. The centre's expansion into other tribal areas led it to change its name to the Aotearoa Institute, a name that reflected its increasingly pan-tribal nature.

In 1988, the Aotearoa Institute lodged an application for TEI status as a polytechnic. This initial application was unsuccessful. Apparently, the Ministry of Education lost the application. From 1989, the Aotearoa Institute made further applications for TEI status. Finally, in late 1993, the then Minister of Education, Dr the Honourable Lockwood Smith, made a surprise announcement outlining the Government's decision to grant full wananga status to the Aotearoa Institute and Te Wananga o Raukawa. Today, the main campus of Te Wananga o Aotearoa is situated in Te Awamutu, with other campuses in Te Kuiti, Porirua, Hamilton, Manukau, Henderson, and Rotorua. At present, the campuses of the wananga operate predominantly on leased land.

4. Document A30

3.6 TE WHARE WANANGA O AWANUIARANGI

The inspiration for the establishment of Te Whare Wananga o Awanuiarangi came from Professor Hirini Moko Mead, who wanted a wananga to provide advanced education for the people of Ngati Awa and Mataatua. Professor Mead first mooted his desire in 1987. The provision of funding for a wananga was always of major concern to the founders of Awanuiarangi. Although established by 1992, Awanuiarangi did not attain wananga status until 1 January 1997. Between 1992 and 1997, Awanuiarangi accepted the Ministry of Education's advice to secure interim funding through two existing TEIS: the University of Waikato and Waiariki Polytechnic.

The site chosen for the wananga is shared with the Apanui Education Centre at Whakatane. There is a certain piquancy about that choice, since the Crown had confiscated the land from Ngati Awa and its return is sought as part of the redress for the Ngati Awa raupatu claim. The site was devoid of buildings or other facilities, but the Ministry of Education made a grant of \$64,000, which, together with 50 percent of the equivalent full-time student (EFTS) grant (see sec 4.7), was used to purchase and erect a toilet block and an administration building on the site. Claimant counsel stated in opening submissions that Awanuiarangi had earlier put forward an architecturally designed plan of proposed facilities but this was rejected by Ministry officials as being too ambitious.⁵

Awanuiarangi's struggle to obtain registration as a wananga, and thus TEI status, as opposed to private training establishment (PTE) status, continued until 1 January 1997. Because of the delay, full entitlement to EFTS funding was not secured until 1997. The Awanuiarangi claimants believe that this was 'unacceptable given the financial hardships already endured by Awanuiarangi in bearing the costs of establishment'.⁶

3.7 TE TAUHU O NGA WANANGA ASSOCIATION

Te Tauhu o nga Wananga Association was formed in 1993 to represent Te Wananga o Aotearoa, Te Whare Wananga o Awanuiarangi, and Te Wananga o Raukawa. The association meets three times a year to coordinate and develop policies to benefit the members as a whole. In addition, it represents the three wananga on various committees dealing with matters of concern to all wananga and assists in the coordination of activities at a national level on behalf of the three wananga.⁷

3.8 STATUTORY RESPONSIBILITIES OF WANANGA

Under part xv of the Education Act 1989, wananga with TEI status are subject to several statutory requirements regarding structure and organisation. All TEIS are

5. Document A69, para 13

6. Ibid, para 18

7. Document A13, para 2

governed by their own councils, established under section 165 of the Act. Councils are to comprise between 12 and 20 members. Four representatives are appointed by the Minister of Education, other positions being filled by representatives of the employers, unions, staff, and students. Councils are required by legislation to reflect both the ethnic and socio-economic diversity of the communities served by the TEI and a gender balance. Councils determine the strategic direction, policies, and programmes of TEIs, as well as managing the budget (including the setting of tuition fee levels), and appointing chief executive officers. The chief executive officer (who may be alternatively designated a vice-chancellor, director, principal, or Te Tumuaki) implements council policies and decisions and manages the academic and administrative affairs of the institution, including the employment of teaching and support staff.

Each TEI is required by legislation to have a written charter that expresses the goals and purposes of the institution. The charter provides the foundation for all the teaching, research, and learning that is carried on in the TEI. Charters must be approved each year by the Minister of Education, who determines what funding is available for each TEI, based on whether the annual statement of objectives submitted to the Secretary for Education is suitable for the implementation of the charter. The TEIs and their governing councils have the freedom and autonomy to act within the constraints of their functions, duties, and powers, as set out in legislation and as consistent with the objectives of their charter, in order to meet student demand and to respond to local educational needs.

Despite their relatively small size, wananga must fulfil the same statutory requirements with respect to governance (such as the membership, work, and accountabilities of the council) as any TEI. These statutory accountabilities carry compliance costs, which must be met from operational funds. Wananga are forced, therefore, to draw from either their administration grant or their EFTS funding to pay these costs. Wananga are disadvantaged by this, because they have a smaller pool of funds compared to those granted to larger institutions.

3.9 THE NEW ZEALAND QUALIFICATIONS AUTHORITY

Wananga had to attain the endorsement of the New Zealand Qualifications Authority in order to gain accreditation as TEIs under the Education Act 1989. The authority monitors wananga at regular intervals for academic audit purposes and also for degree programme accreditation. Several criteria must be met to attain degree accreditation. The criteria include having appropriate facilities (buildings, libraries, etc), financial resources to back the degree, qualified teaching staff, support for the degree, a commitment to research, transparent regulations, and no barriers to entry. The cost of accreditation and monitoring is met substantially by the wananga. Accreditation costs, for example, are \$10,000, plus travel and accommodation for an authority panel to attend the wananga and assess the degree in question. The

claimants told the Tribunal that this was a great burden, because wananga do not receive specific funding to pay for assessments.⁸

The Government requires wananga to achieve qualifications authority approval of their courses. The authority has accepted that all three wananga have the ability to deliver high-quality degree and education programmes. During questioning by the Tribunal, Professor Graham Smith, the chairperson of the council of Te Whare Wananga o Awanuiarangi, told the Tribunal that many Maori education providers believe that authority accreditation has resulted in the over-standardisation of Maori courses. According to Professor Smith, this raises significant issues relating to the intellectual and cultural property of Maori in substantive course content. He feels that the qualifications authority is not qualified to audit wananga, particularly in relation to matauranga Maori. Te Wananga o Raukawa's post-masterate programme, entitled 'Te Kaurutanga', is an advanced programme of study in matauranga Maori.⁹ Te Kaurutanga is a qualification awarded to validate the significance of matauranga Maori in today's society. Te Wananga o Raukawa is not seeking authority approval for this programme because Raukawa believes that such approval is neither necessary nor relevant to the programme.

3.10 THE DISTINCT NATURE OF WANANGA

Each wananga is distinctive in its own right. Nevertheless, some general observations may be said to apply to all. Wananga have characteristics that are not shared by any other current TEI, be it a university, polytechnic, or college of education. Pakake Winiata listed several factors that demonstrate the distinctive nature of wananga:

- (a) wananga have been established by iwi as independent institutions to meet the developmental needs of iwi and, through iwi, Maori generally;
- (b) each wananga enjoys the participation of all sectors of the iwi, from young members as students through to elders as teachers;
- (c) matauranga Maori, and its maintenance, development, and dissemination, are central to wananga activities;
- (d) each wananga operates according to the tikanga of the founding iwi, and is identifiably Maori in its environment and operations;
- (e) the majority of the wananga student body are described as being 'second chance' learners, whose experience of education prior to arriving at the wananga was not satisfactory;
- (f) the development of spiritual strength and depth among the students is an integral part of the wananga programme; and
- (g) the wananga, as a whole, is guided, directed, and controlled by Maori people.¹⁰

These distinctive characteristics cannot be legitimately claimed by any other type of TEI.

8. Document A58, paras 19–20

9. Document A74(b)

10. Document A45, p 2

3.11 WANANGA EDUCATION

Education is a lifelong process. The processes of pre-school, primary, secondary, and tertiary education are all intimately connected. It is never too late to learn and it is never too late to find the desire to learn. The average age of wananga students is 35. Wananga are helping people who have not achieved in the compulsory education system to access higher learning. A key element to success in any educational process is an environment that is conducive to learning. When an individual feels comfortable and confident in a learning environment, their capacity and determination to learn is significantly heightened. Being comfortable within an environment may mean physically, mentally, emotionally, or spiritually. If an individual is uncomfortable or forced to learn in an environment where they feel alienated and uneasy, the learning process is made that much more difficult.

It was suggested to this Tribunal that wananga students, the majority of whom are Maori, succeed predominantly because wananga actively promote a positive Maori environment. Wananga strive to raise the self-esteem and mana of their students by teaching them about themselves and their heritage. When the students are at ease within themselves and within the learning culture of wananga, they are better equipped to learn and succeed.

Past and present students of each wananga presented evidence to the Tribunal. These students ranged in age from their early twenties to early seventies. Whetu Moataane gave the Tribunal an account of his successful educational history at Te Wananga o Aotearoa, after leaving school with no qualifications or 'future prospects'.¹¹ It was obvious to the Tribunal that Mr Moataane is a confident, intelligent young man, who benefited from attending Te Wananga o Aotearoa. Following success at the wananga, he was encouraged to undertake teacher training at Waikato University in 1997. Mr Moataane will graduate with a bachelor of education degree this year. Mr Moataane believed that the guidance he received at the wananga gave him direction in life, and made him the person he is today.

Arana Collett, a former student who now teaches Maori at Te Wananga o Aotearoa, gave an account of his association with Aotearoa (then the Waipa Kokiri Arts Centre).¹² In 1986, as an unemployed father of four with an unsuccessful educational background, he enrolled in a Maori language course, attaining fluency in te reo Maori. His skills became so developed that the chief executive officer, Rongo Wetere, asked him to be part of a team to develop the first accelerated learning programme in te reo Maori. Tutors from this programme began teaching Government departments in 1990. Mr Collett began teaching in schools and taking cultural safety lectures at, among other places, Waikato Polytechnic, the Waikato Business Development Board, the Children and Young Persons Service, the Justice Department in Hamilton, and Tokanui Hospital. In giving his evidence to the Tribunal, Mr Collett spoke entirely in te reo Maori. Mr Collett is Pakeha and testified to the inclusive nature of Te Wananga o Aotearoa.

11. Document A31

12. Document A36

Jim MacGregor gave evidence for Te Wananga o Raukawa.¹³ He was one of the speakers on the paepae and had greeted the Tribunal and guests of Ngati Raukawa on the marae atea at the powhiri preceding the start of the hearing. Mr MacGregor explained that he was close to 60 years of age at the time that he began to learn te reo Maori, and he appeared as a representative of much older students of te reo Maori.

Jo Waerehu, a student of Te Whare Wananga o Awanuiarangi, gave testimony of the excellence of her bachelor of Maori studies degree.¹⁴ She believed her decision to attend Awanuiarangi was one of the most positive moves she had ever made in her life. Yet, she also explained her frustration as a student, owing to what she perceived as a lack of funding received by the wananga. Ms Waerehu told the Tribunal of the lack of classroom space and classroom resources. She revealed how the 180 students had to make do with five toilets and two showers. She believed that, because the wananga was deprived of establishment funding, students had to study in cramped conditions and make do with an under-resourced library. Despite these impediments to study, Ms Waerehu believed Awanuiarangi provided an environment that was culturally comfortable and made her proud to be Maori. She stated that no other institution she knew of could offer this, as well as the traditional values that she had grown up with.

The above are a few brief examples of the kind of evidence given to the Tribunal during the course of the hearing. This evidence illustrated to the Tribunal that wananga instilled in their students a spirit of commitment, self-worth, and determination to succeed.

3.12 WANANGA OUTPOSTS

One of the key strategies of wananga, and of Te Wananga o Aotearoa in particular, is to provide access to tertiary education through multi-campus sites, as opposed to a centralised campus. The management of the wananga strongly believes that a centralised large campus will not attract the same number of students because of the lack of mobility and resistance to relocating the target Maori population. The multi-campus sites encourage and motivate students to study without leaving their tribal roots or places of residence.

3.13 DIVERSITY IN EDUCATION

The Crown stated that, as at July 1997, less than 5 percent of Maori tertiary students were enrolled in wananga. Almost 70 percent are enrolled in universities, polytechnics, and colleges of education, while the remaining Maori students are enrolled at PTES. The Crown submitted that, while wananga play an important part in addressing the tertiary education needs and aspirations of Maori, they are not the sole

13. Document A71

14. Document A54

provider, and the Government supports the participation and achievement of Maori in a number of other ways in the mainstream education system.¹⁵

Wananga are fully aware that many Maori choose to pursue an education at a mainstream TEI. Te Wananga o Aotearoa, for example, has actively encouraged several graduate students to continue further study at institutions such as the University of Waikato. Wananga realise that they are not the sole provider of tertiary education for Maori, and at no time in the course of this inquiry did they suggest otherwise. Perhaps one of the strongest points highlighted by both the Crown and the claimants during the course of this inquiry was the need for options in tertiary education to exist, and for all options to be adequately resourced.

The Crown outlined several of its initiatives developed to target people at risk of high unemployment, and those traditionally under-represented in tertiary education. While these initiatives were not specifically aimed at Maori, they do benefit Maori students. Among these initiatives are student loans and allowances, the training opportunity programme, the equal educational opportunity requirements on TEIS, the rangatahi maia (skill advancement) and Te Ararau programmes, and Manaaki Tauira scholarship funding.¹⁶

The Tribunal supports the training-based initiatives. We also endorse Dr Norman Kingsbury's commonsense approach to the provision of tertiary education. Dr Kingsbury has had 40 years' national and international experience in tertiary education administration. He is currently the chair of the board of the New Zealand Universities Academic Audit Unit and the New Zealand Polytechnic Programmes Committee. From 1988 to 1990, Dr Kingsbury was seconded by the University Grants Committee to work full time on some funding issues of the 'Learning for Life' programme. Since 1990, he has worked on a number of funding issues for the Ministry of Education. In regard to wananga, Dr Kingsbury stated:

The rapid increase in Maori participation in tertiary education requires a variety of strategies. That there is not only one strategy to be followed, nor only one type of provider to be involved. However, the three wananga are important elements in any strategy. They are different from other providers and different from each other. This diversity is to be welcomed. All three wananga need agreed programmes for rapid development.¹⁷

We strongly support the expert opinion of Dr Kingsbury.

3.14 TIKANGA MAORI AND TIKANGA PAKEHA

Although wananga are iwi-based, and iwi-initiated institutions, wananga are open to everybody, regardless of ethnicity. Wananga, like their cousins – universities, polytechnics, and colleges of education – are providers of education that teach all who

15. Document A48, para 31

16. Document C6, para 21

17. Document A29, para 6

wish to learn. The difference between these institutions lies not only in what they teach but also in how they teach it. In other words, the difference lies in the system or 'cultural mindset' of delivery.

Whereas universities could be described as 'tikanga Pakeha' institutions, delivering education in a Pakeha cultural paradigm, wananga seek to deliver education in a Maori cultural paradigm. The evidence of Charles Royal perhaps best illustrated this point when he spoke of 'Matauranga Maori versus Maori Studies'. While Mr Royal in no way challenged the contribution Maori studies departments have made in educating Maori people at the tertiary level, he stated that this field of study was more likely to be within a Pakeha intellectual framework. He explained that, ultimately, 'Maori Studies represents the position that the western paradigm of knowledge has created for it'. Mr Royal went on to say that:

as Maori Studies is located within a western university, it is subject to the western paradigm of knowledge which has severely hindered its growth. Such a circumstance is not tolerated for western science nor should it be tolerated for matauranga Maori.¹⁸

Put simply, Maori studies focuses on studying Maori society from a Pakeha perspective, while matauranga Maori is about studying the universe from a Maori perspective. If we may again quote Dr Kingsbury, 'This diversity is to be welcomed'.¹⁹

3.15 CONCLUSION

Wananga are a significant Maori tertiary education initiative based on an ancient Maori system of advanced learning. The process of giving life to modern wananga has involved a great deal of hard work and sacrifice by many dedicated people who share a common vision of improving the status of Maori.

Educational programmes available at wananga include iwi and hapu studies, studies in matauranga Maori, business administration, performing and practical arts, and teacher training. Inherent to wananga studies is the Maori language. Te reo Maori is the language of instruction for many courses and is actively promoted and taught at wananga. The protection, maintenance, and promotion of te reo Maori form one of the primary aspirations of wananga, along with upskilling and educating Maori.

That which most impresses the Tribunal about wananga is that it was Maori who established these institutions out of a desire to address Maori needs. The inception and eventual operation of wananga as PTES is an excellent example of dedicated Maori working to improve their own situation. The eventual granting of TEI status to wananga was recognition that the vision and hard work of wananga had been realised and appreciated by the Government. Wananga have worked hard within the current system, despite being denied the benefits of the earlier capital funding policy. It is only

18. Document A44, sec 4.2.1

19. Document A29, para 6

now, when the system is clearly prejudicing wananga, that they seek from the Government a measure of equality with the other TEIS.

In 1986, the Waitangi Tribunal's *Report on the Te Reo Maori Claim* concluded that Maori children were not being adequately educated owing to prolonged systemic failure.²⁰ As stated in chapter 2 (see sec 2.6), despite Government attempts to stem the tide of Maori underachievement in education and under-representation at the tertiary level, this trend has, on the whole, continued.

The Government has acknowledged the important work that wananga are undertaking in regard to improving Maori education. The following chapter provides an illustration of how the Crown has supported wananga from their establishment as TEIS to the present.

20. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Maori Claim*, 3rd ed, Wellington, Brooker's Ltd, 1993, sec 6.3

CHAPTER 4

WANANGA AND TERTIARY EDUCATION REFORM IN THE 1990s

4.1 INTRODUCTION

This claim deals with the provision of tertiary education in New Zealand and how the institutions that deliver that education are funded. TEIS are State providers of tertiary education and may be universities, polytechnics, colleges of education, or wananga. They exist independently from the Crown and are under the control of governing councils. There are currently 39 TEIS: 25 polytechnics, seven universities, four colleges of education, and three wananga.

The governing statute for tertiary education in New Zealand is the Education Act 1989. In terms of that Act, wananga are defined as institutions. For the purposes of the Public Finance Act 1989, institutions are defined as ‘Crown entities’. As ‘Crown-owned entities’, the Crown acknowledges that it has an ownership interest in the institution. This means, in effect, that the Crown is committed to ongoing funding and will therefore provide assistance to institutions that are in financial difficulties.¹

The purpose of this chapter is to examine the amendments made to the Education Act 1989 by the Education Amendment Act 1990 that provided for the funding of TEIS. The amendments instituted major changes in the area of tertiary education from what had operated previously, particularly in regard to capital establishment funding. Prior to 1990, the Crown provided newly established TEIS with substantial capital funds to purchase any necessary lands and buildings, as well as to set up necessary infrastructure. This chapter begins with an illustration of how TEIS received capital funding before 1990.

We then chart the development of the 1990 amendments from the late 1980s, when a series of tertiary education reviews began examining the operation of TEIS. These reviews culminated in recommendations for tertiary education reform that led to the passing of the Education Amendment Act 1990. Prior to the passing of this Act, wananga were not eligible to be classified as TEIS, and operated as PTES. It was only after the Government undertook a major process of tertiary education policy reform that wananga became eligible to be recognised as TEIS, and therefore eligible for guaranteed Government funding and the prestige of recognition as a TEI.

After reviewing the development of the 1990 amendments, we examine the current funding policies for TEIS. The amendments abolished capital establishment funding

1. Document A76, app 2, para 3

and implemented a new TEI funding regime based on bulk funding of institutions. Under the amendments, institutions were required to cover all costs, including capital costs, from a single annual bulk grant. We look at these various funding policies created by the amendments.

The 1990 amendments also introduced the wananga class of TEI, making statutorily recognised wananga eligible for increased Government funding. By the early 1990s, it had come to the attention of the Government that the current funding arrangements for wananga needed closer examination. A Cabinet committee on education, training, and employment subsequently directed the development of a range of policy options to address the tertiary needs of Maori. Its unfinished report eventually became subsumed in an overall tertiary education review to guide tertiary education for the next 20 years.

Wananga began operating as TEIS without capital establishment funding from the Crown. The latter part of this chapter will examine the processes through which the Crown became aware of the current financial position of each wananga. This part of the chapter ends with an examination of Te Wananga o Aotearoa's unsuccessful application for a capital injection.

4.2 CAPITAL FUNDING OF TEIS BEFORE 1990

Vince Catherwood, the senior manager of tertiary charters and funding in the Ministry of Education, gave evidence on the capital funding of TEIS prior to 1990. Provision of capital funding to what are now TEIS formerly operated under two different systems:

- (a) *Universities*: Capital funding for universities was managed through the University Grants Committee. This committee, operating under the Universities Act 1961, was given an indicative quinquennial grant, appropriated annually. It then allocated funding to universities from this fund. Universities applied directly to the committee for any capital expenditure, and it then decided between competing priorities from individual universities and managed its funding allocations within the overall appropriation voted by Parliament.
- (b) *Polytechnics, institutes of technology, technical institutes, community colleges, and teachers' training colleges*: Prior to 1990, the former Department of Education managed the provision of capital funding for bodies that are now known as polytechnics and colleges of education. The department received an annual appropriation from Parliament. Each institution made an annual case for capital development (major and minor capital works) to the department, which assessed competing priorities and made recommendations for capital expenditure within the constraints of the parliamentary appropriation.

Mr Catherwood stated that one of the shortcomings of this process was that no transparent criteria existed by which competing priorities were assessed. The process for determining capital bids was complex and detailed, and allocation depended solely on the department's assessment of need.

Inevitably, institutions applying for capital funding resorted to political lobbying, and these representations added a further dimension that department officials had to consider in making an assessment of priorities.

Under the pre-1990 policy, the State provided capital funding to TEIs via the two conduits of the University Grants Committee and the Department of Education. Through these channels, an institution whose bid was accepted received funding for land and buildings over and above its operational funding. By 1990, this was no longer the case.

4.3 MAJOR POLICY CHANGES, 1989–90: THE HAWKE REPORT

During the 1980s, several reviews were carried out concerning various aspects of tertiary education. These culminated in the Working Group on Post Compulsory Education and Training in March 1988. This group was chaired by Professor Gary Hawke, then the director of the Institute of Policy Studies at Victoria University, and it was charged with the task of drawing together all previous sectoral reports and making recommendations for comprehensive tertiary education reform. The Hawke report, as it became known, was published in July 1988 and was to prove a significant turning point in New Zealand tertiary education. Key recommendations included a considerable degree of decentralisation, so that those in charge of TEIs should have greater discretion over expenditure decisions. The report also recommended an improved funding system with greater incentives for decision-makers to use resources effectively and with a greater reliance on non-public financing.²

An important aspect of the report, for the purposes of this claim, was its focus on capital works. The report noted that, under the pre-1990 policy, institutions sought new buildings because they were ‘costless’, and since they came with establishment grants, they were a means of enhancing operating grants. The Hawke report favoured the addition of a ‘capital works’ component to the operational funding of institutions, and proposed that decisions about buildings should be devolved to the institutions themselves, thus requiring them to assess the comparative value of constructing new buildings against spending on other inputs. The Hawke report also set the foundation for major reforms covering all other aspects of tertiary education.

4.4 *LEARNING FOR LIFE AND LEARNING FOR LIFE: TWO*

In February 1989, the then Ministers of Education, the Right Honourable David Lange and the Honourable Phil Goff, released *Learning For Life*.³ This document articulated the Government’s intended policies in relation to post-compulsory education. Under the intended funding policy for TEIs, capital establishment grants

2. Document A47, paras 19–22

3. New Zealand Government, *Learning For Life: Education and Training beyond the Age of Fifteen*, Wellington, Government Printer, 1989 (doc A47, app 3)

were abolished and institutions would be funded by a bulk grant, from which they would meet all their own costs, including capital spending.⁴ The bulk grant would be determined by a formula based on the nominal value of an equivalent full-time student. This meant that the amount of money that an institution received would depend on the number of students enrolled at the institution, and the relative cost involved in teaching the courses that those students undertook. Although automatic establishment funding had been abolished under the intended policy, the Government decided to retain the ability to inject funds for capital purposes when it was satisfied of the need to do so.

Following the release of *Learning For Life*, several working groups were established to present detailed recommendations on the implementation of these policies and TEI-related issues. The work of these groups culminated in *Learning For Life: Two*, which unveiled the Government's finalised policy for post-compulsory education. It signalled the Government's ideas for the promotion of education in Maori and within tikanga Maori and also outlined three possible approaches for Maori tertiary education:

- First, a department within an existing post-secondary educational training (PSET) institution offering education in Maori and within tikanga Maori. (This option was basically a continuance of the university Maori studies model.)
- A second option presented offered a separate campus alongside an existing PSET campus offering education in Maori and within tikanga Maori.
- The final option offered a separate PSET institution offering education in Maori and within tikanga Maori.⁵

The policy outlined in *Learning For Life: Two* explained that these projects might involve 'seeding funds for a specific period'.⁶ After this, they would be funded on what would become known as the general EFTS basis (see sec 4.6).

4.5 CURRENT FUNDING POLICY FOR TEIS

The previous section described how, prior to 1990, many TEIs had received significant capital funding from the Government for establishment, development, and expansion. That funding procedure was to undergo dramatic and significant change with the passing of the Education Amendment Act 1990. In introducing the Bill to Parliament, the then Minister of Education, the Honourable Phil Goff, described it as 'the most significant reform ever carried out in the history of the New Zealand system of tertiary education and training'.⁷

The Long Title to the 1990 Act sets out the objectives that the Government sought to achieve by adding sections 159 to 319 to the Education Act 1989 and adding six of its

4. *Learning For Life*, para 3.4

5. New Zealand Government, *Learning for Life: Two – Education and Training beyond the Age of Fifteen*, Wellington, Government Printer, 1989 (doc A46(b)), para 3.4.16

6. Ibid

7. 29 March 1990, NZPD, 1990, vol 506, p 1166

18 comprehensive schedules. (The 1989 Act had been passed by Parliament as recently as 29 September of that year.) Missing from the Long Title is any reference to the significant amendment that would bring capital funding for TEIs to an end.

The Long Title is as follows:

An Act to reform further the administration of education and, in particular, to reform tertiary education and training with a view to—

- (a) Giving tertiary institutions as much independence and freedom to make academic, operational, and management decisions as is consistent with the nature of the services they provide, the efficient use of national resources, the national interest and the demands of accountability; and
- (b) Establishing a consistent approach to the recognition of qualifications in academic and vocational areas; and
- (c) Encouraging greater participation in tertiary education and training, in particular by removing barriers to access for those groups of persons who have previously been under-represented; and
- (d) Contributing to a dynamic and satisfying society by promoting excellence in tertiary education, training, and research.

The Education Amendment Act 1990 implemented the policy reforms articulated in *Learning For Life: Two*. Parliament thereby added to the Education Act 1989 provisions relating to tertiary education and training. These provisions covered the establishment and disestablishment of TEIs, the registration of PTES, and the establishment of the New Zealand Qualifications Authority and the Education Training and Support Agency. The 1990 Act also introduced provisions for bulk funding under the EFTS funding system and made it possible for wananga to apply for TEI status, and thereby attain greater Government funding. Section 50(5) of the Act repealed the Universities Act 1961, thereby abolishing the University Grants Committee and its role in the provision of establishment funding.

As previously stated at section 3.2, Te Wananga o Aotearoa and Te Wananga o Raukawa were granted TEI status under these amendments in 1993. Te Whare Wananga o Awanuiarangi was granted TEI status under the amendments in 1997.

4.6 EFTS FUNDING

Section 199 of the Education Act 1989 (as added by section 37 of the Education Amendment Act 1990) relates to the funding of institutions. There are two components to the funding system: a general grant calculated by what is known as the EFTS formula and special supplementary grants. Under the 1990 amendments, all TEIs receive a Government subsidy towards the cost of the provision of tertiary education and training tuition for domestic students, but the amount of funding each institution receives is contingent upon many factors and conditions. First, the number of EFTS places in any given year is set by Cabinet, and hence provides a level of constraint on expenditure. The Minister of Education determines the amount of funding for each TEI under section 199(2) of the Education Act, subsequent to the analysis of a

statement of objectives submitted by each institution. The total grant allocated to each TEI is determined by using the EFTS formula. The use of this complex formula underpins the reconciliation and accountability provisions of the Act.⁸

In making recommendations to their Minister on the level of funding for a TEI in any academic year, Ministry of Education officials take into account:

- the projected student enrolments supplied by the institution;
- an assessment of the current and previous academic years' performance in achieving EFTS enrolments;
- an assessment of the previous triennial performance;
- any Government policies for fields of study that are priorities for new growth funding; and
- any new programmes proposed for the coming triennium.

The level of ministerially approved EFTS places is then multiplied by the Study Right to non-Study Right ratio for each individual institution in each of the defined course or programme classifications.⁹

The Study Right policy was designed to 'encourage certain groups to undertake tertiary education by paying a higher subsidy for those identified groups of students'.¹⁰ This policy generally targeted the young and long-term beneficiaries who had not received three years of tertiary education. Unfortunately, some members of groups that the Government wished to see participating more in tertiary education – including many women, Maori, Pacific Islanders, and mature students – did not meet the criteria for the additional Study Right support.¹¹ Such individuals were classified as non-Study Right and drew a lower Government subsidy for institutions.

In addition to these conditions, tertiary courses are funded at different levels according to the category they fall in (and the mix of Study Right and non-Study Right students attending). Higher cost courses such as science receive greater funding than lower cost courses such as business, and higher level courses such as honours or doctorates are funded at a higher rate than certificate courses.¹² There are 10 funding categories: A to E, G to I, P (for the funding of PTES), and X (extramural study). The 1998 base rates for the various categories range from \$6337 for category A to \$26,277 for category E, which covers doctoral and honours study. Category A includes subjects such as arts, social sciences, business, accountancy, community education, and law. The courses offered by wananga are classified as category A for funding purposes, and therefore draw the lowest amount of Government funding per course. In addition, the majority of wananga students are classified as non-Study Right students, which means that they attract an even lower percentage of the category A funding. (The table facing shows the actual annual figures for each category from 1997 to 1999 and the variable subsidy rates, which are dependent upon the Study Right policy.)

8. Ministry of Education, *The EFTS (Equivalent Full Time Student) Funding System for Tertiary Institutions*, 1997, 3rd ed, Ministry of Education, 1994 (reprinted 1996), (doc A47, app 5), sec 6.3

9. Ibid, sec 6.4

10. Ministry of Education, *Tertiary Education in New Zealand: Policy Directions for the 21st Century*, New Zealand Government White Paper, November 1998 (doc c2), p 6

11. Ibid

12. Document A47, para 35

| | 1997 | | | 1998 | | | 1999 | | |
|---|-------------------|-----------------|------------------|-------------------|-----------------|------------------|-------------------|-----------------|------------------|
| | Base rate (\$) | SR rate (\$) | NSR rate (\$) | Base rate (\$) | SR rate (\$) | NSR rate (\$) | Base rate (\$) | SR rate (\$) | NSR rate (\$) |
| A Arts; social sciences; business; accountancy; general, including community education; law | 6337 | 6020 | 4753 | 6288 | 5974 | 4716 | 6206 | 5896 | 4655 |
| B Agriculture (non-degree); architecture (non-degree); computing; engineering (non-degree); fine arts; music; nursing; science; trades | 9600 | 9120 | 7200 | 9527 | 9051 | 7145 | 9402 | 8932 | 7052 |
| C Agriculture (degree); architecture (degree); doctoral and honours (funding category A); engineering (degree); health sciences; foreign-going nautical | 12,093 | 11,488 | 9070 | 12,000 | 11,400 | 9000 | 11,843 | 11,251 | 8882 |
| D Doctoral and honours (funding category B) | 22,165 | 21,057 | 16,624 | 21,995 | 20,895 | 16,496 | 21,706 | 20,621 | 16,280 |
| E Doctoral and honours (funding category C) | 26,480 | 25,156 | 19,860 | 26,277 | 24,963 | 19,708 | 25,932 | 24,635 | 19,449 |
| G Dentistry; medicine; veterinary | 24,082 | 22,878 | 18,062 | 23,898 | 22,703 | 17,924 | 23,584 | 22,405 | 17,688 |
| H Specialist large animal science | 18,616 | 17,685 | 13,962 | 18,473 | 17,549 | 13,855 | 18,231 | 17,319 | 13,673 |
| Teaching | 9316 | 8850 | 6987 | 9245 | 8783 | 6934 | 9124 | 8668 | 6843 |
| P All courses and programmes provided by private training establishments | 5398 | 5128 | 4049 | 5357 | 5089 | 4018 | 5287 | 5023 | 3965 |
| X All extramural courses | 6337 | 6020 | 4753 | 6288 | 5974 | 4716 | 6206 | 5896 | 4655 |

SR – Study Right NSR – non-Study Right SR rate is 95 percent of base rate; NSR rate is 75 percent of base rate
Rates exclude adjustments to funding categories where courses or programmes have a clinical practice component

Tertiary funding rates, 1997–99, as at July 1997 (all figures are GST inclusive). Source: document A47, appendix 5.

Once the funding allocation has been determined, it is delivered to the institution in the form of a bulk grant. TEIs are required to use this grant to meet all costs, including the cost of any capital works required.

4.7 THE EFTS CAPITAL COMPONENT AND FUNDING CAP

The capital component of the EFTS category was set at a notional figure of \$1030 per student in 1991. In essence, this amount was calculated by taking the total amount spent on the capital funding of TEIs at the time (ie, under the University Grants Committee and former Department of Education systems) and dividing it by the number of equivalent full-time students. Initially, the EFTS category separately identified the capital and operational components. Since 1992, however, this policy has no longer applied, and there is currently no distinction made between the capital and operational components of the bulk fund. This decision was made in order to give institutions the responsibility for deciding how their funds should be spent, either on operational costs or on capital investment.¹³

An important feature of the EFTS funding system from 1991 to 1998 was the cap on the total number of EFTS places available for allocation. Each year, every TEI was allocated a certain number of EFTS places that the Government was prepared to subsidise. Any student places over the annual allocation would have to be carried by the institution without Government support. It should be noted that almost every institution carries unfunded student places. However, because wananga are much smaller institutions than universities, this impacts significantly on the resources they are allocated by the Government.

| | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 |
|-----------------------------------|------|------|------|------|------|-------|
| Funded EFTS places | 54 | 281 | 473 | 591 | 855 | 1021 |
| Actual EFTS places | 53 | 333 | 516 | 653 | 1004 | 1202* |
| Unfunded places | -1 | 52 | 43 | 62 | 149 | 181 |
| Actual percentage above funded | -1.9 | 18.5 | 9.1 | 10.5 | 17.4 | 17.7 |

* Wananga estimate

Growth in EFTS places at wananga, 1993–98. Source: document A39, page 24.

Since 1994, the EFTS grant included a base grant of \$1000 per equivalent full-time student, up to a maximum of \$250,000. This base grant is ostensibly made in order to recognise that smaller TEIs, such as wananga, have to pay a proportionately higher level of their funding in administrative and infrastructure costs since they may not be able to practise the same economies of scale as the larger TEIs. All TEIs receive this grant. It appears to the Tribunal that, in granting this money to all TEIs, the policy effectively fails to recognise the higher proportion of costs that must be met by smaller institutions.

13. Document A47, para 36

4.8 SUPPLEMENTARY GRANTS

Special supplementary grants are paid to TEIS under section 199(1)(b) of the Education Act for activities that, for various reasons, do not fall into the EFTS mechanism. Special supplementary grants must be used for the purposes for which they were allocated, and there are strict reporting requirements. An example of a special supplementary grant includes a 1998 grant to all TEIS (except Te Wananga o Aotearoa, which declined to make an application for the funding) for providing support for students with disabilities. Special supplementary grants cannot be used for capital funding purposes.

From their acceptance as TEIS, wananga received funding based on the EFTS system. This system made no allowance for 'start-up' or capital establishment funding from the Crown, as had been allowed to all other mainstream TEIS established before 1990. Since the establishment of wananga as TEIS, their representatives have applied for supplementary grants. These have included requests for special capital injections for campus, library, and information technology purposes. To date, each application has been unsuccessful.

The capital base of wananga is too small to operate effectively under the post-1990 funding system. Wananga are small institutions and lack substantial teaching facilities. Because of this, they are unable to attract and cater for the number of students needed to create the appropriate economy of scale under the EFTS system. This situation eventually led to wananga asking for capital injections from the Government to ensure their viability.

4.9 DEVELOPMENT OF WANANGA POLICY

This section highlights certain concerns made known to Cabinet in 1994 regarding wananga policy. These concerns were raised at a time when Te Whare Wananga o Awanuiarangi was in the process of applying for wananga TEI status. In June 1994, a report by the Cabinet Committee on Education, Training, and Employment was sent to the Minister of Education noting that the arrangements for wananga at that time were flawed and that the development of further wananga along similar lines was undesirable.¹⁴

The committee highlighted several issues, including the desire of a significant number of iwi to establish their own wananga. The committee was worried that this could potentially result in the proliferation of numerous small institutions that would face a limited ability to grow and to develop into credible institutions able to offer Maori a wide range of programmes. By 1994, nine iwi-based organisations (including Awanuiarangi) were wishing to explore the concept of wananga status in the future. The Cabinet committee report was also concerned that the establishment of wananga involved using both an ownership and a purchasing arrangement to achieve

14. Report of the Cabinet Committee on Education, Training, and Employment (CAB(94)M19/17(5)), 26 May 1994 (doc A50(a))

Government objectives for Maori tertiary education. The committee believed that combining ownership and purchasing arrangements might inhibit the flexibility with which the Government could pursue its objectives in Maori tertiary education. It thought that there was a risk that the Government's purchasing would be confined to the institutions in which it held an ownership stake. The committee explained that this approach exposed the Crown to financial risk, since the Crown could be liable in the event of institutional failure. The committee also noted that this might be particularly pertinent in relation to small institutions such as wananga, because the EFTS funding system worked best for larger institutions.¹⁵

The report noted that officials had raised several potential resource implications for wananga under the current policy. Ministry of Education officials considered that alternative arrangements, including modifications to the wananga option, needed to be explored to reduce the Crown's exposure to financial risk and better meet the needs of Maori in terms of providing viable and responsive tertiary education.¹⁶ The Cabinet committee report suggested that the Ministry of Education and Te Puni Kokiri develop a range of alternative policy options that might be appropriate for Maori tertiary education, including modifications to the wananga option, and report back to the committee by 31 October 1994. In the meantime, officials recommended that no further wananga be established, with one possible exception, until a decision was made on an appropriate long-term strategy for Maori tertiary education.

In July 1994 (three years prior to Te Whare Wananga o Awanuiarangi being granted wananga status), Te Puni Kokiri reported to the Minister of Maori Affairs on the status of the Aotearoa Institute since being proclaimed a TEI. The report included an acknowledgement by the Ministry of Education that, while formal establishment procedures existed for the recognition of wananga as TEIs, there was no clear or coherent policy on the funding of set-up costs and ongoing financial support for wananga.¹⁷ In May 1994, the Ministry of Education, Treasury, and the State Services Commission estimated that institutions needed at least 1000 students to be self-sufficient under the EFTS system.¹⁸ At this time, the Aotearoa Institute was funded on the basis of 200 equivalent full-time students, and Raukawa was funded on the basis of 81.¹⁹ Despite the Ministry of Education's awareness that the EFTS funding system was not adequate for smaller institutions, the Cabinet committee recommended pressing on with considering Awanuiarangi for TEI status. This was done in the belief that a decision to decline TEI status for Awanuiarangi would generate accusations of bad faith.²⁰

In 1994, the Ministry of Education had estimated the initial capital works costs for wananga – covering land purchase, an administration building, a library, and teaching facilities – at approximately \$10 million, staged over a three-year period. However, the Ministry believed that any newly established wananga would have been

15. Report of the Cabinet Committee on Education, Training, and Employment, para 4

16. Ibid, para 5

17. Report to Minister of Maori Affairs from chief executive, Te Puni Kokiri, 1 July 1994 (doc A76, app 2)

18. Document A50(a), para 29

19. Ibid, para 14

20. Ibid, para 38(i)

operating as a PTE and would therefore have buildings and equipment.²¹ This was not the case. The July 1994 report by Te Puni Kokiri on Te Wananga o Aotearoa acknowledged the importance of wananga to Maori, and it recommended that:

- provision be made for capital establishment funding for wananga . . .;
- a special EFTS cost category be set up for wananga . . .;
- financial assistance should be provided for those organisations seeking ‘wananga status’ . . .;
- the term ‘wananga’ should be protected under law.²²

Te Puni Kokiri concluded that Te Wananga o Raukawa and Te Wananga o Aotearoa were being treated unfairly because the basis for their funding was not equal to that of other TEIs, and it saw this as being a critical issue that needed to be resolved.²³

As stated previously, the Ministry of Education and Te Puni Kokiri were to report to the Cabinet Committee on Education, Training, and Employment by 31 October 1994. This report was never completed. Instead, the report became subsumed by a larger overall review of tertiary education, culminating in the release of a Green Paper on tertiary education in September 1997. This was subsequently followed in November 1998 by a White Paper, which proposed new Government policy for tertiary education in New Zealand.

4.10 FUTURE DIRECTIONS FOR TERTIARY EDUCATION: THE WHITE PAPER

In September 1997, the Government released a Green Paper entitled *A Future Tertiary Education Policy for New Zealand: Tertiary Education Review*.²⁴ This outlined possible policy directions for tertiary education for the next two decades. The Green Paper was a consultative document designed to promote discussion and debate, in order that interested parties might provide feedback to the Government.

The Green Paper noted that a policy on wananga still needed further development, and it highlighted other issues relevant to Maori education and training. Most notably, it asked whether the term ‘wananga’ needed protection, and whether the relationship between the Crown and wananga could be better expressed through alternative arrangements to the standard Crown–TEI relationship. In setting the direction and priorities for the next two decades, the Government identified four objectives for tertiary education:

- improving opportunities for participation
- improving the participation and achievement of currently under-represented groups

21. Ibid, para 21

22. Document A76, app 2, para 7

23. Ibid, app 2, paras 8–15

24. Ministry of Education, *A Future Tertiary Education Policy for New Zealand: Tertiary Education Review*, New Zealand Government Green Paper, September 1997 (doc A7)

- improving incentives for the quality of qualifications, programmes and providers
- encouraging value for the students' and the Government's financial contribution.²⁵

The Green Paper identified possible ways of meeting these objectives and, following further work by the Government, resulted in the release of a White Paper entitled *Tertiary Education in New Zealand: Policy Directions for the 21st Century* in November 1998. This paper proposed modifications to the legislation and was intended to establish a coherent framework that would be the basis of tertiary education policy for the next 20 years. It outlined policies for the resourcing, quality assurance, research, information requirements, and governance and accountability arrangements of public TEIs. The White Paper stated that these policies would focus the tertiary sector on meeting the objectives set out in the Green Paper.

Crown counsel submitted that key policies outlined in the White Paper were expected to have a positive impact on the participation and achievement of Maori in tertiary education and on the responsiveness of tertiary providers to Maori and iwi.²⁶ Counsel submitted that the significant policies outlined in the White Paper were likely to be relevant to the claim, and that these intended policies would have to be considered in assessing the capital needs of wananga.

A significant policy change proposed in the White Paper is the abolition of the EFTS funding system. In 1999, the EFTS system is due to be replaced by the universal tertiary tuition allowance (UTTA), which will remove the cap on the number of students that the Government will subsidise. According to the White Paper, from 1999 all students studying for quality qualifications taught at viable New Zealand tertiary providers will receive taxpayer support for their study. Alan Sargison, the manager of the Tertiary Ownership Monitoring Unit, submitted that, as high-growth institutions, wananga would benefit from the enhanced funding of growth through the demand-driven resourcing under the UTTA system.²⁷

Another important policy outlined in the White Paper focused on the need to resolve capital disparity amongst institutions. The White Paper announced a subsidy differential to recognise the different levels of capital made available from public resources to each public institution. Mr Sargison submitted that wananga would benefit from this variable subsidy tuition regime. He explained that TEIs, including wananga, with a lower level of public capital relative to the number of students they enrol will receive a higher rate of subsidy, so that a more even-handed distribution occurs across the sector of all the public resources available for tertiary education.²⁸

Crown counsel submitted that wananga would also benefit from the phasing out of the Study Right policy (see sec 4.7). Study Right was designed to encourage certain groups to undertake tertiary education by paying a higher subsidy for those identified groups of students, but the majority of wananga students – including women, Maori, and mature students – do not meet the criteria for the additional support.²⁹

25. *A Future Tertiary Education Policy for New Zealand*, p 68

26. Document c6, para 54

27. Document c3, para 23

28. Ibid

29. Document c2, p 6

4.11 THE TRIBUNAL'S CONCLUSION ON THE 1998 WHITE PAPER

The above are a few examples of the new policies outlined in the White Paper that Crown counsel submitted would benefit wananga. The Tribunal believes that, given time, this may prove to be the case. However, the Tribunal feels that it must stress to the Government that this claim was accorded urgency because the financial need of wananga is immediate. The new policies announced in the White Paper might well prove to benefit wananga in time, but they will not benefit them now, when they need it most. In his supplementary evidence, Mr Sargison outlined that wananga would benefit from the variable tuition subsidy regime. Under examination from the Tribunal, however, he explained that the necessary legislation designed to give life to the new policies was due to go before Parliament some time in 1999. Implementation of this new policy might begin in the year 2000, and even then it would be a staged introduction. Mr Sargison admitted that it might be the year 2000 at the earliest before wananga would receive the variable tuition subsidy.

Although wananga will undoubtedly benefit from the additional funding guaranteed under the UTTA system, 1999 must necessarily be seen as a transitional year that will not immediately benefit wananga and address their very real concerns. The main concern of wananga is that they have not received capital funding, and this has served to place them in jeopardy. The Tribunal believes that the concerns of wananga are immediate and need to be addressed now.

4.12 CHOICE IN EDUCATION

The Ministry of Education's *Strategic Business Plan, 1998–2001* sets out the Government's goals for education until the year 2001. This plan states that the educational achievement levels of all students must rise over time and that the significant disparity in the educational achievement of some groups in our community must be reduced.³⁰ The Crown wants to offer New Zealanders education that responds 'quickly and effectively to wider social and economic impacts and the needs of different communities, society, and employers'.³¹ In that regard, Professor Graham Smith raised a very important issue for Maori education and the notion of responsiveness. Professor Smith believed that, through a lack of Crown resourcing, wananga were in danger of creating a culture of educational poverty. Wananga are being forced to rely on the goodwill and commitment of staff, students, and kaumatua to the kaupapa. While this provides an interim solution, the quality and responsiveness of educational programmes must necessarily be compromised in the long run.³²

Operating with a sustained lack of resources also has the potential to create negative views of wananga as educational institutions amongst Maori. As Dr Linda

30. Ministry of Education, *Strategic Business Plan, 1998–2001*, Wellington, Ministry of Education, 1998 (doc c1), pp 10–11

31. Ibid, p 11

32. Document A58, para 4

Smith pointed out, wananga have had little or no support for capital works or for infrastructure development. They have had to provide land, buildings, teaching facilities, technology, libraries, and staff from their own resources.³³ This Tribunal acknowledges that TEIs and, in particular, universities, have, at their foundation and in subsequent years, benefited significantly from private bequests from their constituent communities. Examples of this can be found in the records of those institutions. Universities have also had over 100 years to develop their research cultures, reputations, and traditions of educational excellence.³⁴

Wananga, in comparison, have had few, or no, endowments or infrastructure grants, little enabling support, and no realistic staffing base. There has been very little recognition by the Crown that wananga need significant financial support to develop libraries and build up their technology and their classroom and research facilities. There is an enormous disparity in the research capacity of universities as compared to wananga.³⁵ This fact alone could actively discourage individuals, both potential staff and potential students, from teaching at or attending wananga, and create a negative stereotype of the institution, owing to a poverty of resources. As a result, the rolls of wananga may remain static, drop, or become loaded with poor achievers, resulting in a reduction of funding and available courses. Added to this, good staff may leave, the capital costs may not be able to be maintained, and the wananga may either close or function at an unacceptably inadequate level.³⁶

The Ministry of Education states that it recognises the need ‘to contribute towards achieving better outcomes for Maori’. The Ministry has identified a need to ‘focus more strongly on building relationships, on consultation, and on working alongside Maori communities’.³⁷ The need for consultation with Maori over issues concerning Maori development is not just necessary, it is vital, and it is common sense.

4.13 FINANCIAL REPORTS ON WANANGA

Under section 220 of the Education Act 1989 (as added by section 37 of the Education Amendment Act 1990), all TEIs are required to submit annual financial reports to the Minister of Education. These reports must be prepared in accordance with the Public Finance Act 1989, and are reviewed by the Ministry of Education’s Tertiary Ownership Monitoring Unit. This unit undertakes additional review work and analysis, as required, for any institution identified as being at risk.³⁸

In January and February 1998, interim reports were received for 1997 and these revealed that the financial position of six TEIs required further research and analysis. Te Whare Wananga o Awanuiarangi was one of these institutions. The monitoring unit commissioned PricewaterhouseCoopers to analyse the 1997 provisional results

33. Document A59, para 18

34. Ibid, para 19

35. Ibid, para 20

36. Document C4, para 38

37. Document C1, p 6

38. Document A49, para 4

and the 1998 budgets of each 'at risk' institution. PricewaterhouseCoopers was to take into account historical performance and to identify key issues and risk factors, as well as visit each institution and explore key issues in order to assess the reasonableness of the TEI's 1998 budget and business plans.³⁹ In summary, the report to the monitoring unit was to highlight the major risks facing each institution; the likely financial outcome for 1998, with a range of conservative to optimistic results; and any significant medium-term viability issues.

PricewaterhouseCoopers was also commissioned, in mid-1998, to investigate the capital situation of Te Wananga o Raukawa and Te Wananga o Aotearoa. This resulted from a meeting held on 30 April 1998 between the Minister of Education, the Honourable Wyatt Creech, and the executive chairman of the Wananga Association, Turoa Royal, when the issue of capital funding for wananga was discussed. Subsequently, on 13 May 1998, the Minister wrote to Mr Royal outlining the basis of the EFTS funding structure and the special circumstances in which capital injections had been made to other TEIs. The Minister advised Mr Royal that he would like to consider further whether there was a 'specific and discrete rationale for providing some assistance to the three existing wananga that [did] not create a precedent'.⁴⁰ He also advised Mr Royal that he had asked officials to provide him with more information on the capital situation of the three wananga and that this process was under way.

The officials commissioned PricewaterhouseCoopers to obtain the necessary information. PricewaterhouseCoopers was required to visit each institution in order to explore the issues and to assess the reasonableness of the 1998 budget and business plan. In addition, they were required to prepare a report for the Tertiary Ownership Monitoring Unit on the adequacy of the current level of capitalisation to support the business plans of the wananga and on the prospects of the wananga obtaining capital on commercial terms.

4.14 THE REPORTS' FINDINGS

The reports carried out by PricewaterhouseCoopers were essentially to determine the financial state of wananga at that time. The reports revealed that the financial situations of Te Wananga o Aotearoa and Te Whare Wananga o Awanuiarangi were weak, and that they would be unable to generate sufficient cash flow to improve facilities or expand operations. The reports noted that, as a result of this, Aotearoa and Awanuiarangi were unlikely to secure funding on commercial terms. The report on Awanuiarangi found that the medium-term viability of the wananga was at risk. PricewaterhouseCoopers explained that the liabilities of Aotearoa exceeded its income and created a weak financial position. Owing to Aotearoa having to lease nearly all its facilities, the wananga was unable to build up any cash reserves that could be used for development.⁴¹

39. Ibid, para 5

40. Document A9

41. Document A49, apps 2, 7

The financial situation of Raukawa was somewhat better than that of the other wananga. This was largely because Te Wananga o Raukawa was able to lease land and existing buildings owned by the Otaki and Porirua Trusts Board. Several additional teaching units had also been constructed on this land. The position of Te Wananga o Raukawa was reported as being sound, owing to a number of factors, including the generation of funds through entrepreneurial activities and, most significantly, the use of volunteer tutors, which resulted in a relatively low ratio of personnel costs to revenue. It was estimated that volunteers, or kaiawhina, had saved Raukawa at least \$750,000 from 1996 to 1998, giving Raukawa a strong working capital.⁴² It was clear from the evidence presented to the Tribunal that the Ministry of Education expected Raukawa to continue to exploit this volunteer resource. Raukawa, however, is unwilling to do so.

The claimants agreed with the findings of the reports, since they were already aware of the situation, and believed it was confirmation of their need for capital injection from the Crown. In response to the reports, wananga engaged the services of McKenzie Podmore Limited to prepare a financial report examining the reasons why wananga were barely surviving as viable entities, and why they had little chance of viable growth in the future.

The McKenzie Podmore reports were brief but raised some interesting points for the Tribunal. Significantly, McKenzie Podmore found that the EFTS funding mechanism did not provide a sufficient capital component for wananga to operate on an equitable basis with other TEIs.⁴³ It is clear that, in order to survive, wananga have had to resort to utilising a combination of low-quality facilities, fewer or lower-paid tutors, a large pool of kaiawhina, and a benefactor prepared to make facilities available at low cost. The Ministry of Education suggested that another option is open to wananga – that of charging higher student fees. Wananga already charge significant student fees, albeit at the lower range of the TEIs with which they were compared.⁴⁴ The Tribunal believes that high fees can be a significant barrier to entry for Maori, a situation that wananga are attempting to avoid. We understand that many of the students already find it hard to meet the costs of their tuition programmes.

The Crown accepted that there was clear and compelling evidence from the claimants themselves and from the PricewaterhouseCoopers reports that two of the three wananga (Te Whare Wananga o Awanuiarangi and Te Wananga o Aotearoa) are in weak financial positions and not well placed to withstand any additional financial burdens. The Crown stated that Te Wananga o Raukawa did not appear to be in immediate financial difficulty, but noted that the claimants maintain that their operation and future development have been severely inhibited by lack of capital or establishment funding from the Crown.⁴⁵

42. Document A49, app 8

43. Document A38

44. Ibid, para 11.4

45. Document A75, para 4

4.15 CAPITAL INJECTIONS

In addition to receiving funding under section 199 of the Education Act 1989, TEIs are also eligible to apply for capital injections under section 15 of the Public Finance Act 1989. The Government's capital injection policy applies to all Government departments and Crown entities. Capital injections are intended to be a 'last resort' source of capital funds. To receive one, organisations must present a sound business case and a strategic business plan, and demonstrate whether the Crown would receive net positive benefits within a reasonable period of time (being benefits equal to or greater than the capital contribution).

Factors considered in deciding whether to grant a capital injection include the net financial benefits test, whether the capital injection would further the Government's objectives, and the overall financial position of the Government. If the net financial benefits test returns a negative result, the application is not necessarily declined, since Ministers can exercise discretionary approval.

4.16 THE APPLICATION FOR CAPITAL INJECTION BY TE WANANGA O AOTEAROA

On 5 March 1997, Te Wananga o Aotearoa submitted an application (excluding financial information) for a capital injection of \$8.78 million (excluding GST). Aotearoa asked for funding to assist with the implementation of eight separate projects, together with a contingency provision. The proposed capital expenditure for these projects was for, among other things, the acquisition of land, construction of buildings, and purchase of office equipment for seven of Aotearoa's eight campuses.

Aotearoa did not provide the required business case or strategic plan with their initial application. After receiving advice from the Ministry of Education, Aotearoa appointed a consultant to develop a business case so that the capital injection proposal could be analysed. The consultant (Fred Grace and Associates) submitted financial information in stages, the final report being received in June 1997. The wananga also provided a copy of its strategic plan. The Crown, however, was not satisfied that the information presented to the Ministry met the Cabinet guidelines for capital injections. In early 1998, a decision was made to present the information at hand to the Minister of Education, so that an assessment could be made as to whether it was worth Aotearoa proceeding with developing its case. This was done in order that consideration could be given to Aotearoa's proposal as part of the 1998 budget round.⁴⁶

Owing to budget constraints (in particular the coalition agreement, which placed a limit of \$900 million over three years on all capital spending by the Government), the Minister of Education declined to include a capital injection for Aotearoa as part of the 1998 budget. The Minister did not discount the possibility of considering the

46. Document A47, para 66

application again for the 1999 budget. This decision was communicated to Aotearoa at a meeting in May 1998, and was formally confirmed in a letter dated 18 May 1998.⁴⁷

4.17 CAPITAL INJECTIONS FOR OTHER TEIS

The claimants submitted that some TEIS had received capital injections since 1990. The Tribunal believes that this allegation has significance for this claim, and accordingly, it sought to investigate the matter further. Some senior officials of the Ministry of Education were not prepared to acknowledge that a few TEIS had received capital establishment funding after the passing of the Education Amendment Act 1990. Mr Catherwood was the manager responsible for processing the applications for capital injections from those TEIS that have received capital grants under the capital injection policy. Both in his evidence-in-chief and when questioned by claimant counsel and the Tribunal, he sought to distinguish between capital funding and ‘capital grants under the capital injection policy’.⁴⁸ One of the four cases raised before the Tribunal concerned the Manawatu Polytechnic and the Manawatu College of Education, which shared a site at Hokowhitu in Palmerston North. Mr Catherwood told the Tribunal that Cabinet had ‘agreed to make a net contribution of \$18 million . . . to enable the Polytechnic to move from a site it had previously shared with the College of Education’.⁴⁹

The Tribunal finds it difficult to distinguish that arrangement from one of capital establishment funding. The polytechnic now had new, much larger, and fully serviced facilities and the college of education, which took over the land and buildings previously housing the polytechnic, had acquired those most significant additional capital assets without cost.

Mr Catherwood explained that other TEIS had received capital injections in the past, but he went on to stress that these injections had been for specific purposes and were considered on a case-by-case basis prior to the coalition funding constraints. His evidence gave examples where other TEIS had been granted capital injections since the change of policy that brought capital funding to an end. They included the following:

- (a) *Northland Polytechnic*: In October 1996, Cabinet agreed to make a capital injection of \$578,000 to Northland Polytechnic. In addition, \$587,000 from the current Vote Education (property) was expended to purchase classrooms for the polytechnic. The purpose of both these grants was to enable Northland Polytechnic to leave its Kerikeri site and to accommodate the growth of the local high school with which it shared the site.
- (b) *Wairarapa Community Polytechnic*: In 1994, a capital injection of \$419,671 and a loan of \$629,560 were provided to Wairarapa Polytechnic as part of an overall financial rescue package.

47. Document A47, para 67

48. Ibid, para 69

49. Ibid, para 70

- (c) *Wanganui Regional Community Polytechnic*: In mid-1997, a loan of \$2.8 million was made to Wanganui Polytechnic to cover a three-month period to address financial concerns. This loan was repaid when the polytechnic obtained a loan from a commercial source. Crown counsel argued that this was not a 'capital injection' as such but a separate appropriation.⁵⁰
- (d) *The New Zealand School of Dance and the New Zealand Drama School*: The New Zealand School of Dance and the New Zealand Drama School are PTEs, funded under section 321 of the Education Act 1989, which provides for resourcing of 'other education services'. In 1993, Cabinet agreed to provide a capital injection of \$1.913 million in the form of a suspensory loan (to be written off after five years) to a joint trust, representing both schools, to assist in the development of purpose-built accommodation. This development followed the formal transfer of administration of these national schools from the former Queen Elizabeth II Arts Council to Vote Education in 1990.

These examples demonstrate that, since 1990, the Government has approved the allocation of Government funds for TEIs (or similar institutions) to be used for capital establishment purposes, and to assist financially troubled institutions.

4.18 CONCLUSION

The 1990 amendments to the Education Act 1989 implemented major policy changes in the area of tertiary education and revolutionised the funding of TEIs. Most importantly, for the purposes of this claim, it introduced two new policies that have a direct bearing on this report.

First, the 1990 amendments introduced the wananga class of TEI. This was a forward-thinking educational step by the Government towards recognising that all New Zealanders had a right to choose to be educated, at a tertiary level, in a Maori context. This allowed an organisation already providing educational services as a PTE, such as Te Wananga o Raukawa, Te Wananga o Aotearoa, and, later, Te Whare Wananga o Awanuiarangi, the opportunity to apply for statutory recognition as a TEI and to accrue all the rights and obligations of such an institution.

At the same time as the 1990 amendments introduced the wananga class of TEI, they also abolished the policy granting capital establishment funding. This meant that, although wananga could be statutorily established, the Crown no longer provided funds to establish a TEI with any land, buildings, plant, and equipment that it may require to begin operations. As a result of this far-reaching amendment to the recently enacted Education Act 1989, the three wananga were not eligible for establishment funding, despite a policy outlined in *Learning For Life: Two* that could have made seeding funding available for wananga.

In being denied establishment or seeding funding, wananga were placed at a distinct disadvantage in comparison to other TEIs, all of which had received pre-1990

50. Ibid, para 74

establishment funding. As the financial reports of both parties clearly showed, the absence of a capital base has had a negative impact on the operation of all three wananga, particularly Te Whare Wananga o Awanuiarangi, and Te Wananga o Aotearoa. The operation and development of Te Wananga o Raukawa have also been severely inhibited by a lack of capital or establishment funding. The evidence of this is clear.

A key plank of the 1990 tertiary reforms was the decentralisation of control to the institutions themselves, thereby encouraging their autonomous and independent development. In terms of capital funding, it was envisaged that if TEIS wanted or needed to invest in capital assets, they would do so by utilising their EFTS grants, raising other sources of operating revenue, selling property, or borrowing on a commercial basis. Although special capital injections could be made, these would be made only in exceptional circumstances and would be contingent on overall funding for tertiary education and training.

It is clear that the EFTS funding system does not adequately protect smaller institutions such as wananga. Evidence clearly shows that wananga are currently unable to accumulate sufficient revenue to undertake major capital works, because it is estimated that at least 1000 students are required for TEIS to be self-sufficient under the EFTS system. The evidence is also clear that the Crown has been aware of this fact since at least 1994. Wananga were therefore established as TEIS under policy that denied them establishment funding and that did not recognise their ongoing specific needs as small institutions.

The financial needs of Te Wananga o Aotearoa became so desperate that it applied for a capital injection in 1997. Despite significant capital injections to other TEIS in the past, the Minister of Education declined Aotearoa's application because of budget restraints.

In passing the Education Amendment Act 1990, the Government gave to Maori with one hand and took away with the other. It enabled the statutory establishment of Maori-based TEIS, yet it denied the essential funding necessary for the physical establishment and development of such institutions. We believe that the Crown's failure to provide capital establishment funding to the three TEIS known as wananga has clearly prejudiced them in their efforts to provide tertiary education in a Maori context. Thus, the most significant, and almost certainly the only realistic, means by which wananga can obtain funding for their capital development is by a capital injection from the Crown. The Tribunal, therefore, supports such an immediate capital injection for wananga.

CHAPTER 5

TREATY PRINCIPLES

5.1 INTRODUCTION

This claim is concerned with the urgent matter of the funding of tertiary education institutions known as wananga. While earlier Tribunal reports have expressed views about Maori and education, this is the first claim in which the Tribunal has dealt with tertiary education.

Education is a lifelong process. It is, in some respects, difficult to separate the concept and role of tertiary education from those of compulsory education. Education is a social good. Education equips us with basic tools that are necessary for us to function as a society. It is difficult to imagine a functional modern society that lacks the benefits of reading, mathematics, history, science, or geography. The basics of these subjects are taught in all our schools. Up to a certain age, some subjects, such as English and mathematics, are compulsory. These forms of knowledge are seen by the State as being basic needs for each individual within our society. All children up to the age of 16 must receive a minimum amount of education. The Crown clearly has an obligation to see that all its people are properly educated in order that they may carry out their political and social obligations as citizens.

Maori have always regarded education as an important vehicle for improving their quality of life. Education is one of the primary vehicles for the improvement and development of Maori. The development of wananga, tikanga Maori based TEIs, is seen as a natural extension of kohanga reo, kura kaupapa, and whare kura. Maori have actively engaged with European education since its first introduction in New Zealand. Largely missing from this vision has been the significant partnership input that Maori could have provided in education if only their aspirations had earlier been recognised and catered for. That Maori continue to be so heavily represented in negative educational statistics and low tertiary participation rates should be a matter of grave concern for both the Government and New Zealand society.

5.2 THE TREATY OF WAITANGI

The claimants contend that the failure by the Crown to provide sufficient funding to wananga breaches all three articles of the Treaty of Waitangi.

The preamble to the Treaty sets out the intentions of the Crown towards Maori. The English text states that the Queen was ‘anxious to protect their just Rights and

Property and to secure to them the enjoyment of Peace and Good Order'. It goes on further to state that Her Majesty was:

desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects.

It is in the preamble that we receive our understanding of the spirit in which the chiefs who signed the Treaty entered the agreement.

5.3 PARTNERSHIP

The Treaty created a reciprocal relationship between Maori and the Crown. It gave the Crown both the right to govern and the obligation to protect, while guaranteeing to Maori their rights and property and giving them all the rights and obligations of British subjects. Of particular importance to Maori was that it gave them equality of status in the partnership created by the Treaty.

The Waitangi Tribunal has repeatedly commented on the partnership created between Maori and the Crown by the Treaty. For the purposes of this report, we cite the *Preliminary Report on the Te Arawa Representative Geothermal Resource Claims*:

This principle [of partnership] was firmly established by the Court of Appeal in the *New Zealand Maori Council* case where it was authoritatively laid down that the Treaty signifies a partnership and requires the Pakeha and Maori partners to act towards each other reasonably and with the utmost good faith.

While the needs of both cultures must be provided for and compromise may be necessary in some cases to achieve this objective, the Treaty guarantee of rangatiratanga requires a high priority for Maori interests when proposed works may impact on Maori taonga.¹

The claimants have argued that it is the right of Maori under the Treaty to be able to choose to be educated, at the tertiary level, in a Maori controlled and directed environment. The claimants believe that the Treaty partnership gives them the right to receive establishment funding.

The Crown submitted that it has already acknowledged the Treaty obligation by recognising the three wananga as TEIS. The Tribunal notes that this was an important step by the Crown – one that recognises the singular importance of matauranga Maori, tikanga Maori, and ahuatanga Maori to New Zealand education and to society as a whole. The Crown should be applauded for recognising wananga as TEIS on the same level as mainstream universities, polytechnics, and colleges of education. In doing this, the Crown has expressed goodwill towards its Treaty partner. We believe that the Crown has shown a measure of commitment to wananga Maori and the

1. Waitangi Tribunal, *Preliminary Report of the Waitangi Tribunal on the Te Arawa Representative Geothermal Resource Claims*, Wellington, Brooker and Friend Ltd, 1993, p 33

Treaty in its exercise of kawanatanga. However, this commitment has been qualified by the failure to provide wananga with capital establishment funding.

Recognition as TEIs has not afforded wananga the security that they desired. Under the amendments made to the Education Act 1989 by the Education Amendment Act 1990, wananga were both recognised as a category of TEI and, at the same time, denied access to establishment funding as TEIs. A question arises for the Tribunal as to whether recognition of wananga as TEIs is a sufficient commitment to the Treaty by the Crown. In our clear opinion, it is not.

It is abundantly clear to the Tribunal that the equality of partnership has yet to be achieved. In no small measure, this claim provides a real opportunity for the Crown as Treaty partner to acknowledge and remedy part of the shortfall in its meeting of Maori expectations, aspirations, and rights in education, as reflected in this claim.

Wananga are statutorily charged with the task of maintaining, disseminating, and advancing matauranga Maori. In the view of the Tribunal, the principle of partnership places a responsibility upon the Crown to support wananga adequately enough to ensure that they are not prejudiced in their ability to carry out a Crown-appointed task.

5.4 ARTICLE 1: KAWANATANGA – GOOD GOVERNANCE

The cession, under article 1 of the Treaty of Waitangi, of sovereignty, or what Maori clearly understood from the Maori version to be kawanatanga, or governance, gave to the Crown the power to legislate for all matters relating to ‘Peace and Good Order’.²

The Crown has argued that at the heart of this claim lies an issue over the right of the Crown to exercise its kawanatanga as it sees fit. As Crown counsel correctly pointed out, the allocation of limited resources is an issue that is ultimately one for the Government of the day to exercise its kawanatanga over for the benefit of all New Zealanders.

The claimants do not dispute this. The broad question is whether the Crown has exercised its right to govern with due recognition of its Treaty partner’s rights and the Treaty guarantees. The rights and responsibilities of the Crown to govern were upheld by the Judicial Committee of the Privy Council in *New Zealand Maori Council v Attorney-General* (the broadcasting assets case), where Lord Woolf, delivering the judgment of their lordships, accepted the reciprocal nature of the rights and duties ensuing from the Treaty.³ In return for being recognised by Maori as the legitimate Government of the whole nation, the Crown undertook duties of protection. The Tribunal has examined the findings of this case in its 1994 *Maori Electoral Option Report*, quoting this passage:

The Treaty refers to this obligation in the English text as amounting to a guarantee by the Crown. This emphasises the solemn nature of the Crown’s obligation. It does not

2. See Waitangi Tribunal, *Kiwifruit Marketing Report 1995*, Wellington, Brooker’s Ltd, 1995, sec 4.5

3. *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513, 517 (PC)

however mean that the obligation is absolute and unqualified. This would be inconsistent with the Crown's other responsibilities as the Government of New Zealand and the relationship between Maori and the Crown. This relationship the Treaty envisages should be founded on reasonableness, mutual cooperation and trust. It is therefore accepted by both parties that the Crown in carrying out its obligations is not required in protecting taonga to go beyond taking such action as is reasonable in the prevailing circumstances. While the obligation of the Crown is constant, the protective steps which it is reasonable for the Crown to take change depending on the situation which exists at any particular time. For example in times of recession the Crown may be regarded as acting reasonably in not becoming involved in heavy expenditure in order to fulfil its obligations although this would not be acceptable at a time when the economy was buoyant. Again, if as is the case with the Maori language at the present time, a taonga is in a vulnerable state, this has to be taken into account by the Crown in deciding the action it should take to fulfil its obligations and may well require the Crown to take especially vigorous action for its protection. This may arise, for example, if the vulnerable state can be attributed to past breaches by the Crown of its obligations, and may extend to the situation where those breaches are due to legislative action. Indeed any previous default of the Crown could, far from reducing, increase the Crown's responsibility.⁴

Counsel for Te Whare Wananga o Awanuiarangi submitted that wananga represent for many Maori a desirable option for tertiary education. Counsel also submitted that wananga have had the effect of increasing the participation in tertiary education of Maori, particularly those people who would not normally participate, and that wananga have the power to create further substantial increases in Maori participation. On that basis, Awanuiarangi submitted that providing funding for wananga is a sound exercise of kawanatanga.

The Crown has admitted that it needs to do further work in order to establish a proper relationship with wananga. In the passage quoted above from its broadcasting assets judgment, the Privy Council stressed that, if 'a taonga is in a vulnerable state, this has to be taken into account . . . and may well require the Crown to take especially vigorous action for its protection'.⁵ The Tribunal believes that vigorous action by the Crown is indeed necessary in order to aid wananga by providing them with a meaningful and sound capital base. The future educational needs of many New Zealanders are at risk.

5.5 ARTICLE 2: RANGATIRATANGA

Article 2 of the Treaty guarantees to Maori their rangatiratanga over all they possess for as long as they wish to retain it. Rangatiratanga has been examined in many Tribunal reports, but for the purpose of this claim we cite the *Report on the Muriwhenua Fishing Claim*:

4. *New Zealand Maori Council v Attorney-General*, p 517; Waitangi Tribunal, *Maori Electoral Option Report*, Wellington, Brooker's Ltd, 1994, sec 3.4

5. *New Zealand Maori Council v Attorney-General*, p 517

‘Te tino rangatiratanga o o ratou taonga’ tells of the exclusive control of tribal taonga for the benefit of the tribe including those living and those yet to be born. There are three main elements embodied in the guarantee of rangatiratanga. The first is that authority or control is crucial because without it the tribal base is threatened socially, culturally, economically and spiritually. The second is that the exercise of authority must recognise the spiritual source of taonga (and indeed of the authority itself) and the reason for stewardship as being the maintenance of the tribal base for succeeding generations. Thirdly, the exercise of authority was not only over property, but [over] persons within the kinship group and their access to tribal resources.⁶

As we have already stated, the Treaty guarantees to Maori all that they possess for so long as they choose to retain it. However, when the Crown first became involved in the provision of education for Maori, it thought of education only in English terms, and the possibility that there was a partnership right of Maori to be educated on their terms was totally ignored. There is clear evidence that the speaking of Maori in schools was often banned, and those caught speaking Maori were likely to be punished.⁷ Despite the explicit Treaty guarantees to Maori over all they possessed and valued, matauranga Maori was systematically dismissed and erased by the English-derived education system as being worthless. This was seen by Pakeha as being a natural process of ‘civilising’ Maori, a clear example of ethnocentric thinking, which was concerned with the assimilation of Maori into the European way of life. Past legislative actions of the Crown have effectively resulted in a raupatu over matauranga Maori. It cannot be denied that the process has resulted in tragic damage to Maori society.

Wananga hope to increase the participation of Maori in tertiary education. Modern wananga are also attempting to reclaim and revitalise te reo and matauranga Maori. It is clear to the Tribunal that the three claimant wananga have demonstrated rangatiratanga in the inception and creation of their institutions. If we may paraphrase the words of Charles Royal, it is clear to us that all three wananga have taken on the responsibility to govern themselves and have accepted the responsibility of improving the lives of their students and associated communities.⁸ Wananga began as Maori initiatives designed to maintain and extend matauranga for the benefit of the living and those yet to be born. In the case of Te Wananga o Raukawa, it was realised that, unless something was done to revitalise matauranga Maori, the tribal base would be threatened socially, culturally, economically, and spiritually.

Rangatiratanga involves, at the very least, a concept of tribal self-management. The wananga that have been recognised as TEIs have all developed out of the efforts of Maori iwi groups to provide tertiary education to, in the first instance, their own people; in the second instance, Maori students; and, in the third instance, anyone

6. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, 2nd ed, Wellington, Government Printing Office, 1989, sec 10.3.2

7. See Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Maori Claim*, 3rd ed, Wellington, Brooker’s Ltd, 1993, sec 3.2

8. Document A44, secs 4.1.1, 4.1.5

who wishes to embrace this particular form of education. As such, the efforts of these tribal groups to create and sustain TEIs is a vital exercise of rangatiratanga.

The establishment of wananga as TEIs recognised by the State represents an attempt to engage actively with the Crown in the exercise of rangatiratanga in the management of new forms of tribal and Maori education. The Crown's Treaty obligation is to foster, support, and assist these efforts. In doing so, the Crown needs to ensure that wananga are able to remain accountable to, and involved in, the communities that created them.

The claimants contend that the Crown's failure to provide establishment funding for necessary infrastructure restricts their ability to exercise their rangatiratanga. Further to this, and as this chapter has already stated, wananga are statutorily compelled to have regard to teaching and research that maintains and advances mātāuranga Māori. We believe that, in not financially establishing wananga, the Crown has restricted their rangatiratanga, and thus their ability to carry out an obligation both to their own iwi and to the Crown as a TEI.

5.6 IS WANANGA A TAONGA?

Wananga is an ancient process of learning that encompasses te reo and mātāuranga Māori. Wananga embodies a set of standards and values. As a verb, 'to wananga' is to make use of mātāuranga Māori in all its forms in order to teach and learn. It is clear that te reo Māori and mātāuranga Māori are taonga. Wananga is given life by these taonga, and in the reciprocal nature of the Maori world, wananga also serves to give life to te reo and mātāuranga. Each is dependent on the others to nurture, sustain, and develop. Wananga as a system of learning, and a repository of mātāuranga Māori, is a taonga in its own right, but it does not exist in isolation from te reo and mātāuranga Māori. Modern institutions claiming status as wananga and calling themselves wananga need to demonstrate that they recognise and incorporate the set of standards and values embodied by wananga. Whether they do will in the end be judged by the communities they serve.

As the Tribunal noted in the *Report on the Muriwheuna Fishing Claim*, distortions can occur when Maori concepts are translated into Western terms.⁹ 'Wananga' has suffered this fate. It appears to the Tribunal that the Government has taken a narrow translation of the word 'wananga' to mean a Maori form of university. Mainstream universities adopting the Maori term and calling themselves 'whare wananga' reinforce this incorrect application. The use of the word 'university' is protected by legislation. The Tribunal finds it ironic that a wananga, a tikanga Māori based TEI, cannot call itself a 'university', yet a mainstream university based on tikanga Pakeha can call itself a 'whare wananga'. The Tribunal believes that the Government has a Treaty obligation actively to protect the integrity of the set of values and standards that wananga embodies.

9. *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, sec 10.3.2

The Tribunal suggests that one way that the Government could carry out its Treaty obligation would be to revisit the way that the New Zealand Qualifications Authority audits modern wananga. Audits should be carried out by people with the expertise to measure and judge the set of standards and values embodied in wananga.

5.7 ACTIVE PROTECTION

In assuming the right to govern, the Crown took upon itself the duty actively to protect Maori interests. The Tribunal has stressed this in various reports and the Court of Appeal endorsed this view in 1987.¹⁰ That decision was later qualified by the broadcasting assets judgment. However, for the purposes of this claim, the Tribunal believes that vigorous action is necessary on the part of the Crown in order to protect the wananga, institutions devoted to the protection of te reo and matauranga Maori and taonga in their own right.

In 1993, the Tribunal issued the *Preliminary Report on the Te Arawa Representative Geothermal Resource Claims*. That Tribunal found that:

Article 2 of the Treaty requires the Crown actively to protect the claimants' respective interests in both the benefit and enjoyment of their taonga and the mana or authority to exercise control over them. Failure to afford such protection constitutes a breach of Treaty principles.

The degree of protection given to the claimants' taonga will depend on the nature and value of the resource. The value to be attached to their taonga is essentially a matter for the claimants to determine. Such value is not confined to, or restricted by, traditional uses of the taonga. It will include present day usage and such potential usage as may be thought appropriate by those having rangatiratanga over the taonga. In the case of a highly valued, rare and irreplaceable taonga of great spiritual and physical importance, . . . the Crown is under an obligation to ensure its protection (save in very exceptional circumstances) for so long as Maori wish it to be so protected.¹¹

The claimants have argued that wananga are a taonga. Wananga is essentially a process of education in a Maori context. This Maori context places primary significance on matauranga Maori and te reo Maori. Despite Maori initiatives to halt the decline of te reo Maori, the language is still in a perilous state. If wananga Maori fail through a lack of establishment funding and resourcing, then the Crown will have failed an institution that devotes a significant proportion of its activities to protecting and revitalising te reo Maori, a taonga that the Crown has admitted is in need of special protection. It might be argued that other TEIs have Maori studies departments that provide this protection. While this may be true to a certain extent, te reo Maori and matauranga Maori are not central tenets to the activities of mainstream universities and polytechnics in the way they are to wananga. Wananga are statutorily

10. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, 664 (CA)

11. *Preliminary Report on the Te Arawa Representative Geothermal Resource Claims*, pp 33–34

compelled to have regard to teaching and research that maintains ahuatanga Maori and tikanga Maori. In this regard, they are unique.

There can be no doubt that te reo Maori and matauranga Maori are highly valued and irreplaceable taonga for New Zealand. These taonga exist nowhere else. The Crown has a duty actively to protect these taonga. The Tribunal believes that wananga Maori are a modern application of an ancient process that was responsible for the protection, maintenance, and advancement of these taonga and that the Crown should move actively to ensure their viability and survival. The Tribunal is compelled to stress, in the strongest possible terms, its belief that if wananga fail because of undercapitalisation, then the Crown has done a disservice, not only to Maori but to New Zealand society as a whole.

To expect wananga to shoulder all the responsibilities of TEIs without giving them the same pre-1990 benefits of capital funding is unfair. To imply that the 1990 policy change abolishing capital establishment funding is not a Treaty issue is incorrect. Every legislative action of the Crown that affects Maori is a Treaty issue, whether the legislation makes explicit mention of the Treaty or not. The Tribunal notes, however, that the Crown, most responsibly, has acknowledged that the 1990 policy change has operated so as to place an unfair burden upon wananga. The Tribunal finds that the vision of wananga, to re-establish te reo Maori and matauranga Maori and to revitalise the aspirations of Maori people, has been prejudiced by a lack of substantial capital funding as a direct result of the new funding policy created by the provisions introduced by the Education Amendment Act 1990.

To state that missing out on capital establishment funding was ‘an unfortunate side effect’ of policy change, as suggested by Mr Catherwood, is proof to the Tribunal that the full implications of the place and the role of the Treaty of Waitangi in tertiary education were not fully realised or considered when the law was amended. It is clear to the Tribunal that the Crown was obviously expecting Maori institutions to apply for TEI status under the 1990 amendments, hence the inclusion of the wananga class of TEI. However, it is apparent to the Tribunal that the Crown was simply not prepared to pay for any establishment funding that such new institutions might require. We note, however, that the Government nevertheless saw fit to provide the Manawatu College of Education and Manawatu Polytechnic with what, the Tribunal finds, was significant additional capital funding in 1996. We query whether the Crown has applied its own policy with consistency, let alone with full consideration of its Treaty obligations.

We note further, in this respect, the question of whether the Ministry had a responsibility to consult with Maori prior to the enactment of the Education Amendment Act 1990 over the impact that it might have on Maori tertiary education. There was no consultation with iwi or the claimants about the proposed far-reaching changes to the long-established capital funding policy, which have had such a dramatic negative impact on wananga.

In regard to the New Zealand School of Dance and Drama, the Crown moved actively to protect a PTE, an institution that Mr Catherwood, in response to questioning, stated was an organisation with which the Crown had a ‘special

relationship'. In 1993, Cabinet agreed to provide a capital injection of \$1.913 million to the school. The Tribunal notes, of course, that the Crown has a special relationship with its Treaty partner that it should not lose sight of.

The Tribunal finds that the Crown is under an obligation actively to protect Maori rights. This includes the right to participate in a tertiary education in a Maori paradigm, which at this time is provided only by wananga.

5.8 ARTICLE 3: ORITETANGA (CITIZENSHIP)

Article 3 of the English version of the Treaty of Waitangi states:

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

Article 3 raises a problem of interpretation, which can be viewed in two ways. First, the traditional view of article 3 is that, in granting 'royal protection' and the rights and privileges of British subjects to Maori, this article was intended to bestow and protect Maori rights as British subjects only and to extinguish traditional Maori rights. Article 3 has often been used as a validation of Crown policy that sought to extinguish Maori tradition. This Tribunal does not share this view. While the Treaty did confirm new rights to Maori – 'the Rights and Privileges of British Subjects' – it did not deny Maori the right to be Maori.

Nowhere within the Treaty is there any suggestion, explicit or implicit, which states that Maori must abandon their rights, culture, traditions, knowledge, or world view. It is the view of this Tribunal that the Treaty confirmed to Maori their right to continue to live under their own customs and traditions, while at the same time bestowing upon them additional rights as British subjects. The two sets of rights are far from mutually exclusive.

The claimants argued that Maori have been disadvantaged, in educational terms, owing to the policies of the past, which have in turn resulted in adverse social and economic effects. It was submitted to the Tribunal that the Treaty was being breached at two levels with regard to wananga. First, wananga, as institutions that protect the maintenance of te reo and tikanga Maori, were clearly disadvantaged by the policy change that denied them capital establishment funding. Secondly, the hundreds of students who attend these wananga receive an education that is inadequately supported by resources. The claimants submitted that, if this situation is allowed to continue, it can be predicted that Maori students will develop a negative view of their institutions and the rolls of wananga will remain static, drop, or become loaded with poor achievers, resulting in a reduction of funding and available courses. The final result may well be that good staff, both full-time and kaiawhina, will leave, the capital costs will not be able to be maintained, and the wananga will be forced to close, thus denying New Zealanders the option of a tertiary education in a Maori context.

The Ministry of Education has stated that it wants to offer New Zealanders choice in education. In 1988, the Muriwhenua fisheries Tribunal discussed the principle of options and found that:

The Treaty provided an effective option to Maori to develop along customary lines and from a traditional base, or to assimilate into a new way. Inferentially it offered a third alternative, to walk in two worlds. That same option is open to all people . . . it was not intended that the partner's choices could be forced.¹²

If wananga close because of a lack of establishment funding, then the tertiary education options available to all New Zealanders will have been limited. If wananga fail through undercapitalisation, those who have chosen wananga will be forced to look elsewhere.

The Tribunal believes that the Crown has acted responsibly and in good faith towards Maori by statutorily recognising wananga and by charging them with the task of offering tertiary education in a Maori context. In doing this, the Crown has recognised both the right of its Treaty partner and the right of all New Zealanders to choose a Maori-controlled tertiary education.

We believe, however, that the Crown has not provided adequate protection to wananga, which have great potential to work with the Crown to help raise the development and aspirations of all New Zealanders. The Crown has stated that it wants to offer choice in tertiary education to all New Zealanders, but if the wananga fail, the Tribunal believes that there will be no real choice, for Maori or non-Maori, within the tertiary system at this time.

12. *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, sec 10.5.4

CHAPTER 6

CONCLUSIONS, FINDINGS, AND RECOMMENDATIONS

6.1 CONCLUSION

Maori currently rank highly in the negative statistics of all social indicators from education to health. While we did not receive substantial historical evidence, we believe it would not be difficult to argue that the seeds of current Maori underachievement in the modern tertiary education system were sown by some of the past education policies of the Crown. The Crown is concerned to improve the participation and achievement of under-represented groups in tertiary education, including Maori, and it acknowledges the positive contribution that wananga are making to Maori education.¹

Modern wananga are attempting to fulfil various important objectives. Two of the principal reasons for the development of modern wananga by Maori were to address the current underachievement of Maori in tertiary education and to help in the development of New Zealand society generally. Another primary objective of wananga is to help revitalise te reo Maori and matauranga Maori. Claimant witnesses clearly demonstrated to us that all three wananga were committed to the positive development of Maori and contribute to the wider education of New Zealand as a whole.

Wananga are a significant Maori tertiary education initiative based on an ancient Maori process of advanced learning. The wananga system of learning has a set of standards and values, and is dependent on te reo and matauranga Maori. Three wananga Maori have successfully sought TEI status in the belief that this statutory recognition would secure them a successful future, enabling them to provide significant help in the development and advancement of Maori society. The various financial reports that we received in evidence demonstrate that currently all three wananga are financially insecure and unable to expand their operations.

The Government acknowledges that wananga are improving Maori education, yet it has denied to them the capital establishment funding granted to all other TEIs. The Crown has also declined an application for capital injection by Te Wananga o Aotearoa. It was denied, despite there being several precedents of substantial funding being allocated to other TEIs under this policy. On equitable terms alone, this was unjust. Regardless of Treaty rights, wananga, as TEIs, deserve to be treated fairly.

1. Paper 2.4(a), para 11

Wananga now lack a stable capital base from which to deliver their educational services. The evidence clearly shows that this has served to compromise both their financial viability and their integrity as a significant Maori educational initiative.

6.2 SUMMARY OF FINDINGS

Our findings are as follows:

- (a) Pursuant to section 6(3) of the Treaty of Waitangi Act 1975, the Tribunal must consider whether a claim is well founded or not. We find that this claim is well founded.
- (b) Having had regard to all the circumstances of the case, we find that the Crown has breached the principles of the Treaty in failing to honour its obligation actively to protect Maori rights in matters relating to tertiary education; in particular, by failing to provide wananga with capital establishment grants in a similar manner to mainstream TEIS.
- (c) We find that the Maori process of teaching and learning known as wananga is a taonga that is inextricably linked with te reo Maori and matauranga Maori.
- (d) We find that the Crown has further failed adequately to protect and support its Treaty partner through the EFTS system of funding, which does not adequately cater for the specific needs of wananga.
- (e) We find that, after 1990, the Crown did provide capital injections to some TEIS but refused to do so for wananga, thereby prejudicing wananga.

6.3 INTRODUCTION TO RECOMMENDATIONS

There were a number of problems that faced the Tribunal when it came to determining the nature of the recommendations that it should make to the Government on how it might resolve the settlement of this claim. These problems arose from a number of factors, including:

- (a) the differences in the nature of the formal and informal leasehold properties and the freehold ownership of the land occupied by the three wananga and their various satellites;
- (b) the different financial and capital positions of the wananga, taking into account their land, buildings, funds, plant, equipment, and liabilities;
- (c) the different dates on which the wananga were established as education providers; and
- (d) the different rolls, both present and forecast, that each wananga caters for.

The Tribunal is concerned that the Government be provided with a formula enabling it to achieve a just and transparent settlement of the claim. In undertaking that task, the Tribunal is equally concerned to assist in the sensible resolution of the claim.

There is concern expressed by the claimants, in the written closing submissions and in oral submissions of their counsel, that the Crown should not seek to deal with


the settlement of their claim on a 'Band-Aid' or drip-feed basis. There is, in the clear view of the Tribunal, an urgent need that the settlement of this claim be achieved by injections of capital to place wananga on the footing that would have applied had they been exempted from the legislative provisions ending initial capital funding in 1990.

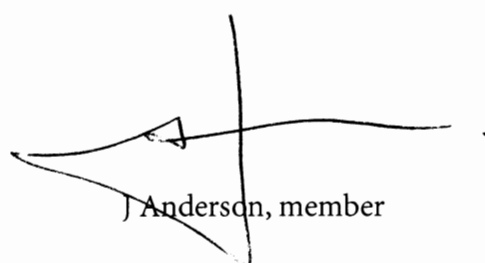
6.4 RECOMMENDATIONS


We recommend that a one-off payment of a capital sum be made to each of the wananga sufficient to cover the following objectives:

- (a) to compensate the claimants, as a matter of urgency, for the expenditure of capital and labour that they have invested in the land, buildings, plant, and equipment on the various sites that they occupy, and on which they operate their teaching programmes and provide accommodation and other necessary amenities for their staff and students;
- (b) to make a payment to each of the claimants that will be sufficient to cover the real cost of bringing the buildings, plant, and equipment of the various establishments up to a standard comparable to other TEIs and commensurate with the needs of their existing and anticipated rolls over the next three years; and
- (c) to meet the proper costs and disbursements of the claimants incurred in the preparation and presentation of their claims.

Dated at Wellington this 22nd day of April 1999


Judge R R Kearney, presiding officer


J Anderson, member


K Walker, member



APPENDIX I

STATEMENT OF CLAIM

APPLICATION TO CONVENE URGENT HEARING OF
WAITANGI TRIBUNAL ON BEHALF OF
NGA TAUHU O NGA WANANGA ASSOCIATION

COMPRISING

Te Wananga o Aotearoa – 6 North Island Campuses

Represented by
Chief Executive and Tumuaki
Rongo Herehere Wetere ONZM
of Ngati Maniapoto,
the eighth largest Tribal Iwi in Aotearoa
Mo Te Waka o Tainui

Te Wananga o Raukawa – Otaki

Represented by
Chief Executive and Tumuaki
Professor Whatarangi Winiata FCA, Bcom, MBA, PhD
of Ngati Raukawa Ki Te Tonga,
Ngati Toa Rangatira
Mo Tainui Waka

Te Wananga o Awanuiarangi – Whakatane

Represented by
CEO and Tumuaki
Himiona Nuku MA Dip Tchg
Mo Mataatua Waka

Te Tauihu o Nga Wananga believes we have been misled and marginalised by government *inaction* and *indifference*.

We believe that the *Crown is in clear Breach of the Treaty of Waitangi*. Its policies continue to marginalise Maori and seriously threaten the viability of Wananga Maori and Maori initiatives in Education. Maori failure to participate on an equal footing with non Maori will lead to disparities in education, which ultimately affect all New Zealanders.

Maoridom *cannot afford to stand still whilst ineffective* Crown policies continue to proliferate horrific statistics for Maori in Aotearoa.

The Crown confiscated Maori land within the Maniapoto Rohe at Alexandria, Pirongia, 10 000 acres to help set up the University of Auckland in the 1860s.

Maori assets have been stripped by Crown action to benefit the majority culture in New Zealand without regard to equity of opportunity for Tangata Whenua in education.

Maori who have retained some land have made it freely available for education purposes all around New Zealand in the vain hope that Maori educational opportunity and participation would not be subjected to disadvantage.

Our claim against the Crown is

That having formerly approved Wananga status for each of the three Wananga under the 1990 Education Amendment Act:

- The crown has failed to resource these three Wananga on a similar basis as other Tertiary Institutes.
- The crown has failed to resource Te Wananga o Aotearoa, Te Wananga o Raukawa and Te Wananga o Awanuiarangi on an equitable basis compared to other Tertiary Education Institutes.

Based on 1994 figures:

- Crown investment in Universities, Polytechnics, Schools of Education stood at \$1.75 billion – Wananga Maori – Nil.

Evidence will be presented showing that by any measurement Maori have been and are still being seriously disadvantaged by education funding policies of the Crown.

Evidence will show that following a meeting with Wyatt Creech, Minister of Education who had made a substantial grant to Manawatu Polytechnic's \$44 million new campus development in 1996. He agreed to consider a grant application on behalf of Wananga Maori in February 1997. After following all the requirements of the Ministry of Education, Te Wananga o Aotearoa as a test case lodged its completed Application for Capital Grant, 3 April 1997.

To assist the Ministry of Education, a further concluding submission was made in May 1997.

Repeated assurances were made by Ministry of Education staff that provision for Wananga particularly Te Wananga o Aotearoa would be in the 1998 budget round.

Minister of Education, Wyatt Creech fuelled the hopes of Te Tauihu o Nga Wananga when we met in Wellington in November 1997 to discuss the Green Paper on Tertiary Education and made the statement that, had funding provision been made available by the Coalition Government in 1997, Wananga establishment grants would have been funded.

Meeting with Deputy Prime Minister and Minister of Finance Hon Winston Peters 5 May 1998 acknowledged no capital budget in 1998/99 for Wananga.

Exploratory notes – initial announcement of Wananga's status for Te Wananga o Aotearoa and Raukawa was made by Dr Lockwood Smith at the Annual Pokai at Waahi Marae in October 1993. His public press release stated Wananga Maori would be the peers of Universities, Polytechnics and Schools of Education in New Zealand.

To achieve this recognition and status of Wananga Maori, required substantial costs and personal commitment from both Te Wananga o Aotearoa and Te Wananga o Raukawa without any Crown capital resourcing available, even to this day.

The Crown has clearly made funds available to several Polytechnics and Universities since 1990 and ignored many representations by Wananga Maori for similar resourcing.

Government policy has effectively controlled the development of Wananga which has forced Te Wananga o Raukawa to be funded for 284 EFTS places rather than the actual full time enrolments of 443 this year.

In 1997, Raukawa carried 30% unfunded EFTS. No other Tertiary Institution in New Zealand has made this level of commitment to Maori participation at Tertiary level.

This shows the absolute commitment that Maori Wananga has made to address under representations for Maori at Tertiary level.

This application is lodged with the full support of the Chair of Nga Tauihu o Nga Wananga, Turoa Royal MA, MEd Admin, Dip Tchg.

Signed on behalf of Wananga Maori Association

Rongo H Wetere
Te Tumuaki

APPENDIX II

RECORD OF INQUIRY

RECORD OF HEARINGS

THE TRIBUNAL

The Tribunal constituted to hear claim Wai 718, concerning the Crown's education funding policies in respect to wananga, comprised Judge Richard Kearney (presiding officer), Josephine Anderson, and Keita Walker. The Right Reverend Manuhuia Bennett was the Tribunal's kaumatua adviser.

The Tribunal staff who assisted were Dion Tuuta (researcher) and Lynette Fussell and Turei Thompson (claims administrators).

COUNSEL

Counsel appearing were Mike Doogan and Helen Carrad (for the Crown); Carolyn Wait (for Te Wananga o Raukawa and Te Wananga o Aotearoa); Heitia Raureti (for Te Wananga o Raukawa); and Joseph Williams, Gillian Warren, and Andrew Ruakere (for Te Whare Wananga o Awanuiarangi).

FIRST CONFERENCE, WAITANGI TRIBUNAL OFFICES, WELLINGTON, 30 JUNE 1998

At the first conference, an application from the claimants for urgency was considered.

SECOND CONFERENCE, WAITANGI TRIBUNAL OFFICES, WELLINGTON, 25 AUGUST 1998

At the second conference, all preliminary matters concerning the forthcoming hearing were considered.

FIRST HEARING, RAUKAWA MARAE, OTAKI, 19–23 OCTOBER 1998

At the first hearing, opening submissions from counsel were heard and there was a site visit to Te Wananga o Raukawa.

Submissions and evidence for Te Wananga o Raukawa were received from: Bruce Bryant (doc A65); Willis Katene (doc A40); Norman Kingsbury (docs A29, A29(a)); Colin Knox (doc A41); Ngawini Kuiti (docs A42, A42(a)); Jim MacGregor (doc A71); Peter McKenzie (docs A38, A38(a)); Ngarongo Nicholson (doc A68); Oriwia Raureti (doc A43); Charles Royal (doc A44); Turoa Royal (docs A13, A26); Pakake Winiata (docs A45, A45(a)); and Professor Whatarangi Winiata (docs A11, A46, A46(a)–(e), A73).

Submissions and evidence for Te Whare Wananga o Awanuiarangi were received from: Watene Horsfall (docs A56, A61); Professor Hirini Mead (docs A50, A50(a),(b)); Wally Penetito (docs A62, A62(a)–(c)); Dr Judith Simon (doc A51); Cheryl Smith (doc A57); Graham Smith (doc A58); Linda Smith (doc A59); Jo Waerehu (doc A54); and Haromi Williams (doc A52).

Submissions and evidence for Te Wananga o Aotearoa were received from: Arana Collett (doc A36); Manaoterangi Forbes (docs A34, A34(a)); Wiki Henskes (docs A28, A28(a),(b)); Whetu Moataane (doc A31); Marie Panapa (docs A30, A30(a)); the Reverend Te Napi Waaka (doc A32); and Rongo Wetere (docs A4, A27, A60, A60(a)–(d)).

Submissions and evidence for the Crown were received from Rawiri Brell (doc A67) and Dr Ngatata Love (doc A76).

SECOND HEARING, RAUKAWA MARAE, OTAKI, 4–5 NOVEMBER 1998

At the second hearing, further evidence from Crown witnesses Allan Sargison (docs B5, B8), Murray Coppersmith (doc B3), Jane von Dadelszen (doc B7), and Vince Catherwood (doc B6) was heard.

THIRD HEARING, WAITANGI TRIBUNAL OFFICES, WELLINGTON, 7 DECEMBER 1998

At the third hearing, closing submissions from counsel (docs C4, C5, C6) were heard.

RECORD OF PROCEEDINGS

1. CLAIMS

1.1 Wai 718

A claim by Rongo Wetere and others concerning the Crown's education funding policies in respect to Te Wananga o Aotearoa, Te Wananga o Raukawa, and Te Whare Wananga o Awanuiarangi, 11 May 1998

2. PAPERS IN PROCEEDINGS

2.1 Direction of deputy chairperson registering claim 1.1, 19 May 1998

- 2.2** Notice of claim, 19 May 1998
- 2.3** Letter from Rongo Wetere to assistant registrar requesting urgent hearing, 28 May 1998
- 2.4** Direction of chairperson convening conference to consider request for urgency, 11 June 1998
- (a) Synopsis of Crown submissions opposing request for urgency, 30 June 1998
 - (b) Letter from Minister of Education to Rongo Wetere concerning request for capital injection, 18 May 1998
 - (c) Supplementary Crown submission and related documents, 15 July 1998
 - (d) Claimant submission in response to paper 2.4(c), 20 July 1998
- 2.5** Direction of Tribunal granting urgency, 23 July 1998
- 2.6** Direction of chairperson appointing Judge Kearney presiding officer, 6 August 1998
- 2.7** Memorandum from claimant counsel for Wai 431 requesting that Wai 431 be heard with Wai 718, 11 August 1998
- (a) Submission of Te Whanau o Waipareira Trust applying to be heard with Wai 718, 24 August 1998
- 2.8** Submissions from claimant counsel opposing applications by Wai 431 and Te Whanau o Waipareira Trust to be heard with Wai 718, 31 August 1998
- 2.9** Crown submissions opposing applications by Wai 431 and Te Whanau o Waipareira Trust to be heard with Wai 718, 1 September 1998
- (a) Statement of claim of Te Whanau o Waipareira Trust, 2 September 1998
 - (b) Submissions from Wai 431 claimant counsel in response to papers 2.8 and 2.9, 3 September 1998
 - (c) Further submissions from claimant counsel opposing applications by Wai 431 and Te Whanau o Waipareira Trust to be heard with Wai 718, 3 September 1998
- 2.10** Direction of Tribunal declining applications by Wai 431 and Te Whanau o Waipareira Trust to be heard with Wai 718, 3 September 1998
- 2.11** Direction of chairperson constituting Tribunal, 16 September 1998
- 2.12** Letter from registrar to Crown counsel concerning appointment of Josephine Anderson to Tribunal, 21 September 1998
- 2.13** Notice of first and second hearings, 16 October 1998
- 2.14** Direction of Tribunal adjourning first hearing until 4 November 1998, 23 October 1998
- 2.15** Notice of third hearing, 27 November 1998

RECORD OF DOCUMENTS

* Document confidential and unavailable to the public without a Tribunal order
The name of the person or party that produced each document or set of documents in evidence appears in parentheses after the reference, except where that source is already apparent.

A. TO END OF FIRST HEARING, 19–23 OCTOBER 1998

- A1** Te Wananga o Aotearoa, *The Path*, Te Wananga o Aotearoa promotional booklet, 1998
- A2** Submission of claimant counsel Carolyn Wait, 30 June 1998
 - (a) Letter from the Waitomo District Council to the Aotearoa Institute concerning loan repayment, 25 June 1998
- A3** ‘Paper on Needs of Awanuiarangi’, submission of Himiona Nuku, undated
 - (a) ‘A Brief History of Te Whare Wananga o Awanuiarangi: Introduction’, submission of Himiona Nuku, June 1998
 - (b) ‘A Brief History of Te Whare Wananga o Awanuiarangi’, submission of Himiona Nuku, undated
(counsel for Te Whare Wananga o Awanuiarangi)
- A4** Brief of evidence of Rongo Wetere, 29 June 1998 (counsel for Te Wananga o Aotearoa)
- A5** Number not allocated
- A6** Document renumbered as paper 2.4(a)
 - (a) Document renumbered as paper 2.4(b)
- A7** Ministry of Education, *A Future Tertiary Education Policy for New Zealand: Tertiary Education Review*, New Zealand Government Green Paper, September 1997
- A8** Letter from the Minister of Education to Bryant and Company (chartered accountants) concerning capital funding for wananga, 22 May 1998
- A9** Letter from the Minister of Education to Turoa Royal concerning Government policy on capital injections for TEIS, 13 May 1998 (counsel for Te Wananga o Raukawa)
- A10** Te Wananga o Aotearoa, ‘Application for a Capital Contribution from the Crown’, unpublished report, 27 February 1997
 - (a) Te Wananga o Aotearoa, ‘Additional Supporting Information for a Capital Contribution from the Crown’, unpublished report, 3 April 1998
 - (b) Te Wananga o Aotearoa, ‘A Summary Submission of All Applications for Capital Funding from the Crown’, unpublished report, May 1997
(counsel for Te Wananga o Aotearoa)

- A11** Brief of evidence of Whatarangi Winiata, undated (counsel for Te Wananga o Raukawa)
- A12** Brief of evidence of Emare Nikora, 30 June 1998
- A13** Submission of Te Tauihu o nga Wananga concerning urgency, undated (counsel for Te Wananga o Raukawa)
- A14** Videotape of wananga capital funding protest, May 1998
- A15** Laminated display of colour photographs of funding protest entitled 'Wananga Capital Funding Protest, Wellington, May 1998'
- A16** Laminated display of colour photographs of funding protest entitled 'Te Wananga o Raukawa, Te Wananga o Aotearoa, Te Whare Wananga o Awanuiarangi', May 1998
- A17** Te Wananga o Aotearoa, 'Wananga Report: Examination and Critique of Wananga Policies, Procedures and Future Developments', report commissioned by Te Puni Kokiri, May 1994 (counsel for Te Wananga o Aotearoa)
- A18** Te Tauihu o nga Wananga, 'Policy and Funding Issues for Wananga', report to the Minister of Education, November 1994 (counsel for Te Wananga o Aotearoa)
- A19** Ernst and Young, 'Ownership Monitoring Framework for Tertiary Educational Institutions', report commissioned by the Tertiary Capital Charge Steering Group, February 1995
- A20** Te Puni Kokiri and Ministry of Education, *He Tirohanga Whakamua mo te Whakaakoranga Matua: A Future Tertiary Education Policy for New Zealand – A Summary for Maori*, Wellington, Te Puni Kokiri and Ministry of Education, 1997
- A21** Te Wananga o Aotearoa, *Annual Report, 1997*, Te Awamutu, Te Wananga o Aotearoa, 1998 (counsel for Te Wananga o Aotearoa)
- A22** 'Unfair Treatment of Wananga', public statement of Te Tauihu o nga Wananga, 25 April 1998 (counsel for Te Wananga o Aotearoa)
- A23** Document renumbered as paper 2.4(c)
- A24** Te Whare Wananga o Awanuiarangi, *1997 Annual Report: For the Year Ended 31 December 1997*, Whakatane, Te Whare Wananga o Awanuiarangi, 1998 (counsel for Te Whare Wananga o Awanuiarangi)
- A25** Document renumbered as paper 2.4(d)
- A26** Brief of evidence of Turoa Royal, undated (counsel for Te Wananga o Raukawa)

A27 Brief of evidence of Rongo Wetere, undated (counsel for Te Wananga o Aotearoa)

A28 Brief of evidence of Wiki Henskes, undated

(a) Wiki Henskes, 'Te Tauihu o nga Wananga', submission of Te Wananga o Aotearoa, undated

(b) Colour printouts of overhead projector presentation by Wiki Henskes on Te Wananga o Aotearoa

(counsel for Te Wananga o Aotearoa)

A29 Brief of evidence of Norman Kingsbury, undated

(a) Brief of evidence of Norman Kingsbury, 21 October 1998

(counsel for Te Wananga o Raukawa)

A30 Brief of evidence of Marie Panapa, undated

(a) Colour printouts of overhead projector presentation by Marie Panapa on Te Wananga o Aotearoa

(counsel for Te Wananga o Aotearoa)

A31 Brief of evidence of Whetu Moataane, undated (counsel for Te Wananga o Aotearoa)

A32 Brief of evidence of the Reverend Te Napi Tutewehiwehi Waaka, undated (counsel for Te Wananga o Aotearoa)

A33 Brief of evidence of Taehuri Collett, undated (counsel for Te Wananga o Aotearoa)

A34 Brief of evidence of Manaoterangi Forbes, undated

(a) Letter from the New Zealand Lottery Grants Board to Te Wananga o Aotearoa concerning an application for funds, 1 October 1998

(counsel for Te Wananga o Aotearoa)

A35 Brief of evidence of Maver Moeau-Punga, 1 October 1998 (counsel for Te Wananga o Aotearoa)

A36 Brief of evidence of Arana Collett, undated (counsel for Te Wananga o Aotearoa)

A37 Brief of evidence of Himiona Nuku, undated (counsel for Te Whare Wananga o Awanuiarangi)

A38 Brief of evidence of Peter McKenzie, undated

(a) Submission of Peter McKenzie concerning Crown financial support to the Wananga TEIS, 21 October 1998

(counsel for Te Wananga o Raukawa)

A39 McKenzie Podmore Ltd, 'Capital Funding of Wananga and Other Issues', report commissioned by the Maori Education Commission, August 1998

A40 Brief of evidence of Willis Katene, 5 October 1998 (counsel for Te Wananga o Raukawa)

A41 Brief of evidence of Colin Knox, 5 October 1998

Te Wananga o Raukawa, *Master of Maori and Management MMMgt (Tahuhu Matauranga Whakahaere TMW)*, Otaki, Te Wananga o Raukawa, September 1998 (counsel for Te Wananga o Raukawa)

A42 Brief of evidence of Ngawini Kuiti, 4 October 1998

(a) Sheet giving English translations of Maori phrases in document A42
(counsel for Te Wananga o Raukawa)

A43 Submission of Oriwia Raureti concerning the financial position of Te Wananga o Raukawa, 1998 (counsel for Te Wananga o Raukawa)

A44 Brief of evidence of Charles Royal, undated (counsel for Te Wananga o Raukawa)

A45 Submission of Pakake Winiata, undated

(a) Four-page document entitled 'Nga Take i Tautokona ai a te Wananga o Raukawa: The Reasons for the Widespread Support for Te Wananga o Raukawa', undated
(counsel for Te Wananga o Raukawa)

A46 Submission of Whatarangi Winiata, undated

(a) 'Nga Marae o te Kotahitanga o te Ati Awa, o Ngati Raukawa, o Ngati Toarangatira', guide to marae, undated

(b) New Zealand Government, *Learning for Life: Two – Education and Training beyond the Age of Fifteen*, Wellington, Government Printer, 1989

(c) Ray Barnhardt, 'Higher Education in the Fourth World: Indigenous People Take Control', unpublished paper, undated

(d) Marie Waaka and Whatarangi Winiata, 'A Vision for Studies in Maori and Information Management', revised version of a paper presented at a curriculum development research seminar held at Te Wananga o Raukawa, Otaki, 17 September 1998

(e)* Te Wananga o Raukawa, 'Diploma in Maori and Information Management DMIM, 1999', unpublished draft, October 1998
(counsel for Te Wananga o Raukawa)

A47 Brief of evidence of Vince Catherwood, undated (Crown counsel)

A48 Brief of evidence of Jane von Dadelszen, undated (Crown counsel)

A49 Brief of evidence of Allan Sargison, undated (Crown counsel)

A50 Brief of evidence of Hirini Mead, undated

(a) Report of the Cabinet Committee on Education, Training and Employment (CAB(94)M19/17(5)), 26 May 1994

(b) *Te Tangi a Tamapahore*, Ngati Awa waiata and English translation
(counsel for Te Whare Wananga o Awanuiarangi)

A51 Submission of Judith Simon concerning education policies and practices, undated (counsel for Te Whare Wananga o Awanuiarangi)

A52 Brief of evidence of Haromi Williams, undated (counsel for Te Whare Wananga o Awanuiarangi)

A53 Brief of evidence of Jane Kelsey, undated (counsel for Te Whare Wananga o Awanuiarangi)

A54 Brief of evidence of Jo Waerehu, undated (counsel for Te Whare Wananga o Awanuiarangi)

A55 Brief of evidence of Ngareta Timutimu, undated (counsel for Te Whare Wananga o Awanuiarangi)

A56 Brief of evidence of Watene Horsfall, undated (counsel for Te Whare Wananga o Awanuiarangi)

A57 Brief of evidence of Cheryl Smith, undated (counsel for Te Whare Wananga o Awanuiarangi)

A58 Brief of evidence of Professor Graham Smith, undated (counsel for Te Whare Wananga o Awanuiarangi)

A59 Brief of evidence of Linda Smith, undated (counsel for Te Whare Wananga o Awanuiarangi)

A60 Supplementary brief of evidence of Rongo Wetere, undated

(a) Colour printouts of overhead projector presentation by Rongo Wetere on capital funding for wananga, October 1998

(b) David Cowley, 'Maori Provider Development', report commissioned by the Maori Employment and Training Commission, August 1998

(c) Page of tables showing EFTS funding for wananga from 1993 to 1998

(d) Letter from the Minister of Education to Trevor Mallard MP concerning an official information request for papers relating to capital works provisions for wananga, 12 August 1998

(counsel for Te Wananga o Aotearoa)

A61 Supplementary brief of evidence of Watene Horsfall, undated (counsel for Te Whare Wananga o Awanuiarangi)

A62 Brief of evidence of Wally Penetito, undated

(a) Ministry of Education, 'Maori Education Stocktake', unpublished report, 18 December 1996

A62—continued

(b) Te Puni Kokiri and Ministry of Education, *Making Education Work for Maori – Te Whakamahi i te Matauranga mo te Iwi Maori*, Wellington, Te Puni Kokiri and Ministry of Education, 1997

(c) Ministry of Education and Te Puni Kokiri, *Making Education Work for Maori: Report on Consultation – Te Whakamahi i te Matauranga mo te Iwi Maori: Te Purongo mo nga Whakawhiti Whakaaro*, Ministry of Education and Te Puni Kokiri, 1998
(counsel for Te Whare Wananga o Awanuiarangi)

A63 Te Wananga o Aotearoa, *Capital Funding Submission*, VHS videotape, October 1997

A64 Cabinet Committee on Education and Employment Policy, 'Request for a Capital Injection to Assist the Development of Campuses for Te Wananga o Aotearoa', draft paper, 22 December 1998

A65 Brief of evidence of Bruce Bryant, undated (counsel for Te Wananga o Raukawa)

A66 Supplementary brief of evidence of Allan Sargison, undated (Crown counsel)

A67 Brief of evidence of Rawiri Brell, undated (Crown counsel)

A68 Brief of evidence of Ngarongo Nicholson, 19 October 1998 (counsel for Te Wananga o Raukawa)

A69 Opening submissions of counsel for Te Whare Wananga o Awanuiarangi, October 1998

A70 Opening submissions of counsel for Te Wananga o Raukawa and Te Wananga o Aotearoa, 20 October 1998

A71 Brief of evidence of Jim MacGregor, undated (counsel for Te Wananga o Raukawa)

A72 Submission of Godfrey Pohatu, 16 October 1998 (counsel for Te Wananga o Raukawa)

A73 Whatarangi Winiata, VHS videotape (counsel for Te Wananga o Raukawa)

A74

(a) Raukawa trustees, *Te Wananga o Raukawa 1983 Calendar*, undated

(b) Raukawa trustees, *Te Wananga o Raukawa 1998 Maramataka*, undated

(c) Te Puni Kokiri, *Progress towards Closing Social and Economic Gaps between Maori and Non-Maori: A Report to the Minister of Maori Affairs*, Wellington, Te Puni Kokiri, 1998

A75 Synopsis of opening submissions of Crown counsel, undated

A76 Brief of evidence of Dr Ngatata Love, undated (Crown counsel)

B. TO END OF SECOND HEARING, 4–5 NOVEMBER 1998

B1 Secretary for Education, 'Policy for Capital Injections for Tertiary Education Institutions', draft paper to the Minister of Education, 8 August 1996 (Crown counsel)

B2 Fax from the Treasury to Vince Catherwood concerning a draft of document B1, 8 August 1996 (Crown counsel)

B3 Brief of evidence of Murray Coppersmith, undated (Crown counsel)

B4 Brief of evidence of Graham Gaskin, undated (registrar)

B5 Supplementary brief of evidence of Allan Sargison, 4 November 1998 (Crown counsel)

B6 Table entitled 'Ministry of Education Funding', undated (supplementary document to document A47) (Crown counsel)

B7 Ministry of Education, *Strategic Business Plan, 1998–2001*, Wellington, Ministry of Education, 1998, pp 30–31 (supplementary document to document A48) (Crown counsel)

B8 Table entitled 'Financial Analysis (Audited Results of Wananga)', undated (supplementary document to document A49) (Crown counsel)

C. TO END OF THIRD HEARING, 7 DECEMBER 1998

C1 Ministry of Education, *Strategic Business Plan, 1998–2001*, Wellington, Ministry of Education, 1998

C2 Ministry of Education, *Tertiary Education in New Zealand: Policy Directions for the 21st Century*, New Zealand Government White Paper, November 1998

C3 Supplementary brief of evidence Allan Sargison, undated (Crown counsel)

C4 Closing submissions of counsel for Te Wananga o Raukawa and Te Wananga o Aotearoa, 7 December 1998

C5 Closing submissions of counsel for Te Whare Wananga o Awanuiarangi, 7 December 1998

C6 Synopsis of closing submissions of Crown counsel, 7 December 1998

D. SUBSEQUENT TO 7 DECEMBER 1998

D1 Letter to the registrar from Crown counsel concerning establishment funding for Wairarapa Polytechnic, 4 February 1999 (Crown counsel)