

MATUA RAUTIA



MATUA RAUTIA  
THE REPORT ON THE  
KŌHANGA REO CLAIM  

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PREFACE

Because this inquiry has been conducted under urgency, we are making our report available to the parties at the earliest opportunity in pre-publication form for the convenience of the parties. When published, the final version of the report may contain additional illustrative material, the text and footnotes will be edited where necessary, and any errors will be corrected. The substance of our analysis, findings, and recommendations will not be altered.



The Honourable Dr Pita Sharples  
Minister of Maori Affairs



The Waitangi Tribunal  
141 The Terrace  
WELLINGTON

And

The Right Honourable John Key  
Prime Minister

And

The Honourable Hekia Parata  
Minister of Education

Parliament Buildings  
WELLINGTON

16 October 2012

E ngā mana, e ngā reo, tēnei te mihi maioha atu ki a koutou katoa, tēnā koutou. Tēnā koutou i runga i te kaupapa i hui ai mātou ki te whakawhiti whakaaro, whakawhiti kōrero mō te kōhanga reo me te reo rangatira.

E ngā Minita, tenā koutou, tēnā koutou, tēnā koutou.

We enclose a copy of *Matua Rautia: The Report on the Kōhanga Reo Claim*, which reports to you on the urgent Waitangi Tribunal hearings held over two weeks in March 2012 in respect of the claims made to the Tribunal by the trustees of Te Kōhanga Reo National Trust. Those claims allege that the Crown has acted in a manner inconsistent with the principles of the Treaty of Waitangi with respect to a range of issues affecting the relationship between the Crown and kōhanga reo and the ability of kōhanga reo to operate effectively in ensuring the transmission of te reo me ngā tikanga. Actions and omissions of the Crown, the claimants allege, have led to a decline in the number of kōhanga reo and the number of children enrolled in kōhanga reo.

We note that you have been previously advised by the Wai 262 Tribunal that te reo Māori is in a vulnerable state and that there is a pressing and urgent need for action to be taken for the protection of te reo Māori. That Tribunal noted the correlation between the decline in kōhanga reo enrolments and the numbers of children acquiring some competence in speaking te reo Māori. We understand that the broader government Māori Language Strategy is being reviewed and that there is some policy work forming around this as a response to the recommendations of the Wai 262 *Ko Aotearoa Tēnei* report (2010) and of

the *Te Reo Mauriora Report* (2010) reviewing the Māori language sector and the Māori language strategy.

This report, *Matua Rautia: The Report on the Kōhanga Reo Claim*, adds further information for you to consider. The findings and recommendations within the report are aimed at addressing the extremely vulnerable state of the Māori language and the kōhanga reo movement and the serious threat that this poses for the survival of te reo Māori as a living language.

The kōhanga reo movement is a key platform for the retention and transmission of te reo Māori. As the Crown's principal expert witness Professor May highlighted, no less than 50 per cent immersion education over a period of six to eight years is necessary to achieve bilingualism in te reo Māori and English. The optimal age for engaging in such learning is between 0 and 10 years of age. Programmes comprising 81 to 100 per cent te reo Māori instruction are also the optimal means of ensuring language transmission. In the early childhood education sector, kōhanga reo are the most significant contributor to the immersion education space with 9,071 mokopuna currently enrolled and many more whānau members learning alongside. The kōhanga reo movement provides the cohort of five- to six-year-old speakers of te reo who can progress into immersion education so as to become bilingual and biliterate and thus ensure a pool of speakers to carry on the use of the language as a living language.

Kōhanga reo are also the largest participant in early childhood immersion education sector with 471 centres, and the survival of te reo Māori is thus critically dependent on them. There are less than 15 licensed immersion centres other than kōhanga reo providing such a service. While there are many other mainstream early childhood education services now offering limited te reo Māori instruction, the expert evidence was that this is insufficient for language transmission.

We also bring to your attention the Ministry of Education statistics which indicate that mokopuna emerging from immersion education are achieving university entrance level qualifications at a level similar or slightly higher than others in mainstream education. While the sample numbers are low, these preliminary indications are significant in that if this continues to be the case, Māori will be achieving through immersion education at the same levels as children in mainstream education. These indications are also to be celebrated.

Unfortunately, however, the early childhood education sector reforms that commenced over the period from 2000 to 2011 have resulted in the Crown developing an early childhood education policy framework, quality measures, funding mechanisms and a regulatory regime that has not focused on the particular circumstances and environment of kōhanga reo to any significant degree, but has rather concentrated on incentivising participation in mainstream early childhood education services. That has occurred despite the Crown and



the Trust entering into a Tripartite agreement in 2003 which was intended to address these issues.

Consequently, we have found the claim to be well founded and that the Crown should reprioritise its expenditure on te reo Māori in ECE. We have also found that the Trust and kōhanga reo have suffered significant prejudice from the Crown:

- ▶ failing to provide a sound policy framework that addresses the Crown's duty to actively protect te reo Māori in the early childhood education sector through support for immersion services, particularly kōhanga reo to whom the Crown owes Treaty obligations;
- ▶ failing to promote participation and targets for the numbers of children moving through early childhood education who can speak Māori with the competency necessary to enter the school system long enough to become bilingual and biliterate;
- ▶ omitting to develop, in partnership with the Trust, appropriate quality measures for assessing and improving quality in kōhanga reo for transmission of te reo;
- ▶ imposing a funding regime that incentivises teacher-led ECE models and does not provide equitable arrangements for kaiako holding the degree qualification designed for kōhanga reo;
- ▶ imposing a regulatory and licensing regime that does not adequately address the specific needs of the kōhanga reo movement and in part stifles their motivation and initiative; and
- ▶ failing to accurately measure the achievements of kōhanga reo at any time during the 30 years since the movement started.

We have, therefore, found that the Crown's failures to address the place of kōhanga reo has led to actions and omissions inconsistent with the principles of the Treaty, namely the principles of: partnership; the guarantee of rangatiratanga; the obligations on the Crown to make efficient and effective policy and to actively protect te reo Māori in ECE through kōhanga reo; and the principle of equity. There has been serious prejudice to the kōhanga reo movement as a result of these Crown actions and omissions. In particular there has been:

- ▶ inadequate recognition in ECE policy for kōhanga reo;
- ▶ a decline in the proportion of Māori participating in kōhanga reo;
- ▶ adverse impacts on the reputation of the kōhanga reo movement;
- ▶ serious underfunding of the Trust for services provided and insufficient funding to kōhanga reo, which has led to a decrease in capital expenditure posing a relicensing risk and exposing 3,000 mokopuna to the possibility of losing their kōhanga reo buildings;
- ▶ imposition of a regulatory regime including licensing criteria that has paid insufficient regard to the particular kōhanga reo environment; and

- ▶ an ERO evaluation methodology that remains focused on teacher-led models unbalanced against the important results that kōhanga reo provide for te reo transmission and whānau development.

The relationship between the Crown and Te Kōhanga Reo National Trust and kōhanga reo has deteriorated over the 2000 to 2011 period as a result of mismatch between government policy design with the aims and objectives of kōhanga reo. The fractured relationship has been exacerbated by the failure of the Ministry of Education to ensure that a recent Early Childhood Education Taskforce, appointed in 2010, consulted with the kōhanga reo movement prior to releasing its report. The Ministry then published that report, which was critical of kōhanga reo, against a background where the Trust had no proper opportunity to respond to the criticisms levelled. Responses from the chief executive officers of the Ministry of Education and Te Puni Kōkiri to the report have been the cause of complaint from the claimants. The result is that the relationship between the Trust, the Ministry of Education, and Te Puni Kōkiri has deteriorated to a point where the Trust has lost trust and confidence in the ability and willingness of these agencies to understand and provide for kōhanga reo.

We therefore make the following recommendations:

- ▶ *Recommendation 1:* We recommend that the Crown, through the Prime Minister, appoints an interim independent advisor of sufficient standing, Treaty knowledge, reo, and policy acumen, chosen after consultation by the Department of Prime Minister and Cabinet with the Trust, the Ministry of Education, and Te Puni Kōkiri, and reporting to the Prime Minister (or Department of Prime Minister and Cabinet), to oversee the implementation of the Tribunal's recommendations, to redevelop the engagement between government agencies and the Trust, and to ensure that the progress to achieve effective transmission of te reo Māori through kōhanga reo proceeds with the dedication and urgency required given the vulnerable state of te reo Māori.
- ▶ *Recommendation 2:* We recommend that the Crown, through the DPMC and the independent advisor, oversees and facilitates the urgent completion of a work programme developed by the parties in accordance with the Shared Vision, Values, Goals, Outcomes and Understandings in the Tripartite Agreement. The work should address the following urgent goals:
  - a policy framework for kōhanga reo;
  - policy and targets for increasing participation in kōhanga reo and for reducing waiting lists;
  - identification of measures for maintaining and improving quality in kōhanga reo;
  - a supportive funding regime both for kōhanga reo and the Trust;

- a more appropriate regulatory and licensing framework specific to kōhanga reo;
- the provision of capital funding to ensure that existing kōhanga reo can meet the required standards for relicensing by the end of 2014; and
- support for the Trust to develop the policy capability to collaborate with the government in policy development for kōhanga reo.

Engagement with kōhanga reo on these issues should be facilitated by the independent advisor and should involve at least some Crown officials who have a high level of competency in te reo me ngā tikanga, a good knowledge of Treaty principles and practice, and of the kōhanga reo movement.

- ▶ *Recommendation 3:* We recommend that the Crown, through the Ministry of Education and Te Puni Kōkiri, discusses and collaborates with the Trust to scope and commission research on the effects and impacts of the kōhanga reo model including how to support and build on the contribution that kōhanga reo make to language transmission and Māori educational success as Māori.
- ▶ *Recommendation 4:* We recommend that the Crown, through the Ministry of Education, Te Puni Kōkiri, and the Trust, informs Māori whānau of the relative benefits for mokopuna in attending kōhanga reo with respect to te reo Māori and education outcomes. They should also be informed of the importance of bilingual/immersion programmes if te reo Māori is to survive as a living language.
- ▶ *Recommendation 5:* We recommend that the Crown formally acknowledges and apologises to the Trust and kōhanga reo for the failure of its ECE policies to sufficiently provide for kōhanga reo. This apology is important to the process of reconciliation between the parties. In making such an acknowledgement and apology the Crown should also agree to meet the reasonable legal expenses of the Trust in bringing this claim.

The 2011 report of the Waitangi Tribunal, *Ko Aotearoa Tēnei*, noted that urgent steps are needed to address recent Crown policy failures if te reo Māori is to survive. If te reo is lost, then the very vibrancy and strength of the Māori culture which is unique would also be lost and New Zealand would have changed forever.

We appreciate that the survival of te reo is not solely reliant on Crown action. The situation requires that the Treaty partners, both Māori and Crown, take whatever reasonable steps are required to protect and promote te reo Māori.



Deputy Chief Judge Fox, Presiding Officer

Heoi anō, tēnei te mihi,

Nā te rōpu Whakamana i te Tiriti

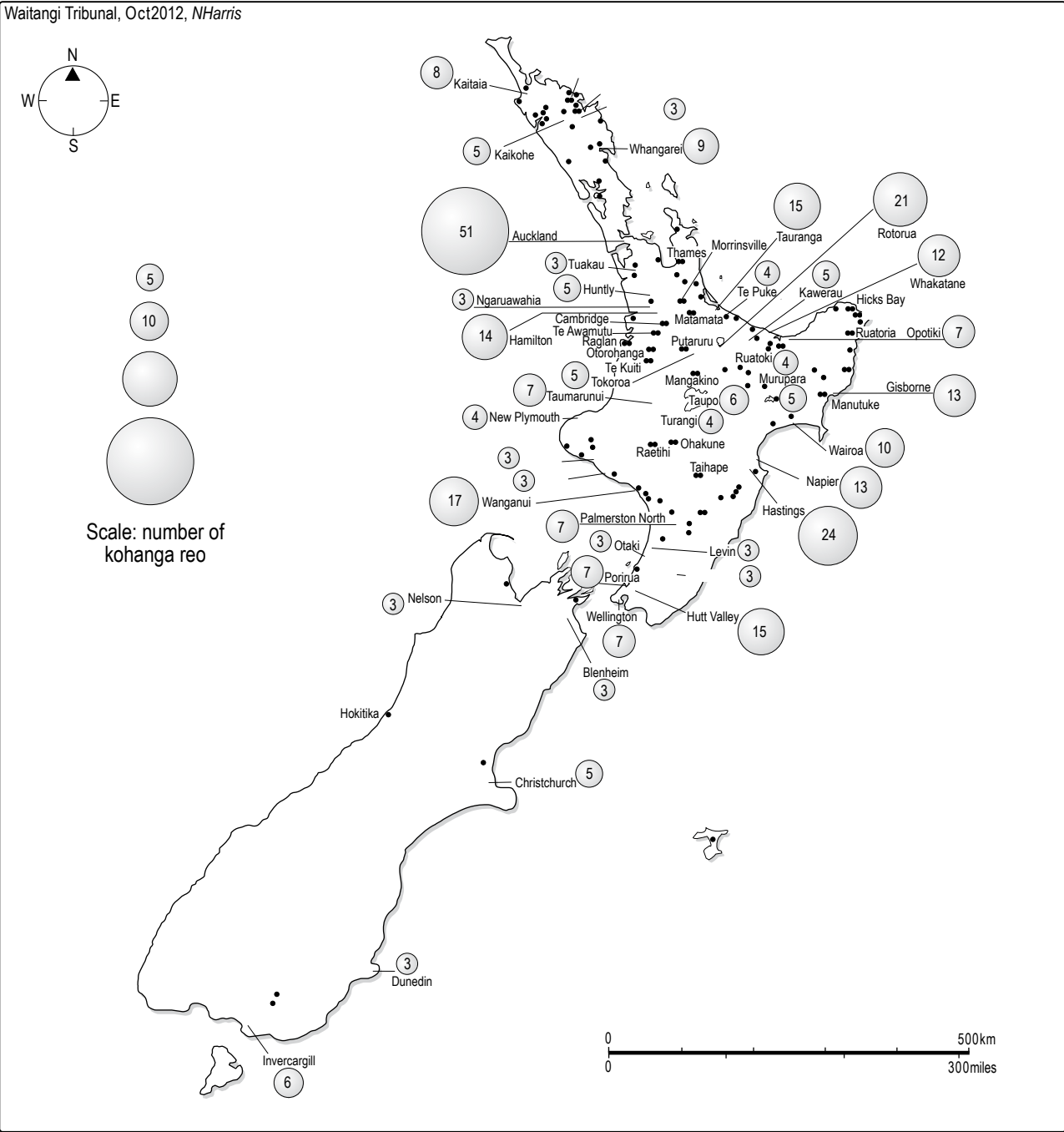


ABBREVIATIONS

AJHR	<i>Appendix to the Journals of the House of Representatives</i>
app	appendix
ch	chapter
comp	compiler
DGS	Discretionary Grants Scheme
doc	document
DOP	desirable objectives and practices
DPMC	Department of Prime Minister and Cabinet
ECE, ECES	early childhood education, early childhood education services
ed	edition, editor
ERO	Education Review Office
fn	footnote
fol	folio
ltd	limited
MA	Department of Maori Affairs file
MOA	memorandum of agreement
MOE	Ministry of Education
no	number
NCEA	National Certificate of Educational Achievement
NZEI	New Zealand Educational Institute
NZQA	New Zealand Qualifications Authority
p, pp	page, pages
para	paragraph
PPP	Promoting Participation in Early Childhood Education Project
pt	part
ROI	record of inquiry
s, ss	section, sections (of an Act of Parliament)
sec	section (of this report, a book, etc)
sess	session
SOI	statement of intent, statement of issues
TAPS	Targeted Assistance for Participation Scheme
vol	volume

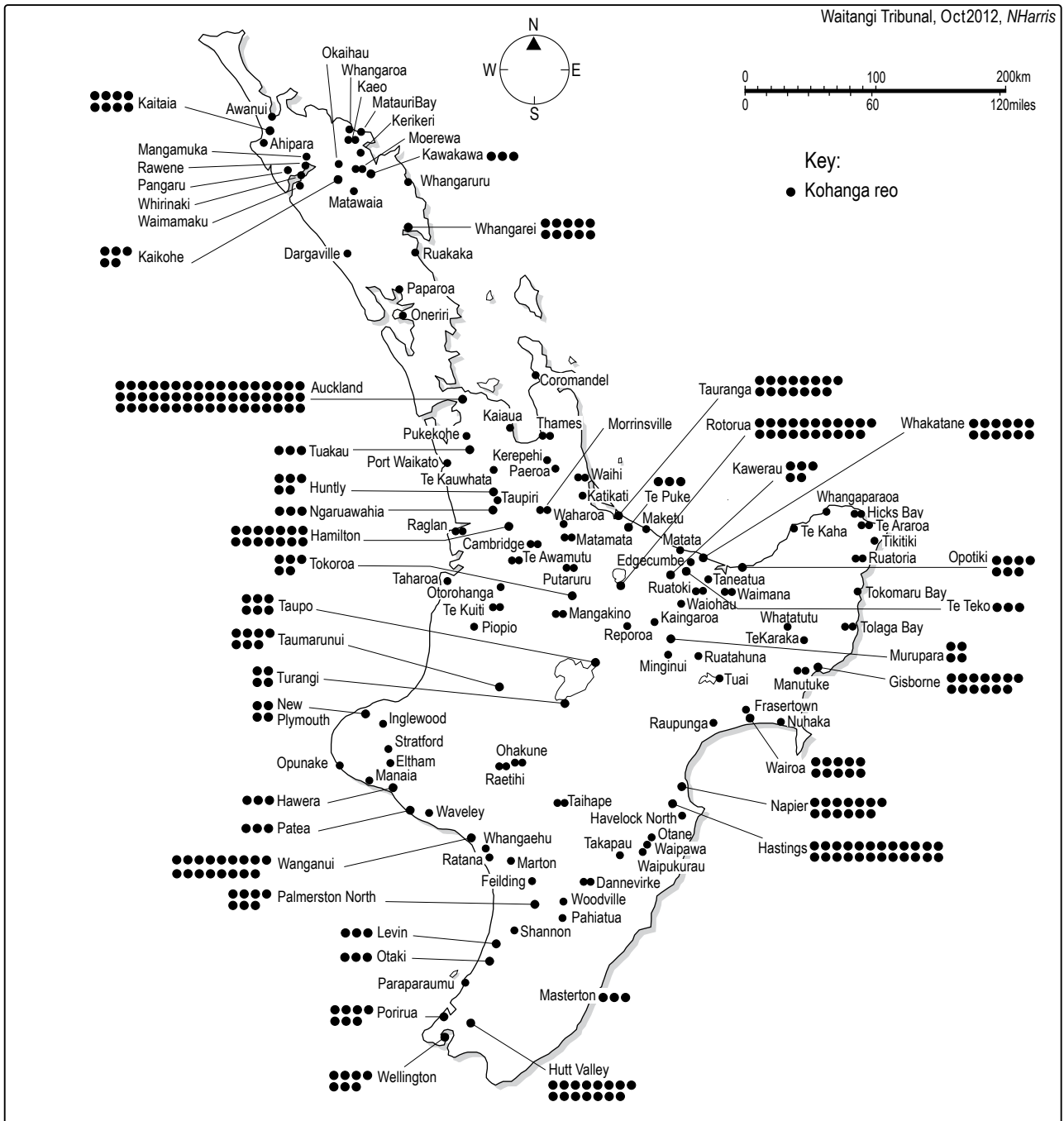
‘Wai’ is a prefix used to denote a Waitangi Tribunal claim number.

Unless otherwise stated, footnote references to claims, statements, submissions, memoranda, and documents are to the Wai 2336 (kohanga reo) record of inquiry, a select index to which is reproduced in appendix III.



Map 1: Location of kōhanga reo in urban and rural areas

Source: Submission 3.4.13 (claimant counsel, memorandum providing additional information, 1 August 2012); doc E15 (table attached to submission 3.4.13)



Source: Submission 3.4.13 (claimant counsel, memorandum providing additional information, 1 August 2012);  
doc E15 (table attached to submission 3.4.13)





CHAPTER 1

**KUPU WHAKATAKI  
INTRODUCTION**

*Karanga te muri hau i tutū ai ngā ngaru o te moana  
I papa ai te whatitiri me te uira ki runga i te Kōhanga Reo  
E papaki tū ana ngā tai ki Te Reinga  
Ka pō, ka ao, ka awatea.  
Tihei Mauri Ora!*

E ngā mana, e ngā reo, e ngā pari kārangaranga o te motu mai i te Taitokerau whiti atu ki te Tairāwhiti heke whakararo ki te Tai Hauāuru tae atu ki te Tonga, tēnei rā te mihi maioha atu ki a koutou katoa, tēnā koutou, tēnā koutou.

Tēnā koutou i runga i te kaupapa i hui ai tātou ki te whakawhiti whakaaro me te kōrero mō ngā mokopuna o Te Kōhanga Reo me tō tātou reo rangatira me te mahara anō ki te mokopuna Alexa Maraea Eva Winslade i whānau mai i ngā rā o te hui. Te mokopuna hou mō Te Kōhanga Reo.

I rongo ai mātou ki te hōhonutanga me te wairua o ngā kōrero mō Te Kōhanga Reo me ā tātou mokopuna me te tangi tonu ki a rātou kua riro atu ki Te Pō. Otirā, rātou ngā tangata i kaha ki te hāpai i te kaupapa o Te Kōhanga Reo me te hoe i tōna waka.

Me hoki anō rā te whakaaro ki tō tātou Kīngi Tūheitia e noho nei i te nohoanga i waihotia ai e tōna whaea tō tātou arikinui Te Atairangikaahu, hei pou here hei pou māngai mō Te Kōhanga Reo.

Ko Reg O'Brien nō te Whānau ā Apanui, Eugene Mackey i mate ohorere, tikanga kaihautū, o te Ao Māori me ōna tikanga a Tākuta Hone Kaa, Tā Peter Tapsell, Lob Te Kani, Kevin Bradley me te kuia nei a Mere Moses i mate i te timatanga o te hui.

E maringi māturuturu tonu nei ngā roimata mō rātou e kore rā e rongo ki te aue ō ā rātou mokopuna i tēnei huihuinga; rātou ki a rātou.

Me hoki te pae o mahara ki ngā kaihautū i timatahia te hoe i tēnei waka Te Kōhanga Reo. Ko te Kahurangi tō tātou arikinui Te Atairangikaahu rāua ko Tā Hemi Henare, ngā kaiārahi hāpai i te kaupapa o te Kōhanga Reo ki tōna taumata ikeike mō te maha o ngā tau ā mate noa. Ko Hone Bennett te Heamana Tuatahi o Te Kōhanga Trust. I tērā wā hoki ko ia te Heamana o te Māori Education Foundation me te Heamana tuarua o te New Zealand

MATUA RAUTIA : REPORT ON THE KŌHANGA REO CLAIM

1.1

Māori Council. Ko Frances Williams o Ngāti Porou he kuia o Te Kōhanga Reo mai i te tīmatatanga tae noa ki tōna matenga.

Ko Canon Wi Te Tau Huata i runga i tōna tūranga, i a ia te wairua māori i hāngai atu ki roto i te kaupapa o Te Kōhanga Reo. Ko Te Ao Peehi Kara te koroua i kaha ki te kawē i ngā tikanga ki roto ki ngā mahi katoa o Te Kōhanga Reo.

Ko ēnei ngā tāngata o te Ao Koroua/Kuia i hiki ngā āhuatanga o Te Kōhanga Reo ki ngā taumata whakahirahira o te Ao Māori. I tēnei rā kua ngaro atu rā i te tirohanga kanohi; moe mai koutou i roto i Te Ariki, otirā, te tini o rātou kua mene ki Te Pō; ko rātou ki a rātou, tātou ngā mōrehu waihōtanga ā rātou; tātou ki a tātou.

Tēnei te mihi, tēnei te mihi, tēnei te mihi.

Nā te Rōpū Whakamana i te Tiriti o Waitangi

**1.1 KUA TIPU RĀ**

Kua tipu rā hei oranga

Mo te iwi Māori

Mā te matua i te rangi

Hei ārahi i te kōhanga

Nō reira mauria mai

Ngā Tamariki ki te Kōhanga Reo<sup>1</sup>

**1.2 THE CLAIMANTS, THE CROWN, AND THE CLAIM**

**1.2.1 The claimants**

On 25 July 2011, a large number of kōhanga reo supporters participated in a hīkoi through Wellington to deliver a claim to the Waitangi Tribunal.<sup>2</sup> On behalf of Te Kōhanga Reo National Trust Board, Dr Timoti Kāretu, Tina Olsen-Ratana, and Dame Iritana Te Rangi Tāwhiwhirangi presented their application for an urgent inquiry into the alleged acts and omissions of the Crown in relation to kōhanga reo, in particular concerning the report of the Government's Early Childhood Education Taskforce<sup>3</sup> and the potential development of Government policy which would affect the operation and support of kōhanga reo.

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1. Document B2 (Kohi Coleman and Tunisia Keelan, 'Kua Tipu Rā'), p 8

2. Document E61 (NZPA, 'Hundreds Protest "Bias" Against Kohanga', *New Zealand Herald*, 26 July 2011). Appendix I gives a timeline of the main events in the inquiry.

3. Document A4, vol 1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: ECE Taskforce, 2011), pp 61–455

The kōhanga reo movement comprises a national network of kōhanga reo affiliated with the Te Kōhanga Reo National Trust (the Trust).<sup>4</sup> Kōhanga reo provide a total immersion Māori language and whānau development programme for children from birth to five years of age and their whānau.<sup>5</sup> Parents, whānau, and kaumātua are, together with kaiako, closely involved in children's learning, and take responsibility for management, operation, and everyday decision-making. At any one time, close to 9,000 children and members of their wider whānau attend the 471 kōhanga reo across the country.<sup>6</sup>

Kōhanga reo emerged as a community-based response to the deep concern amongst kaumātua and Māori generally over the declining number of te reo speakers and the very survival of the Māori language.<sup>7</sup> During the 1980s, Māori communities and whānau established kōhanga reo in marae and community centres nationwide.

Te Kōhanga Reo National Trust was established to lead and sustain the movement. Informed by a Māori philosophical world view, the movement's primary purpose is to pass on te reo me ngā tikanga Māori to mokopuna and to promote whānau development. The current Trust board consists of Kingi Tūheitia (patron), Tina Olsen-Ratana (co-chair), Timoti Kāretu (co-chair), Dame Iritana Tāwhiwhirangi, Professor Wharehuia Milroy, Druis Barrett, Manuera Tohu, and Toni Waho.<sup>8</sup>

For the last 30 years kōhanga reo have provided an early learning environment based in te reo and tikanga Māori. Today, the movement continues to engage the energy and commitment of many thousands of mokopuna, whānau, kaiako, and kaumātua across the country. Kōhanga reo are partially state-funded as part of the Crown-regulated mainstream early childhood education (ECE) sector. In addition, the Trust provides a broad range of financial, advisory, training, and administrative support to kōhanga reo, sets the movement's policy, and represents kōhanga reo in interfacing with Crown agencies. Much of its work is directly funded by the Crown, mainly through the Ministry of Education. The Crown's relationship with kōhanga reo and the Trust is important to the well-being of the movement and for the Treaty-based commitment, shared by Māori and the Crown, to save and revitalise te reo Māori.

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4. Claim 1.1.1(a) (Timoti Kāretu, Tina Olsen-Ratana, and Dame Iritana Tāwhiwhirangi, amended statement of claim, 22 September 2011), p 2

5. Document A78 (Te Kohanga Reo National Trust Board, Deed of Trust, December 2002), pp 80–81; doc A2 (Dame Iritana Tāwhiwhirangi, brief of evidence in support of application for urgency, 25 July 2011), p 4

6. Document E15 (claimant counsel, tables showing the number of mokopuna per Kōhanga Reo per district, 30 June 2012); memo 3.1.13 (claimant counsel, memorandum regarding direction for further information, 1 August 2012)

7. Document E63 (Richard Hill, *Maori and the State: Crown-Maori Relations in New Zealand/Aotearoa, 1950–2000* (Wellington: Victoria University Press, 2009), pp 191–192); doc A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), p 493; doc A78 (Department of Maori Affairs, 'OECD: TECO: Partnership Project, Department of Maori Affairs in Partnership with the Maori Community Through its National Te Kohanga Reo Trust in Support of Te Kohanga Reo', case study, 1984), p 255

8. Te Kōhanga Reo National Trust Board, 'Board of Trustees', Te Kōhanga Reo National Trust Board, [http://www.kohanga.ac.nz/index.php?option=com\\_content&view=article&id=1&Itemid=155](http://www.kohanga.ac.nz/index.php?option=com_content&view=article&id=1&Itemid=155), accessed 10 August 2012

**1.2.2 The Crown's current relationship with kōhanga reo**

The ECE sector has been primarily supported since 2008 by the Early Childhood and Regional Education Group within the Ministry of Education (the Ministry).<sup>9</sup> The group is responsible for giving ECE policy advice to the Government, administering regulations (including licensing and certification), and providing support and resources (including distributing funding) to ECE services around the country through the Ministry's regional offices.<sup>10</sup> The group is also responsible for coordinating cross-agency liaison with district health boards, local government, and the Fire Service on licensing, regulation, and other issues.<sup>11</sup>

The Ministry of Education's ECE programmes are also supported by its strategic policy group, Group Māori, which coordinates the Ministry's strategic responsibilities for te reo Māori across the education sector.<sup>12</sup> Group Māori oversees the implementation of the Government's Māori education strategy, *Ka Hikitia*, through the Action and Accountability for the Māori Education Strategy Unit. Group Māori also manages the Ministry's education relationships with iwi partners through the Iwi and Māori Education Relationships Team and iwi partnership advisors, who work through national and regional offices.<sup>13</sup>

Te Puni Kōkiri is the Crown's principal advisor on Crown-Māori relations and guides Māori public policy. The Ministry has a statutory responsibility to promote increases in the levels of achievement attained by Māori in education, training and employment, health, and economic development.<sup>14</sup> Te Puni Kōkiri is largely a policy Ministry, which also supports a range of small-scale programmes and services to further Māori development.<sup>15</sup>

The Education Review Office (ERO) is the Government agency that evaluates the quality of education and care provided for students in schools, kura kaupapa Māori, ECE services, and kōhanga reo.<sup>16</sup> ERO has a specialist Māori review services unit, Te Uepū ā-Motu, which is responsible for all reviews of kōhanga reo and kura kaupapa Māori.

The New Zealand Teachers Council is the professional and regulatory body for registered teachers working in English and Māori medium settings in ECE, schools, and other related education institutions. The Teachers Council is responsible for the approval, review, and monitoring of teacher education programmes, and regulating teacher registration.<sup>17</sup> The Teachers Council comprises members appointed by the Minister of Education and elected by registered early childhood, primary, and secondary teachers, and principals. It is supported by a staff of 40 and by two statutory advisory groups, the Early Childhood Education

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9. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), p 21

10. Document A61 (Karen Sewell, brief of evidence, 15 February 2012), para 34; doc A60 (Karl Le Quesne, brief of evidence, 15 February 2012), p 1

11. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), p 21

12. Document A58 (Apyll Parata, brief of evidence, 15 February 2012), pp 1-2

13. *Ibid*, pp 1-2

14. Document A68 (Geoff Short, brief of evidence, 15 February 2012), p 2

15. *Ibid*, p 4

16. Document A56 (Graham Stoop, brief of evidence, 15 February 2012), p 1

17. Document A68 (Peter Lind, brief of evidence, 15 February 2012), p 3

Advisory Group and the Māori Medium Advisory Group, which specialise in early childhood issues and immersion and bilingual Māori-medium issues respectively.<sup>18</sup>

The Tertiary Education Commission is the Crown agency that leads the Government's relationship with the tertiary sector and makes investments in tertiary education and training on the Government's behalf.<sup>19</sup> A Board of Commissioners, comprising members appointed by the Minister for Tertiary Education, Skills and Employment, gives effect to the Tertiary Education Strategy, which includes Māori as a 'priority group'.<sup>20</sup> The commission funds the Trust to deliver tertiary qualifications for kaiako, kaiāwhina, and kōhanga reo whānau.<sup>21</sup>

### 1.2.3 The claim

In their statement of claim, the claimants raise a range of concerns about the Crown's engagement with kōhanga reo and the Trust in the fields of partnership relations, regulatory compliance, finance, and support for the kaupapa of te reo Māori revitalisation. The claimants allege that since 1990, by statutory amendment and subsequent actions, the Crown had unilaterally treated kōhanga reo as ECE providers. This, they consider, failed to recognise the kaupapa of kōhanga reo, which was never intended to be only about ECE but also encompassed te reo Māori, tikanga Māori, and whānau development.<sup>22</sup> In their view, the Crown had failed to understand the purpose and nature of kōhanga reo, and had sought or acquiesced in the assimilation of kōhanga reo as mainstream ECE service providers in a manner inconsistent with the exercise of tino rangatiratanga.<sup>23</sup>

The claimants contend that the Crown's integration of kōhanga reo within the ECE sector has required multiple compromises and sacrifices from kōhanga reo whānau and the Trust as to this kaupapa. Although the claimants acknowledge that flexibility was needed, the nature of the compromises the Crown had required kōhanga reo to make, they say, went to the heart of the kōhanga reo kaupapa and prevented them from developing organically.<sup>24</sup>

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18. Document A68 (Peter Lind, brief of evidence, 15 February 2012), pp 2–3

19. Document A25(f) (Ministry of Education, 'Māori Language in the Ministry of Education, Submission from the Ministry of Education to Te Paepae Motuhake: Review Panel for the Government Review of the Māori Language Sector', 19 November 2010), p 110

20. Document A25(f) (Apyll Parata, 'Education Report: Government's Review of the Maori Language Strategy and Sector: Briefing on the Report back from Te Paepae Motuhake', 4 April 2011), p 89

21. Document A45 (Rochelle Swinton, brief of evidence, 22 December 2011), p 3

22. Claim 1.1.1 (Timoti Kāretu, Tina Olsen-Ratana, and Dame Iritana Tāwhiwhirangi, statement of claim, 25 July 2011), pp 5–6

23. Ibid, pp 5, 10–11, 17

24. Ibid, p 10

The claimants contend that the Crown must bear responsibility for the steady decline in kōhanga reo numbers.<sup>25</sup> They allege that breaches of the Crown's duties under the Treaty of Waitangi have had a number of adverse consequences for kōhanga reo whānau and have caused further decline in the status of te reo Māori.<sup>26</sup>

The claimants ask the Tribunal to recommend that the Crown take steps to inform itself as to the true nature and purpose of kōhanga reo and its kaupapa, and that kōhanga reo be given independent statutory recognition. The claimants also seek recognition of the Trust as kaitiaki of kōhanga reo and their kaupapa, and for an end to what they see as inequities in the funding and professional status of kōhanga reo.<sup>27</sup>

### 1.3 THE APPLICATION FOR URGENCY

#### 1.3.1 The application

The claimants allege that there were problems in their relationship with the Crown and that these had recently been brought to a head by the establishment of an expert panel to review the efficiency and effectiveness of Government spending on ECE.<sup>28</sup> In October 2010, following approval from Cabinet, the then Minister of Education, the Honourable Anne Tolley, established an advisory taskforce on early childhood education (known as the ECE Taskforce).<sup>29</sup> After inquiring into all areas of ECE, this taskforce released its report on 1 July 2011. The report, *An Agenda for Amazing Children – Final Report of the ECE Taskforce* (the *ECE Taskforce Report*), made 65 wide-ranging recommendations, a number of which indirectly or directly impacted on the Trust and kōhanga reo.<sup>30</sup> The claimants considered that the report included adverse comments and recommendations about the Trust and kōhanga reo, and failed to recognise the nature and purpose of kōhanga reo and their kaupapa.<sup>31</sup> The claimants alleged that the Crown was in the process of making decisions based on the

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25. Claim 1.1.1 (Timoti Kāretu, Tina Olsen-Ratana, and Dame Iritana Tāwhiwhirangi, statement of claim, 25 July 2011), p 16; submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), pp 30, 69; submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 23; Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 398

26. Claim 1.1.1 (Tiimoti Kāretu, Tina Olsen-Ratana, and Dame Iritana Tāwhiwhirangi, statement of claim, 25 July 2011), p 16

27. Ibid, p 17

28. Ibid, p 8

29. Document E62 (Minister of Education, 'Government Taskforce on Early Childhood Education', media release, Wellington, 7 October 2010)

30. Document A4, vol 1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: ECE Taskforce, 2011)), pp 61–455

31. Claim 1.1.1 (Timoti Kāretu, Tina Olsen-Ratana, and Dame Iritana Tāwhiwhirangi, statement of claim, 25 July 2011), p 8; claim 1.1.1(a) (Timoti Kāretu, Tina Olsen-Ratana and Dame Iritana Tāwhiwhirangi, amended statement of claim, 22 September 2011), pp 9–12

recommendations of the report that were likely to cause significant and irreversible prejudice to the Trust, kōhanga reo, and the future of te reo Māori.<sup>32</sup>

The claimants filed an application with the Waitangi Tribunal on 25 July 2011 for an urgent inquiry into alleged acts and omissions of the Crown in relation to kōhanga reo, in particular concerning the *ECE Taskforce Report* and the potential development of Government policy which would affect the operation and support of kōhanga reo. The claimants stated that there was a risk of imminent harm arising from the *ECE Taskforce Report* in the form of reputational damage caused to the Trust and kōhanga reo and that, as a consequence, enrolments at kōhanga reo and the number of future te reo Māori speakers would decrease.<sup>33</sup> A brief of evidence and accompanying appendices were filed the same day by Tina Olsen-Ratana and Dame Iritana Tāwhiwhirangi.<sup>34</sup> Claimant counsel filed a subsequent memorandum in support of the application for urgency on 28 July 2011.<sup>35</sup>

### 1.3.2 Delegation to presiding officer and members

The kōhanga reo claim was registered on 26 July 2011.<sup>36</sup> On the same day, the Chairperson, His Honour Chief Judge Wilson Isaac, appointed Deputy Chief Judge Caren Fox as presiding officer to determine the application for urgency, and requested a response from the Crown.<sup>37</sup> In response to the Chief Judge's memorandum-directions of 26 July 2011 the Crown opposed the application for urgency.<sup>38</sup> A brief of evidence was also filed by the Crown.<sup>39</sup>

In order to ensure the Tribunal had all the information it needed to make an informed decision on the issues, on 9 August 2011 Deputy Chief Judge Fox decided to hear the kōhanga reo application for urgency.<sup>40</sup> Later, on 12 August 2011, Chief Judge Isaac appointed two Tribunal members, Kihi Ngatai QSM and the Honourable Sir Douglas Kidd, to assist Deputy Chief Judge Fox in determining whether to grant the application for urgency.<sup>41</sup>

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32. Claim 1.1.1 (Timoti Kāretu, Tina Olsen-Ratana, and Dame Iritana Tāwhiwhirangi, statement of claim, 25 July 2011), pp 8, 16

33. Claim 1.1.1(a) (Timoti Kāretu, Tina Olsen-Ratana and Dame Iritana Tāwhiwhirangi, amended statement of claim, 22 September 2011), pp 14–15

34. Document A1 (Tina Olsen-Ratana, brief of evidence in support of application for urgency, 25 July 2011); doc A1(a) (Tina Olsen-Ratana, comp, appendices 1–8 to brief of evidence, various dates); doc A2 (Dame Iritana Tāwhiwhirangi, brief of evidence in support of application for urgency, 25 July 2011); doc A2(a) ('Tripartite Relationship Agreement between Te Kōhanga Reo National Trust and the Ministers of Education and Māori Affairs', 27 March 2003)

35. Submission 3.1.2 (claimant counsel, submission in support of the application for urgency, 28 July 2011)

36. Memorandum 2.1.1 (Chairperson, memorandum-directions, 26 July 2011)

37. Memorandum 2.5.1 (Chairperson, memorandum, 26 July 2011)

38. Submission 3.1.7 (Crown counsel, submission in opposition to application for urgency, 4 August 2011)

39. Document A3 (Karin Dalglish, brief of evidence in opposition to application for urgency, 4 August 2011)

40. Memorandum 2.5.3 (Presiding officer, memorandum, 9 August 2011)

41. Memorandum 2.5.5 (Chairperson, memorandum, 12 August 2011)



### 1.3.3 Hearing and mediation

On 9 August 2011, the Tribunal granted the claimants a hearing on their application for urgency.<sup>42</sup> The hearing took place at the Waitangi Tribunal's offices in Wellington on 17 and 18 August 2011. The Tribunal heard opening submissions for the claimants and then evidence from Dr Timoti Kāretu, Dame Iritana Tāwhiwhirangi, Titoki Black, and Ms Olsen-Ratana on behalf of the Trust. Crown counsel presented submissions in response, followed by the evidence of the Ministry of Education's acting group manager early childhood education.

Following the hearing, the Tribunal directed the parties to mediation pursuant to clause 9A of schedule 2 to the Treaty of Waitangi Act 1975.<sup>43</sup> The Tribunal suggested that mediation between the parties to the Tripartite Agreement (the Trust, the Ministry, and Te Puni Kōkiri) would assist in re-establishing an effective working relationship between the parties. After considering responses from the parties on the persons to mediate, the Tribunal advised that Royden Hindle (an arbitration and mediation professional) and Kevin Prime (an expert on community and governance matters, and a current Environment Court commissioner) would act as co-mediators.<sup>44</sup>

A mediation teleconference took place on 16 September 2011, and mediation between the parties was held at the offices of the Waitangi Tribunal on 20 September 2011. However, the Tribunal was advised later that day by Mr Hindle and Mr Prime that the mediation had been unsuccessful.<sup>45</sup>

The application then returned to the Tribunal for consideration. The Crown filed further information and its closing submissions in opposition to the application for urgency on 29 August 2011.<sup>46</sup> Closing submissions for the claimants were filed on 9 September 2011.<sup>47</sup>

### 1.3.4 Decision on urgency

In deciding an application for urgency, the Tribunal has regard to a number of factors. Of particular importance are whether:

- ▶ the claimants can demonstrate that they are suffering, or are likely to suffer, significant and irreversible prejudice as a result of current or pending Crown actions or policies;

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42. Memorandum 2.5.3 (Presiding officer, memorandum, 9 August 2011), p 4

43. Memorandum 2.5.6 (Deputy Chief Judge CL Fox, Sir Douglas Kidd, and Kihī Ngatai, memorandum, 19 August 2011); memo 2.5.7 (Deputy Chief Judge CL Fox, Sir Douglas Kidd, and Kihī Ngatai, memorandum, 23 August 2011)

44. Memorandum 2.5.10 (Deputy Chief Judge CL Fox, Sir Douglas Kidd and Kihī Ngatai, memorandum, 12 September 2011), p 2

45. Submission 3.5.1 (Royden Hindle and Kevin Prime to registrar, Waitangi Tribunal, letter concerning mediation, 20 September 2011)

46. Submission 3.1.25 (Crown counsel, closing submission in opposition to application for urgency, 29 August 2011)

47. Submission 3.1.38 (claimant counsel, closing submission regarding application for urgency, 9 September 2011)



- ▶ there is no alternative remedy that, in the circumstances, it would be reasonable for the claimants to exercise; and
- ▶ the claimants are ready to proceed urgently to a hearing.<sup>48</sup>

Other factors that the Tribunal takes into account in considering urgent applications include whether the claim or claims challenge an important current or pending Crown action or policy, whether an injunction has been issued by the courts on the basis that the claim or claims for which urgency has been sought has been submitted to the Tribunal, and whether any other grounds for justifying urgency have been made out.<sup>49</sup>

In accordance with the 2009 *Guide to the Practice and Procedure of the Waitangi Tribunal*, the Tribunal considered that there were grounds for granting the kōhanga reo application for urgency. In its decision on urgency, delivered on 25 October 2011, the Tribunal discussed the grounds for granting an urgent hearing and accepted that in granting a claim, an urgent hearing has the effect of ‘leap-frogging’ it ahead of many other claims that have been partially heard, or are ready or nearly ready to be fully inquired into. However, the Tribunal considered that ‘if an exceptional case exists with adequate grounds made out, then the Tribunal must grant it, as no sufficient reason can exist to justify not hearing the claim.’<sup>50</sup> The Tribunal noted that Crown officials were preparing policy changes as a result of the *ECE Taskforce Report* that would affect kōhanga reo, that no alternative remedy existed which would be reasonable for the claimants to exercise, and that the claimants were ready to proceed urgently to a hearing.<sup>51</sup>

In particular, the Tribunal noted that any reputational damage resulting from the publication and release of the *ECE Taskforce Report*, which had occurred without consultation by officials or the Minister with the Trust, would be likely to result in a renewed reduction of enrolments for the 2012 and 2013 years with consequent prejudice to te reo Māori.<sup>52</sup> The Tribunal also found that it was likely the Crown would make decisions on the basis of the *ECE Taskforce’s* recommendations, particularly around funding for the *ECE* sector during the annual budget round commencing in December 2011.<sup>53</sup> The Crown and the claimants had produced documents which indicated that Government officials were preparing policy for approval by the Minister in September, October, and December 2011 through to 2012. The Tribunal also noted that the Crown appeared to be moving towards implementing

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48. Waitangi Tribunal, *Guide to the Practice and Procedure of the Waitangi Tribunal*, practice note (Wellington: Waitangi Tribunal, 2009), p 4

49. *Ibid*, p 4

50. Memorandum 2.5.13 (Deputy Chief Judge CL Fox, Sir Douglas Kidd, and Kihi Ngatai, memorandum, 25 October 2011), p 21

51. Waitangi Tribunal, *Guide to the Practice and Procedure of the Waitangi Tribunal*, practice note (Wellington: Waitangi Tribunal, 2009); memo 2.5.13 (Deputy Chief Judge CL Fox, Sir Douglas Kidd, and Kihi Ngatai, memorandum, 25 October 2011), pp 25, 27

52. Memorandum 2.5.13 (Deputy Chief Judge CL Fox, Sir Douglas Kidd, and Kihi Ngatai, memorandum, 25 October 2011), p 24

53. *Ibid*, pp 24, 31

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1.4

aspects of phase one of the *ECE Taskforce Report* and that, in the Tribunal's view, 'several tasks identified for this phase must have some long-term effect on the Trust, the kōhanga reo movement, and te reo Māori'.<sup>54</sup> The Tribunal stated that as a degree of respect and confidence had been lost, and as mediation had failed, a hearing would give both parties the opportunity to have their respective positions transparently and independently assessed against Treaty principles.<sup>55</sup> The Tribunal accordingly granted urgency to the claim.

On 3 November 2011, Chief Judge Isaac constituted a panel to hear the claim, reappointing Deputy Chief Judge Fox, Sir Douglas, and Mr Ngatai along with the additional appointments of Mr Ron Crosby and Ms Tania Simpson.<sup>56</sup>

#### 1.4 THE INQUIRY

##### 1.4.1 Pre-hearing matters

The parties identified a large number of publications and reports that they considered would assist the Tribunal during its deliberations on the claim.<sup>57</sup> Time was given before the hearing for the parties to prepare independent expert evidence and file a range of Government records and reports, as well as relevant scholarly works and expert literature reviews.<sup>58</sup> There was considerable exchange between counsel and the Tribunal on admissible evidence and procedural matters such as expert evidence and witnesses. As a result, hearings were scheduled for February 2012.

A judicial teleconference was held on 10 November 2011 to discuss the preparation of a statement of issues, the inquiry process, the filing of evidence and supporting documents, and the scheduling of hearings.<sup>59</sup> A further judicial teleconference was held on 20 February 2012 to determine final timetabling issues for the filing of evidence. The proposed hearing schedule was also agreed.<sup>60</sup>

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54. Memorandum 2.5.13 (Deputy Chief Judge CL Fox, Sir Douglas Kidd, and Kihī Ngatai, memorandum, 25 October 2011), p 24

55. *Ibid*, p 27

56. Memorandum 2.5.16 (Chairperson, memorandum, 3 November 2011)

57. Submission 3.1.2 (claimant counsel, memorandum in support of the application for urgency, 28 July 2011); memo 3.1.14 (Crown counsel, memorandum filing further information in response to memorandum of the Presiding Officer, 12 August 2011); memo 3.1.58 (Crown counsel, memorandum in response to memorandum relation to the disclosure and requests of documents and requests for directions and orders, 17 November 2011); memo 3.1.62 (claimant counsel, memorandum in response to Crown memorandum on disclosure of documents, 21 November 2011)

58. Memorandum 2.5.13 (Deputy Chief Judge CL Fox, Sir Douglas Kidd, and Kihī Ngatai, memorandum, 25 October 2011), p 32

59. Memorandum 2.5.14 (Deputy Chief Judge CL Fox, Sir Douglas Kidd, and Kihī Ngatai, memorandum, 31 October 2011)

60. Memorandum 2.5.28 (Waitangi Tribunal, memorandum, 15 February 2012)

#### 1.4.2 The statement of issues

Before the 10 November teleconference, claimant counsel and Crown counsel each prepared a draft statement of issues for the Tribunal's consideration.<sup>61</sup> Claimant counsel later submitted an amended statement of issues which added questions around possible remedies and solutions.<sup>62</sup> The Tribunal noted that there were similarities between the claimants' and the Crown's versions, and encouraged the parties to work together to provide a joint statement of issues.<sup>63</sup>

The parties reached substantive agreement on a further draft statement of issues, which was provided to the Tribunal on 18 November 2011.<sup>64</sup> After further consideration, however, the claimants and the Trust rescinded their support for the joint statement of issues and the claimants asked the Tribunal to proceed with the amended statement of issues provided by claimant counsel for the earlier teleconference.<sup>65</sup>

The Tribunal released its own final statement of issues on 25 November 2011.<sup>66</sup> This was designed to ensure that the inquiry and the Tribunal's report would be issue-focused. The final statement of issues identified a range of aspects of kōhanga reo operation and policy for the Tribunal to examine, including:

- ▶ relevant Treaty principles, rights, interests, and duties (SOI 1);<sup>67</sup>
- ▶ an assessment of the relevant areas of Crown conduct in terms of the respective rights, interests, and duties of Māori and the Crown (SOI 2), and an assessment of the effects of Crown conduct in terms of those principles (SOI 3);
- ▶ an assessment of the processes and manner of engagement between the Crown, kōhanga reo, and the Trust through current and pending Crown policy (SOI 4); and
- ▶ changes, if any, to the relationship between the Trust, kōhanga reo and the Crown, and to Crown policy, that may be proposed in order to reflect respective Treaty rights and duties (SOI 5).<sup>68</sup>

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61. Submission 3.1.52 (claimant counsel, submission in response to memorandum 2.5.14 confirming agenda items for the judicial conference, 4 November 2011), appendix A; submission 3.1.53 (Crown counsel, submission in response to memorandum 2.5.14 and also in response to claimant counsel memorandum 3.1.49 regarding the inquiry process, 8 November 2011), pp 3–5

62. Submission 3.1.55 (claimant counsel, submission in response to Crown memorandum 3.1.53 and to memorandum of the presiding officer (memo 2.5.18) as to further witness information, 9 November 2011), appendix A

63. Memorandum 2.5.19 (Tribunal panel, memorandum following the 10 November 2011 judicial teleconference outlining the inquiry timeline, 11 November 2011), p 1

64. Submission 3.1.60 (claimant counsel, submission in response to memorandum (memo 2.5.19) concerning possible witnesses and a list of issues), appendix B

65. Submission 3.1.62 (claimant counsel, submission in response to Crown memorandum (memo 3.1.58) on disclosure of documents), p 2

66. Statement 1.4.1 (Waitangi Tribunal, statement of issues for the urgent inquiry, 25 November 2011)

67. The abbreviations refer to numbered sections in the statement of issues.

68. Statement 1.4.1 (Waitangi Tribunal, statement of issues for the urgent inquiry, 25 November 2011)

### 1.4.3 The hearings

Hearings were held over two consecutive weeks, 12 to 16 and 19 to 23 March 2012. The venue was the Kōhanga Reo National Trust Board offices in Wellington.<sup>69</sup> Mai Chen and her legal team presented the case for the claimants, and Ben Keith and Dr Damen Ward represented the Crown.

In the first week of hearings (12–16 March) the Tribunal heard evidence from 20 claimant witnesses, including Trust members and staff, academic experts, kaumātua, and kaiako from kōhanga reo. Appearing for the claimants were Trust board members Tina Olsen-Ratana (co-chair), Dr Timoti Kāretu (co-chair), Dame Iritana Tāwhiwhirangi, and Professor Wharehuia Milroy. A number of Trust staff also gave evidence: Titoki Black (chief executive), Harata Gibson (general manager, operations), Angus Hartley (general manager, corporate services), Heke Huata (general manager, information management and technology), Mihi Tashkoff (team leader, whānau management), Rochelle Swinton (team leader, whānau learning), Andrew Hema (kaupapa kaimahi), and Nikorima Broughton (kaupapa kaimahi). Kōhanga reo kaumātua Matiu Kingi and Taina Ngarimu, and kaiako Vaine Daniels told us about their past and present experiences in running and supporting kōhanga reo in different parts of the country. Expert witnesses Associate Professor Rawinia Higgins, Arapera Royal-Tangaere, Dr Kathleen Irwin, and Professor Tania Ka'ai presented a wide range of academic and research evidence alongside their experience of Government policy processes affecting kōhanga reo. Jeremy MacLeod (director of te reo, tikanga and mātauranga at Ngāti Kahungunu iwi incorporated) also gave evidence about the importance of kōhanga reo to te reo revitalisation in his iwi.

In the second hearing week (19–23 March) Crown counsel called 17 witnesses, including Professor Stephen May from the Faculty of Education at the University of Auckland, a leading expert on bilingualism and immersion education, and officials from most of the Government agencies whose mandates connect to the Trust and kōhanga reo.<sup>70</sup> Ministry witnesses Lesley Longstone (Secretary for Education), Karen Sewell (Secretary for Education between 2006 and 2011), Apryll Parata (Deputy Secretary of Performance and Change), Rawiri Brell (Deputy Secretary, Early Childhood Education and Regional Education in 2011), Karl Le Quesne (Group Manager Early Childhood Education), and Richard Walley (Senior Policy Manager Early Childhood Education) spoke about the Crown's role in ECE and kōhanga reo.<sup>71</sup> ERO witnesses Dr Graham Stoop (Chief Executive and Chief Review Officer), Lynda Watson (Review Services Manager in Te Uepū ā-Motu), Makere Smith

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69. Memorandum 2.5.23 (Waitangi Tribunal, memorandum, 25 November 2011), p 2

70. Document A71 (Stephen May, brief of evidence, 20 February 2012), p 1

71. Document A3 (Karin Dagleish, brief of evidence in opposition to application for urgency, 4 August 2011); doc A58 (Apryll Parata, brief of evidence, 15 February 2012); doc A59 (Lesley Longstone, brief of evidence, 15 February 2012); doc A60 (Karl Le Quesne, brief of evidence, 15 February 2012); doc A61 (Karen Sewell, brief of evidence, 15 February 2012); doc A62 (Richard Walley, brief of evidence, 15 February 2012); doc A63 (Rawiri Brell, brief of evidence, 15 February 2012)

(National Manager Review Services Māori), and Ani Rolleston (Review Services Manager in Te Uepū ā-Motu) presented evidence to the Tribunal on ERO's system, process, and standards for reviewing kōhanga reo.<sup>72</sup> Te Puni Kōkiri witnesses Geoff Short (Deputy Secretary for Whānau and Social Policy) and Steven (Tipene) Chrisp (Policy Director) spoke to us about the Māori Language Strategy and the involvement of their Ministry in providing advice to other agencies' education policies as they relate to Māori, in particular the Ministry of Education.<sup>73</sup> From the New Zealand Teachers Council, Peter Lind (Director and Chief Executive) described how the Council engages with kaupapa-based qualifications and the processes the Council follows when approving teaching qualifications.<sup>74</sup> The Tertiary Education Commission did not appear before us.

Three independent witnesses were also included by the Crown in addition to Professor May. Rita Walker (an ERO review officer with strong links to kōhanga reo) spoke of the place of te reo me ngā tikanga Māori in ECE.<sup>75</sup> Julian King (an independent public policy advisor) gave us a statistical analysis of enrolment rates at kōhanga reo.<sup>76</sup> Dr Anne Meade (an independent ECE consultant) provided a history of ECE policy changes.<sup>77</sup>

The Tribunal heard the parties' closing submissions on 23, 24, 26, and 27 April 2012, also at the Trust offices.

Kōhanga reo supporters, on most days numbering in their hundreds, followed the proceedings closely, together with Government officials and members of the public. Public and media interest in the proceedings was high throughout the hearings. The deep concern and involvement in the issues before us that was shown by those who attended the hearings and those who gave evidence, both for the claimants and for the Crown, was frequently demonstrated, not least in the performance of the many waiata sung in support of the witnesses and speakers. The generally good spirit in which witnesses and counsel engaged with the proceedings was appreciated by the Tribunal.

## 1.5 OUR REPORT

Our report on this inquiry is necessarily constrained by the speed required of an urgent inquiry addressing possible imminent prejudice to the claimants. We were presented with a vast quantity of documentary material, amounting very roughly to some 60,000 pages in

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72. Document A53 (Lynda Watson, brief of evidence, 15 February 2012); doc A54 (Makere Smith, brief of evidence, 15 February 2012); doc A55 (Ani Rolleston, brief of evidence, 15 February 2012); doc A56 (Graham Stoop, brief of evidence, 15 February 2012)

73. Document A68 (Geoff Short, brief of evidence, 15 February 2012), pp 3–4; doc A70 (Tipene Chrisp, brief of evidence, 15 February 2012), pp 2–4

74. Document A67 (Peter Lind, brief of evidence, 15 February 2012)

75. Document A96 (Rita Walker, brief of evidence, 15 February 2012), p 1

76. Document A65 (Julian King, brief of evidence, 15 February 2012), p 2

77. Document A66 (Anne Meade, brief of evidence, 15 February 2012), pp 1–2

all. It is not possible in this report to present the full detail of the events and actions that are relevant to the grievances alleged by the claimants. We have nevertheless weighed all the witness and documentary evidence before us, and we address all of the issues set down in our statement of issues.

The report is structured as follows:

- ▶ Chapter 2 outlines the history of the Trust and the kōhanga reo movement from its origins to the present, presenting a factual background to the issue-focused chapters that follow.
- ▶ Chapter 3 presents the Tribunal's analysis of the relevant Treaty principles, rights, interests, and duties that should guide the relationship between the parties (SOI 1).
- ▶ Chapter 4 discusses the protection of te reo Māori, the Crown's policies and strategies, and the importance of immersion learning (SOI 2.1, 2.2, 3.1, 3.2, 3.4a).
- ▶ Chapter 5 focuses on Māori participation in ECE and the Ministry of Education's goal of increasing participation in ECE (SOI 3.1, 3.2).
- ▶ Chapter 6 addresses the relationship between the Crown and the kōhanga reo movement and the Trust, including current and pending Crown policy towards kōhanga reo and the recommendations of the *ECE Taskforce Report* (SOI 3.4–3.8, 4).
- ▶ Chapter 7 highlights some of the issues concerning quality and kaiako qualifications in kōhanga reo (SOI 2.7).
- ▶ Chapter 8 presents our analysis of the financial resourcing provided to kōhanga reo (SOI 2.3, 2.4, 3.3).
- ▶ Chapter 9 outlines the curriculum, health and safety, and other regulatory requirements applicable to kōhanga reo, and their impact on the operations of kōhanga reo (SOI 2.6).
- ▶ Chapter 10 discusses the Education Review Office and how it practises and carries out performance reviews of kōhanga reo (SOI 2.5).
- ▶ Chapter 11 presents a summary of our findings on the issues and our recommendations on the remedial issues raised by the claim.

CHAPTER 2

**HE KUPU ONAMATA MŌ TE KŌHANGA REO  
THE HISTORY OF THE KŌHANGA REO MOVEMENT**



The kōhanga reo movement originated in the Māori language renaissance of the 1970s and 1980s. Thirty years after the foundation of the first kōhanga reo, it remains the principal institutional vehicle for passing on te reo me ngā tikanga Māori from older generations to the youngest. Through full immersion, it has provided a unique, whānau-based environment within which mokopuna are empowered to ‘catch’ the language in their earliest formative years. In so doing, it has aimed to build much of the future foundation for the teaching of te reo in kura and wānanga and its usage in whānau and everyday life.

In this chapter, we provide an overview of the development of the kōhanga reo movement over the last 30 years, focusing in particular on how the Crown has engaged with it. We consider three phases in the evolution of the relationship:

- ▶ rapid expansion from 1982 to 1990, with the Department of Māori Affairs as the lead Government agency;
- ▶ a peak in 1993, followed by steady decline from 1997 to 2002 after the transfer in 1990 from the Department of Māori Affairs to the Ministry of Education; and

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- ▶ marginalisation and further decline since 2003 within the rapidly expanding early childhood education (ECE) sector.

### 2.1 REVITALISING TE REO AND THE LAUNCH OF THE KŌHANGA REO MOVEMENT

The founders of the kōhanga reo movement faced a situation of advanced and perhaps terminal decline that was threatening the very survival of te reo Māori. In its 1986 report on the Te Reo Māori claim, endorsed a quarter-century later in its *Ko Aotearoa Tēnei* report on the Wai 262 claim, the Waitangi Tribunal described a seemingly inexorable decline during the twentieth century, accelerated by the state educational system:

- ▶ During the first quarter century, children spoke Māori at home but, on pain of punishment, only English at school.
- ▶ During the second quarter century, many graduates of those schools spoke Māori with adults but not to their children, for whom English became their first language.
- ▶ During the third quarter century, monocultural schooling and mass urbanisation produced a generation who had little or no te reo Māori.<sup>1</sup>

The consequence was large-scale language loss within the space of three generations. According to research by Professor Bruce Biggs, the ability to speak te reo declined from 90 per cent of Māori schoolchildren in 1913, to 55 per cent in 1950 and just 5 per cent in 1975.<sup>2</sup> Dr Richard Benton's 1970s survey found that the youngest child was rated as fluent in te reo Māori in only 4 per cent of Māori households with resident children.<sup>3</sup> It was plain to the Tribunal, reporting on the te reo claim in 1986, that more was needed than injunctions to the dwindling number of still fluent parents to speak Māori to their children: 'Other policies are now necessary if it is to survive and if it is to be more than like Church Latin, to be used on some ceremonial occasions and nothing more.'<sup>4</sup>

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1. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Maori Claim*, 4th ed (Wellington: GP Publications, 1996), pp 8–10; Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, pp 393–394

2. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Maori Claim*, 4th ed (Wellington: GP Publications, 1996), p 11; Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 394; doc A32 (David Williams, *Crown Policy Affecting Maori Knowledge Systems and Cultural Practices* (Wellington: Waitangi Tribunal, 2001), p 137

3. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, pp 394–395; doc A42 (Tamati Reedy, 'Te Reo Māori: The Past 20 Years and Looking Forward', *Oceanic Linguistics*, vol 39, no 1 (June 2000), p 151

4. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Maori Claim*, 4th ed (Wellington: GP Publications, 1996), p 12



During the 1970s, a growing sense of urgency amongst Māori led to public campaigns for Government action.<sup>5</sup> A series of petitions was presented to Parliament: those of 1972 and 1978 each attracted 30,000 signatures, the first calling for Māori culture and language to be taught in all schools and the second for a Māori television unit within the New Zealand Broadcasting Corporation.<sup>6</sup> Other initiatives included the founding in 1979 of Te Ātaarangi language learning programme and in 1981 of Te Wānanga o Raukawa, the first kaupapa Māori tertiary institution.<sup>7</sup> The revival of te reo me ngā tikanga Māori was at the forefront of Māori concerns. Speaking to the Tribunal in 1985, Sir James Henare cast the Māori predicament in stark existential terms:

The language is the core of our Maori culture and mana. Ko te reo te mauri o te mana Maori (The language is the life force of the mana Maori). If the language dies, as some predict, what do we have left to us? Then, I ask our own people who are we?<sup>8</sup>

In the late 1970s and early 1980s, Māori initiative encountered an officialdom becoming readier to listen. In 1977 the Department of Māori Affairs, led by Secretary for Māori Affairs Kara Puketapu, adopted its Tū Tangata (stand tall) philosophy, which emphasised cultural and economic advancement through self-reliant, community-based development and drawing on traditional Māori values.<sup>9</sup> As well as allowing more space for local action and decentralised decision-making, the Department convened annual national hui kaumātua and wānanga whakatauirā, at which Māori leaders could raise their concerns and make policy proposals.<sup>10</sup>

The 1979 hui kaumātua, held at Waiwhetū, discussed the plight of the language and the need for urgent action. Writing in 1997, Arapere Royal-Tangaere recorded that ‘from that meeting it was affirmed that the Māori language was a poutokomanawa, the centre pole, of mana Māori and therefore Māori people needed to take control of the future destiny of the

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5. Document A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), p 492

6. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 395; doc A32 (David Williams, *Crown Policy Affecting Maori Knowledge Systems and Cultural Practices* (Wellington: Waitangi Tribunal, 2001)), pp 164–167

7. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, pp 395–396

8. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Maori Claim*, 4th ed (Wellington: GP Publications, 1996), p 34

9. Document E63 (Richard Hill, *Maori and the State: Crown-Maori Relations in New Zealand/Aotearoa, 1950–2000* (Wellington: Victoria University Press, 2009), pp 191–192); doc A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), p 493; doc A78 (Department of Maori Affairs, ‘OECD: TECO: Partnership Project, Department of Maori Affairs in Partnership with the Maori Community Through its National Te Kohanga Reo Trust in Support of Te Kohanga Reo’, case study, 1984), p 255

10. Document E63 (Richard Hill, *Maori and the State: Crown-Maori Relations in New Zealand/Aotearoa, 1950–2000* (Wellington: Victoria University Press, 2009), p 191); doc A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), p 493

language and to plan for its survival.<sup>11</sup> The first Wānanga Whakatauirā in 1980 endorsed the call under the guiding principle ‘Ko te reo te mauri o te mana Māori.’<sup>12</sup> At the second, held in October 1981, Sir James Henare convened a te reo working group comprising, amongst others, Lady Reedy (Tilly), Ruka Broughton, Sir Monita Delamere and Archdeacon Kingi Ihaka.<sup>13</sup> The Wānanga adopted the group’s proposal for a part-funded scheme ‘to appoint an adequate number of Maori, Maori-speaking supervisors, to run day-care centres on marae, kokiri or other appropriate centres where needed.’<sup>14</sup> It was agreed within the Department of Māori Affairs that addressing te reo survival should have top priority. Dame Iritana Tāwhiwhirangi described to us the origins of the kōhanga reo strategy:

Dr Tamati Reedy, Deputy Secretary at the time, then came up with the idea of full immersion. The idea was that the language should be learned in the same way a child learns a language, in the context of a home environment. Thus the concept that developed was that the language should be ‘caught’ rather than ‘taught’ in those early years.<sup>15</sup>

The stage was set for the birth of the kōhanga reo movement.

## 2.2 THE ESTABLISHMENT OF THE KŌHANGA REO MOVEMENT, 1982–90

### 2.2.1 A groundswell movement

Released in April 1986, the Te Reo Tribunal’s report observed that ‘a remarkable thing has happened. During the last three years an extraordinarily vital development has taken place among Maori people. This is the Kohanga Reo Movement.’<sup>16</sup>

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11. Document A81 (Arapera Royal-Tangaere, *Learning Māori Together: Kōhanga Reo and Home* (New Zealand Council for Educational Research: Wellington: 1997)), p 59

12. Document A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), p 494; *Tu Tangata Wananga Whakatauirā 1981: Decisions* (Wellington: Te Wananga, 1981), p 40

13. *Tu Tangata Wananga Whakatauirā 1981: Decisions* (Wellington: Te Wananga, 1981), p 23; doc A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), p 494

14. ‘Report to Conference on Nga Kohanga o Te Reo Proposal’, *Tu Tangata Wananga Whakatauirā 1981: Decisions*, (Wellington: Te Wananga, 1981), pp 25–26; doc A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), p 494; doc A78 (Te Kōhanga Reo Trust Board, District Kaupapa Kaimahi hui papers, June 2004), p 149; doc A78 (Department of Maori Affairs, ‘OECD: TECO: Partnership Project, Department of Maori Affairs in Partnership with the Maori Community Through its National Te Kohanga Reo Trust in Support of Te Kohanga Reo’, case study), p 257; doc A24(h) (Crown/Kōhanga Reo National Trust Joint Working Group, *Report to the Ministers of Education and Māori Affairs, Review of the Relationship Between the Crown and Te Kohanga Reo National Trust* (Wellington: Crown/Kōhanga Reo National Trust Joint Working Group, 2001)), p 36; Document E63 (Richard Hill, *Maori and the State: Crown-Maori Relations in New Zealand/Aotearoa, 1950–2000* (Wellington: Victoria University Press, 2009), p 196)

15. Document A2 (Dame Iritana Tāwhiwhirangi, brief of evidence in support of application for urgency, 25 July 2011), pp 2–3

16. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Maori Claim*, 4th ed (Wellington: GP Publications, 1996), p 12

It emerged from the July 1982 Wananga Whakatauirā, where participants unanimously set a goal of creating ‘at least 300 Whanau Centres over the next two years in which Te Kohanga Reo programmes will be provided for some 6,500 Maori children born each year.’<sup>17</sup> One of three workshops convened at the August 1983 session was specifically on kōhanga reo. The participants, who included Sir James Henare, Dame Whina Cooper, and Anne Delamere, noted the kōhanga reo aim of enabling children to understand and speak te reo by age five and emphasised Māori management, the need for paid Māori supervisors, and an environment of Māori language and culture.<sup>18</sup>

The significance of the kōhanga reo initiative received top-level recognition. At the 1982 session, Prime Minister Robert Muldoon noted in his opening address: ‘In the area of Maori language, I am already aware of the new Te Kohanga Reo programme. I told the kaumatuas here in Wellington early this year that it is one of the most exciting and important efforts to emerge in this century.’<sup>19</sup> Welcoming participants to Government House the following year, Governor-General Sir David Beattie said:

I have heard so much about your language nurseries. It is a fact that if language is not taught at the cradle, then the language will die. You are ensuring that your language and through that your culture will not die . . . You hold the future in your arms and I applaud Te Kohanga Reo as the most significant thing that has happened in New Zealand for the Maori people and race relations in modern times.<sup>20</sup>

In reply, Sir James Henare looked towards cultural revival:

We shall hand on to future generations, unimpaired in power and with undimmed lustre, the rich inheritance which we ourselves received from the past.

He po i moea  
Kua oho ake ki e ao  
Kei te hurahura te ata  
Ko wai ra mo te ata?  
A night has been slept  
Now awaken the dawn  
The morning is unfolding  
Who’s for the morning?<sup>21</sup>

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17. *Tu Tangata Wananga Whakatauirā 1982: Decisions* (Wellington: Te Wananga, 1982), pp9–10; doc A78 (Department of Maori Affairs, ‘OECD: TECO: Partnership Project, Department of Maori Affairs in Partnership with the Maori Community Through its National Te Kohanga Reo Trust in Support of Te Kohanga Reo’, case study, 1984), p258; doc A24(h) (Crown/Kōhanga Reo National Trust Joint Working Group, *Report to the Ministers of Education and Māori Affairs, Review of the relationship between the Crown and Te Kohanga Reo National Trust* (Wellington: Crown/Kōhanga Reo National Trust Joint Working Group, 2001)), p36

18. *Tu Tangata Wananga Whakatauirā 1983: Decisions* (Wellington: Te Wananga, 1983), pp14–16, 31

19. *Tu Tangata Wananga Whakatauirā 1982: Decisions* (Wellington: Te Wananga, 1982), p4

20. *Tu Tangata Wananga Whakatauirā 1983: Decisions* (Wellington: Te Wananga, 1983), p9

21. *Tu Tangata Wananga Whakatauirā 1983: Decisions* (Wellington: Te Wananga, 1983), p13

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2.2.1

The call to action from Māori leaders, kaumātua, and senior officials provided the launchpad for a campaign that galvanised Māori communities across the nation. Dame Iritana described it thus:

There was no template for Kōhanga Reo. It was driven by the recognition that something needed to be done about the state of Te Reo Māori and that this could form the basis for wider whānau development. The initiative came from Māori communities themselves, using the resources they already had in order to place emphasis on . . . a cultural approach to learning, rather than from the Crown . . . In particular, they used their kuia and kaumātua . . . who had been raised with Te Reo Māori, and their marae as premises. The kaupapa involved learning in an environment which was natural for young children and their whānau, rather than a formal education environment.<sup>22</sup>

The first kōhanga reo opened at Pukeatua Marae in Wainuiomata in April 1982, and by 1985 the number was approaching 400, taking in more than 6,000 mokopuna.<sup>23</sup> By any standards this was explosive growth. It was driven by the energy of many Māori communities across the nation and their sense of urgency in acting to preserve te reo me ngā tikanga Māori.<sup>24</sup> By December 1987, some 512 kōhanga reo had more than 8,000 mokopuna on their rolls and reached all parts of the country: in seven of the ten Māori Affairs districts, between 10 and 20 per cent of Māori children aged under five years were in kōhanga reo, with 21 and 34 per cent in Whanganui and Gisborne districts respectively.<sup>25</sup> Kōhanga reo could draw on 977 kaiako, 1,330 kaiāwhina, and 2,034 kaumātua, a ratio of 1.8 adults per child; just 439 (10 per cent) were paid.<sup>26</sup> Most of the workers were women.<sup>27</sup> Most kōhanga reo were fairly small: three-fifths had fewer than 20 mokopuna enrolled. The great majority of mokopuna (87 per cent) were in kōhanga reo that opened five days per week.<sup>28</sup> So rapid was the growth that just 38 per cent of kōhanga reo had been licensed by the Department of

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22. Document A2 (Dame Iritana Tāwhiwhirangi, brief of evidence in support of application for urgency, 25 July 2011), p 3

23. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 396; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Maori Claim*, 4th ed (Wellington: GP Publications, 1996), p 12

24. Document A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), p 522

25. Document A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), tables B1, B3, B7 and B8, pp 510, 529–531. For the position in early 1983 see doc A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p 10 and doc A78 (Te Kōhanga Reo National Trust, 'Te Kohanga Reo Interim Report to 31 October 1983'), p 247

26. Document A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), tbl B2, p 529

27. Document (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), p 501

28. Document A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), tables B3 and B5, p 530

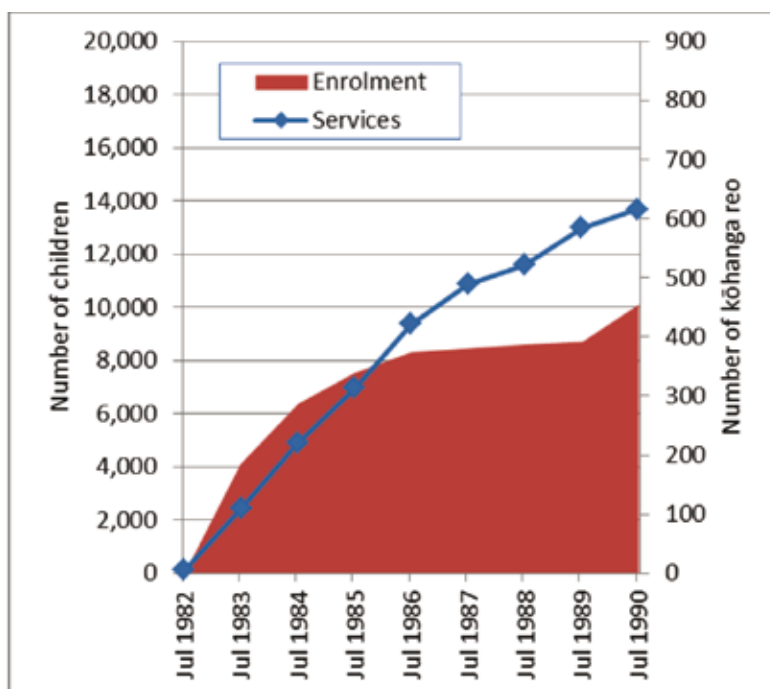


Figure 2.1: Number of enrolled children and kōhanga reo, 1982–1990. Note: Because the sources vary on the numbers of kōhanga reo and their total and Māori enrolment in the 1980s, the pre-1991 statistics should be treated as approximate.

Sources: Document A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), p 495, tbl 1; doc A81, (Arapera Royal-Tangaere, 'Te Kōhanga Reo Aspirations and Struggles', 2011), p 797; doc E51 (Lisa Davies and Kirsten Nicholl, *Te Mana i Roto i nga Mahi Whakaakoranga – Maori in Education* (Wellington: Ministry of Education, 1993), pp 27–29, 105, tbl A1)

Education.<sup>29</sup> By 1990, there were 616 kōhanga reo with 10,108 students, an average increase over the first eight years of 75 kōhanga and 1,250 mokopuna a year (see figure 2.1).<sup>30</sup>

Nearly all kōhanga reo were brought under the umbrella of Te Kōhanga Reo National Trust, which was founded in April 1982 and incorporated as a charitable trust in January 1984.<sup>31</sup> The first national kōhanga reo conference was held at Ngāruawāhia in January 1984.

29. Document A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), p 531, tbl B6

30. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 409, tbl 5.3

31. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), pp 3, 6; doc A78 (Department of Maori Affairs, 'OECD: TECO: Partnership Project, Department of Maori Affairs in Partnership with the Maori Community Through its National Te Kohanga Reo Trust in Support of Te Kohanga Reo', case study, 1984), p 259

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It was attended by more than 1,000 people, who endorsed its formation and objectives.<sup>32</sup> The Trust's three appointors were the Minister of Māori Affairs, the Secretary for Māori Affairs, and the president of the New Zealand Māori Council, reflecting a Crown–Māori partnership that also characterised the first board of trustees despite a preponderance of Government nominees: Sir James Henare and Te Arikinui Dame Te Atairangikaahu as patrons; an *ex officio* executive committee comprising four senior officials from the Ministries of Māori Affairs and Education, and the Māori Education Foundation; nominees of the Māori Women's Welfare League and the New Zealand Māori Council; and three others appointed by the executive committee 'to represent the interests of active participants in Te Kohanga Reo for a term of three years.'<sup>33</sup> 'The broad membership representation on the Trust,' commented state services commissioner Margaret Bazley, 'will ensure greater participation of, and accountability to, the wider community. Moreover, it reflects the "tu tangata" philosophy, which incorporates the people as initiators of their own development.'<sup>34</sup>

Over the next few years the Trust established its national and regional organisational capacity and developed its training and support programmes for kōhanga reo. The Child Care Centre Regulations 1985, administered initially by the Department of Social Welfare, and then from 1986 by the Department of Education, made separate and explicit provision for the Trust to have control of the curriculum and training for kōhanga reo. The regulations defined kōhanga reo as 'special purpose' centres under the Trust's oversight, gave it the right of approval of the 'educational programme' included in a licensing application, and required kōhanga reo to have a 'supervisor' holding a training qualification recognised by the Trust.<sup>35</sup> Regulatory compliance could be a source of both friction and advancement: the Government review team appointed to review kōhanga reo in 1988 found that some kōhanga reo whānau considered that licensing officers lacked understanding of their kaupapa and start-up challenges, while others appreciated the support they received from ECE officials.<sup>36</sup>

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32. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), pp 8–9; doc A78 (National Te Kohanga Reo Wananga, Recommendations, 20–23 January 1984), pp 176–181; doc A78 (Department of Maori Affairs, 'OECD: TECO: Partnership Project, Department of Maori Affairs in Partnership with the Maori Community Through its National Te Kohanga Reo Trust in Support of Te Kohanga Reo', case study, 1984), p 259; doc E63 (Richard Hill, *Maori and the State: Crown-Maori Relations in New Zealand/Aotearoa, 1950–2000* (Wellington: Victoria University Press, 2009), p 197)

33. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), pp 3; doc A78 (Te Kohanga Reo Trust Inc, Rules, 1984), p 271; doc A78 (Manatū Māori, 'Te Kohanga Reo', memorandum to chairman, Cabinet Education, Science and Technology Committee, not dated [1991]), p 305

34. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p 4; doc A78 (Margaret Bazley, State Services Commissioner to Minister of State Services, 9 April 1985), p 44

35. Child Care Centre Regulations 1985 (SR1985/48), reg 10; doc A66 (Anne Meade, brief of evidence, 15 February 2012), pp 5–6

36. Document A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), p 522



The principal financial and logistical support came from the Department of Māori Affairs, which funded kōhanga reo through a block grant to the Trust.<sup>37</sup> By 1987–88 the operating grant to kōhanga reo was \$11.1 million, from which the Trust's policy was to pay each kōhanga reo \$5,000 on start-up and \$18,000 a year thereafter, regardless of size.<sup>38</sup> An additional \$2.5–3 million went to cover the Trust's administrative costs.<sup>39</sup> Even so, the Trust estimated that, on average, whānau contributed roughly 60 per cent of a kōhanga reo's total costs.<sup>40</sup> The Departments of Labour and Social Welfare and the Māori Education Foundation also provided resources.<sup>41</sup> Kōhanga reo licensed under the 1985 regulations – only a third in the late 1980s – could access childcare subsidies from the Department of Social Welfare.<sup>42</sup> Māori Affairs national and district staff provided extensive organisational and administrative support, including staff seconded to the Trust.<sup>43</sup>

There was initially no state capital funding. In December 1987, the great majority of kōhanga reo were based in marae (45 per cent) and community centres (22 per cent), with smaller numbers in schools (14 per cent) churches (8 per cent), and homes (11 per cent).<sup>44</sup> Starting up, some kōhanga reo not based in marae were able to use Government-owned buildings such as schools and Department of Māori Affairs kōkiri community centres. Others used facilities at local institutions.<sup>45</sup> Few owned their premises. During their national consultation in 1988, the Government Review Team found that kōhanga reo whānau identified property costs as a major drain on their resources and 'feel that the buildings should be

37. Document A2 (Dame Iritana Tāwhiwhirangi, brief of evidence in support of application for urgency, 25 July 2011), p 4

38. Document A2 (Dame Iritana Tāwhiwhirangi, brief of evidence in support of application for urgency, 25 July 2011), p 4; doc A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), pp 514–515

39. Document A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), p 515

40. Document A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), p 515

41. Document A78 (Minister of Maori Affairs, Memorandum for Cabinet Committee on Expenditure, *Te Kohanga Reo – Whanau Centres*, undated), pp 26–30; doc A78 (Te Kohanga Reo National Trust, 'Te Kohanga Reo Interim Report to 31 October 1983'), p 247; doc A78 (Department of Maori Affairs, 'OECD: TECO: Partnership Project, Department of Maori Affairs in Partnership with the Maori community Through its National Te Kohanga Reo Trust in Support of Te Kohanga Reo', case study, 1984), pp 258–264; doc A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), p 504

42. Document A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), pp 508–509; doc A81 (Arapera Royal-Tangaere, 'Te Kohanga Reo Aspirations and Struggles', 2011), p 796

43. Document A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), pp 508–510; doc A78 (Margaret Bazley, Commissioner, State Services Commission to Minister of State Services, 9 April 1985), pp 44–45

44. Document A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), p 511–514. The proportions were little changed from the position at the outset in 1983. Document A78 (Te Kohanga Reo Interim report to 31 Oct 1983), p 240, tbl 7

45. Document A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), p 514; doc A78 (Te Kohanga Reo National Trust, 'Te Kohanga Reo Interim Report to 31 October 1983'), pp 230, 240

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provided by the state, providing a permanent and secure base for the kohanga reo whanau to operate from.<sup>46</sup>

In its submission on the Education Reform Bill in 1991, the Trust described the Government's approach in the formative years as supportive:

Government's response in promoting Te Kohanga Reo was not to institutionalise and take regulatory control of the kaupapa but to provide facilitative and policy support. The operation of Te Kohanga Reo was to remain at arms length from all facets of state control on the understanding that Maoridom would assume total operational responsibility.

To that end Te Kohanga Reo Trust was established as the guardian and manager of the kaupapa to facilitate a partnership between the people and departments of Government in the administration of Te Kohanga Reo programme.<sup>47</sup>

Looking back on this foundation period, Dame Iritana informed us:

You know, for the first seven years there was high accountability to the Crown, there was very good support [from] the Crown . . . There was, you know, tremendous support from a distance, remote, they didn't come in and control, they said well they're doing it, let them go. And so there was . . . a surge of activity from people who had normally left their well-being to someone else because that's the way society operated.<sup>48</sup>

The bulk of the effort and funding came from the kōhanga reo whānau themselves. Officials calculated that of the total attributed expenditure of \$5.324 million on kōhanga reo in 1983, the 'community' contributed 75 per cent in fees, koha, equipment, and voluntary time.<sup>49</sup> As Government agencies tried to coordinate an effective response, whānau seized the initiative. As a 2001 report on the relationship between the Crown and the Trust put it, 'from 1982 to 1989 kohanga reo flourished in an atmosphere of excitement and celebration.'<sup>50</sup>

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46. Document A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), pp 516–517

47. Document A78 (Te Kohanga Reo Trust Inc, 'Submission to Education and Science Committee: Education Reform Bill', 21 November 1991), pp 327–328

48. Dame Iritana Tāwhiwhirangi, under questioning by claimant counsel, first week of hearing, 14 March 2012 (transcript 4.1.3, p154); doc A78, (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p10

49. Document A78 (Minister of Maori Affairs, Memorandum for Cabinet Committee on Expenditure, Te Kohanga Reo – Whanau Centres, undated), p 29. The officials costed a dollar equivalent for volunteer time, much of which would have been unpaid.

50. Document A24(h) (Crown/Kōhanga Reo National Trust Joint Working Group, *Report to the Ministers of Education and Māori Affairs, Review of the Relationship Between the Crown and Te Kohanga Reo National Trust* (Wellington: Crown/Kōhanga Reo National Trust Joint Working Group, 2001)), p 36.



**2.2.2 State sector reforms and the transfer to the Ministry of Education**

Towards the end of the 1980s the kōhanga reo movement was caught up in wide-ranging reforms to the state sector.<sup>51</sup> The reforms brought a comprehensive restructuring of the state agencies concerned with Māori affairs and education. Emerging policy towards Māori, published for consultation in April 1988 in the green paper *He Tirotanga Rangapu*, and then in November 1988 in the white paper *He Urupare Rangapu*, envisaged the replacement of vertical, top-down structures with ‘partnership’ relationships between the Government and tribal entities or rūnanga, to which a range of state service functions would be devolved.<sup>52</sup>

In 1989, the Department of Māori Affairs, a multi-purpose agency that had been the face of government for many Māori, was broken up. Its policy function was vested in Manatū Māori (the Ministry of Māori Affairs), and its operational and service functions in Te Tira Ahu Ihu (the Iwi Transition Agency), which was to manage their transfer to mainstream agencies or devolution to iwi-based rūnanga over a period of five years.<sup>53</sup> Devolution was, however, stillborn following a change of government late in 1990. The enabling Runanga Iwi Act, enacted in mid-1990, was repealed in mid-1991; Te Tira Ahu Ihu was abolished, Manatū Māori was beefed up into Te Puni Kōkiri (the Ministry of Māori Development), and most service functions were mainstreamed or contracted out.<sup>54</sup> The education sector also underwent a radical restructure, with a system of school autonomy and the replacement of the Department of Education in October 1989 by the Ministry of Education.<sup>55</sup>

Both the movement and the Trust experienced major changes in their relationships with Government agencies and sources of funding. In 1986, childcare and oversight of the 1985 licensing regulations had been merged with preschool education under the Ministry of Education. This reflected, according to *Education To Be More*, the August 1988 report of the Government’s Early Childhood Care and Education Working Group, a Government commitment to improve the standards of ECE and care as well as ‘a philosophical shift by the Government and a recognition that early childhood care and education should have an educational and therefore a developmental emphasis.’<sup>56</sup> But funding and operational

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51. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), pp 10–11

52. Document E63 (Richard Hill, *Maori and the State: Crown-Maori Relations in New Zealand/Aotearoa, 1950–2000* (Wellington: Victoria University Press, 2009), pp 234–236)

53. Document E63 (Richard Hill, *Maori and the State: Crown-Maori Relations in New Zealand/Aotearoa, 1950–2000* (Wellington: Victoria University Press, 2009), pp 233–237); doc A78 (Minister of Maori Affairs, ‘Partnership Perspective: A Discussion Paper’, April 1988) pp 277–299

54. Document E63 (Richard Hill, *Maori and the State: Crown-Maori Relations in New Zealand/Aotearoa, 1950–2000* (Wellington: Victoria University Press, 2009), pp 241–243, 248–252)

55. Education Act 1989, s144; doc A81 (Arapera Royal-Tangaere, ‘Te Kōhanga Reo Aspirations and Struggles’, 2011), p 797

56. Document A81 (Early Childhood Care and Education Working Group, *Education To Be More: Report of the Early Childhood Care and Education Working Group* (Wellington: Department of Education, 1988)), p 256; doc 81 (Minister of Education, *Before Five: Early Childhood Care and Education in New Zealand* (Wellington: Department of Education, December 1988)), p 330; doc A66 (Anne Meade, brief of evidence, 15 February 2012), pp 5–9

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support for kōhanga reo continued to come mainly from the Department of Māori Affairs and was not conditional on their being licensed.<sup>57</sup>

In December 1988, the Government's policy statement on ECE, *Before Five*, set out a framework for ECE, parts of which have remained intact to the present day.<sup>58</sup> Its main planks were:

- ▶ bulk grant funding for each ECE service, routed through Vote: Education;
- ▶ compulsory licensing of all services, which also had to be chartered to be eligible for bulk funding;
- ▶ a discretionary grants scheme to assist with capital costs; and
- ▶ monitoring by an independent review agency.<sup>59</sup>

The administrative changeover to the new regime was set for 1 October 1989, and funding and charters for 1 January 1990.<sup>60</sup> *Before Five* largely stepped around kōhanga reo, on which the Government had yet to make decisions following receipt in September 1988 of a review of kōhanga reo it had previously appointed a review team to prepare. It went only as far as confirming that, if funding were mainstreamed, the Trust would contract centrally for kōhanga reo until iwi authorities were ready to take them over; and that funding would be on the same footing as for other ECE services.<sup>61</sup>

Both the Government Review Team, which included two Trust representatives, and the Early Childhood Care and Education Working Group, chaired by Dr Anne Meade, took full and careful account of the views of kōhanga reo whānau and the movement's kaupapa.<sup>62</sup> The working group was unequivocal in its support, stating:

We consider nga kohanga reo to be one of the most exciting, developmental movements in New Zealand . . . We support Maori control over the development of nga kohanga reo. We also support the development of a partnership between the early childhood care and education field and kohanga reo, so that the early childhood service aspect of kohanga reo

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57. Document A81 (Early Childhood Care and Education Working Group, *Education To Be More: Report of the Early Childhood Care and Education Working Group* (Wellington: Department of Education, 1988)), tbl3, note 2, pp 292, 305; doc A36 (Harata Gibson, first brief of evidence, 22 December 2011), p5; doc A81 (Arapera Royal-Tangaere, 'Te Kōhanga Reo Aspirations and Struggles', 2011), pp 796–797

58. Document A81 (Minister of Education, *Before Five: Early Childhood Care and Education in New Zealand* (Wellington: Department of Education, December 1988)), pp 325–347

59. Document A81 (Minister of Education, *Before Five: Early Childhood Care and Education in New Zealand* (Wellington, Department of Education, December 1988)), pp 330–331

60. Document A81 (Minister of Education, *Before Five: Early Childhood Care and Education in New Zealand* (Wellington: Department of Education, December 1988)), p 331

61. Document A81 (Minister of Education, *Before Five: Early Childhood Care and Education in New Zealand* (Wellington: Department of Education, December 1988)), p 345

62. Document A66 (Anne Meade, brief of evidence, 15 February 2012), pp 9–11

can be effectively acknowledged. In saying that, we do not expect the government to begin treating Te Kohanga Reo solely as an early childhood service.<sup>63</sup>

From a briefing to his Minister in May 1989 it appears that Secretary for Māori Affairs Dr (now Sir) Tamati Reedy envisaged:

a full policy statement on the future administration and delivery of the Te Kohanga Reo programme. It is intended that the statement will deal with Te Kohanga Reo matters in the same depth and scope as 'Before Five'.<sup>64</sup>

Although others also anticipated policy specific to kōhanga reo, none emerged.<sup>65</sup>

Kōhanga reo were soon transferred to the ECE sector. In May 1989, the Government decided in principle to transfer funding and operational responsibility for kōhanga reo from the Department of Māori Affairs to the Ministry of Education, expecting also that responsibility for programme delivery would progressively devolve from the Trust to iwi.<sup>66</sup> Tamati Reedy noted at the time that an issue was 'the ability of the Ministry of Education to eventually assume its role in a manner appropriate to the Te Kohanga Reo Programme'.<sup>67</sup>

The portfolio move to Education, which many kōhanga reo whānau had feared and opposed, took effect in February 1990.<sup>68</sup> Amending legislation in July 1990 included kōhanga reo in the Education Act's definition of early childhood centres, which it required to be licensed.<sup>69</sup> Kōhanga reo were also made subject to review by the Education Review Office (ERO), which was established as an independent agency in 1989 at the same time as the Ministry of Education.<sup>70</sup> In September 1990, the revised early childhood centre regulations omitted the partial control of the kōhanga reo 'educational programme' and the

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63. Document A81 (Early Childhood Care and Education Working Group, *Education To Be More: Report of the Early Childhood Care and Education Working Group* (Wellington: Department of Education, 1988)), p 264; doc A66 (Anne Meade, brief of evidence, 15 February 2012), p 9

64. Document A78 ((Tamati Reedy, Secretary, Department of Maori Affairs to Minister of Maori Affairs, 'Te Kohanga Reo: Policy Matters', memorandum, 5 May 1989), pp 711–713

65. Document A81 (Arapera Royal-Tangaere, brief of evidence, 22 December 2011), pp 13–16; doc A66 (Anne Meade, brief of evidence, 15 February 2012), p 10

66. Document A78 (Manatū Māori to Chairman, Cabinet Education, Science and Technology Committee, 'Kohanga Reo', memorandum, undated), p 304; doc A78 (Tamati Reedy, Secretary, Department of Maori Affairs to Minister of Maori Affairs, 'Te Kohanga Reo: Policy Matters', memorandum, 5 May 1989), p 712

67. Document A78 ((Tamati Reedy, Secretary, Department of Maori Affairs to Minister of Maori Affairs, 'Te Kohanga Reo: Policy Matters', memorandum, 5 May 1989), p 712

68. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), pp 11–12; doc A78 (Manatū Māori to Chairman, Cabinet Education, Science and Technology Committee, 'Kohanga Reo', memorandum, undated), p 305; doc A78 (Tamati Reedy, Secretary, Department of Maori Affairs to Minister of Maori Affairs, 'Te Kohanga Reo: Policy Matters', memorandum, 5 May 1989), pp 712–713; doc A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), pp 521–522; doc A63 (Rawiri Brell, brief of evidence, 15 February 2012), pp 4–5

69. Education Amendment Act 1990, ss 308, 316–317

70. Education Amendment Act 1990, s 318(2)(b); doc A56, (Graham Stoop, brief of evidence, 15 February 2012), p 2

professional qualification for staff that the 1985 regulations had devolved to the Trust.<sup>71</sup> In December 1990, the Ministry published its ‘desirable objectives and practices’ as compulsory standards for chartered ECE centres under the Education Act.<sup>72</sup> By late 1990, kōhanga reo had thus been mainstreamed into early childhood education.

Operational support remained with the Department of Māori Affairs’ successor, the Iwi Transition Agency. A Government review of the Trust in July 1990, commissioned by agency chief executive Wira Gardiner from Kara Puketapu and Rose Pere, concluded that kōhanga reo were underfunded and criticised the centralised administration of funding by the Trust as inefficient and overly bureaucratic. It recommended that the agency should disburse the ECE subsidy directly to kōhanga reo, with additional funding for them to organise their own district-level operational support.<sup>73</sup>

Within a year, however, the Iwi Transition Agency had itself been disbanded. In May 1991, the Cabinet Strategy Committee decided that transitional operational support from the agency’s successor, Te Puni Kōkiri, would end by June 1993.<sup>74</sup> A tripartite operational agreement between the Trust, the Ministry of Education, and Te Puni Kōkiri ended when in August 1994 chief executive Wira Gardiner resigned from the Trust’s board of trustees and notified Te Puni Kōkiri’s withdrawal from the agreement at the end of the current contract.<sup>75</sup> The board membership of other senior officials had already lapsed as a result of the state sector restructuring.<sup>76</sup> Operational oversight and support of kōhanga reo were now fully located with the Ministry of Education.

### 2.3 KŌHANGA REO UNDER THE EARLY CHILDHOOD EDUCATION REGIME, 1990–2002

#### 2.3.1 Adjusting to ECE objectives and regulations

Notwithstanding the disruptions of the regime change in 1990, the expansionary momentum of the 1980s continued for a few years more.<sup>77</sup> Between 1989 and 1993, the number of kōhanga reo rose by an average of 80 per year and their enrolments by more than 1,400 a

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71. Child Care Centre Regulations 1985, reg 10; Education (Early Childhood Centres) Regulations 1990

72. Education Amendment Act 1990, s 312(2); doc E67 (Ministry of Education, ‘Statement of Desirable Objectives and Practices for Chartered Early Childhood Services’, 29 November 1990, *New Zealand Gazette*, 6 December 1990, no 213, pp 4582–4585)

73. Document A64 (Rose Pere and Kara Puketapu, ‘Te Kohanga Reo National Trust, Review of Trust Operations’, 18 July 1990), pp 301–322

74. Document A78 (Manatū Māori to Chairman, Cabinet Education, Science and Technology Committee, ‘Kohanga Reo’, memorandum, undated), p 304

75. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), pp 14–15; doc A78 (Wira Gardiner, Chief Executive, Te Puni Kōkiri to Sir John Bennett, Chairperson, Te Kōhanga Reo National Trust, 1 August 1994), pp 456–457

76. Document A78 (Manatū Māori to Chairman, Cabinet Education, Science and Technology Committee, ‘Kohanga Reo’, memorandum, undated), p 305

77. Document A81 (Arapera Royal-Tangaere, ‘Te Kōhanga Reo Aspirations and Struggles’, 2011), p 802

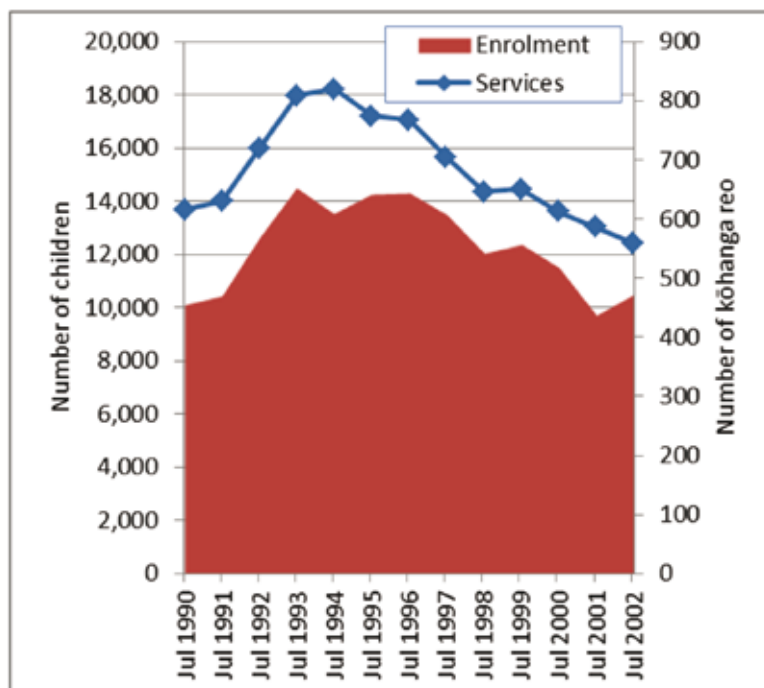


Figure 2.2: Number of enrolled children and kōhanga reo, 1990–2002

Source: Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Te Taumata Tuarua, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 409, tbl 5.3

year, to reach 809 and 14,514 respectively. The peak year was 1993, when kōhanga reo made up half of all mokopuna in ECE.<sup>78</sup> Thereafter, the breakneck expansion abruptly flattened between 1993 and 1996, and then declined steadily to 586 kōhanga reo with a roll of 9,808 in 2001. This marked a decline of 181 kōhanga reo and 4,494 mokopuna over the space of five years.<sup>79</sup> The rate of kōhanga reo closures peaked at more than 40 a year in 1997 and 1998 and exceeded 20 a year throughout the decade 1994 to 2003 (see figure 2.2).<sup>80</sup>

The transfer of responsibility for kōhanga reo during 1990, from Māori Affairs to Education, brought the Trust and kōhanga reo under a more rigid, rules-based ECE compliance regime, although it took several years before the new regime was fully in place.<sup>81</sup> Instead of the supporting infrastructure of knowledgeable Māori Affairs officials, especially the district field staff, the kōhanga reo movement now had to deal with a Wellington-based

78. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Te Taumata Tuarua, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 398

79. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Te Taumata Tuarua, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 409, tbl 5.3

80. Document A65 (Julian King, brief of evidence, 15 February 2012), p 18, fig 10

81. Document A78 (Policy and Research Division, (Manatū Māori, ‘Te Kohanga Reo Funding – Manatu Position’, memorandum, June 1991), pp 300–301; doc A78 (Manatū Māori to Chairman, Cabinet Education, Science and Technology Committee, ‘Kohanga Reo’, memorandum, undated), pp 304–305

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bureaucracy that, however sympathetic, knew little about the kōhanga reo kaupapa and culture and focused more narrowly on educational objectives.<sup>82</sup> The Trust entered into its first funding agreement with the Ministry in 1990, and faced widespread criticism for this from the kōhanga reo movement, which was concerned that the transfer would compromise its kaupapa.<sup>83</sup>

Alongside the institutional reforms, from late 1990 all kōhanga reo fell within the regulated ECE sector.<sup>84</sup> The Department of Māori Affairs' bulk funding of kōhanga reo through the Trust was replaced by the Ministry's standard rates per child hour for early childhood centres.<sup>85</sup> Bulk funding was now conditional on being licensed and chartered. Licensing was regulated under the Education (Early Childhood Centres) Regulations 1990, which set minimum compliance standards for premises, facilities, health and safety, childcare, and centre management.<sup>86</sup> Chartering required kōhanga reo to meet the broader standards of the Ministry's *Statement of Desirable Objectives and Practices*, which were deemed to form part of every charter.<sup>87</sup> During the early 1990s, considerable effort was devoted to licensing the many kōhanga reo still outside the system.<sup>88</sup>

Preparing for the transition in 1991, Māori Affairs officials doubted whether the Ministry of Education had yet attained sufficient cultural competence and accused it of denying the Trust the discretion in determining the distribution of public funds to kōhanga reo that it allowed to other early childhood services.<sup>89</sup> That some Ministry officials did engage positively is illustrated by the report on a visit by liaison officers in January 1991 to 19 kōhanga

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82. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), pp12–14, doc A78 (Ministry of Education, 'Report from Liaison Visits to Te Kohanga Reo, 15 January 1991 to 25 January 1991', memorandum, 29 January 1991), pp 332–337

83. Document A75 (Dame Iritana Tāwhiwhirangi, Te Kōhanga Reo National Trust Board, 'Capital Work Funding Meeting with Ministry of Education', report, 23 August 1996), p 29; doc A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p 11; doc A78 (Policy and Research Division, (Manatū Māori, 'Te Kohanga Reo Funding – Manatu Position', memorandum, June 1991), p 300

84. Education Amendment Act, 1990, ss 316–317

85. Document A78 (Manatū Māori to Chairman, Cabinet Education, Science and Technology Committee, 'Kohanga Reo', memorandum, undated), pp 304–305; doc A78 (Wira Gardiner, General Manager, Manatū Māori to Minister of Maori Affairs, 'Kohanga Reo: Talking Points for Cabinet Discussion', memorandum, undated), p 321

86. Education (Early Childhood Centres) Regulations, 1990

87. Education Amendment Act 1990, s 312(2); doc E67 (Ministry of Education, 'Statement of Desirable Objectives and Practices for Chartered Early Childhood Services', 29 November 1990, *New Zealand Gazette*, 6 December 1990, no 213, pp 4582–4583)

88. Document A81 (Arapera Royal-Tangaere, 'Te Kōhanga Reo Aspirations and Struggles', 2011), p 799

89. Document A78 (Manatū Māori to Chairman, Cabinet Education, Science and Technology Committee, 'Kohanga Reo', memorandum, undated), pp 304–314; doc A78 (Rauru Kirikiri, Director, Policy and Research Division, (Manatū Māori to Department of Prime Minister and Cabinet, Ministry of Education and Iwi Transition Agency, 'Kohanga Reo Funding: Joint Report to Ministers', memorandum, undated), p 318; doc A78 (Wira Gardiner, General Manager, (Manatū Māori to Minister of Maori Affairs, 'Te Kohanga Reo: Reasons for Retaining Control', letter, undated and 'Kohanga Reo: Talking Points for Cabinet Discussion', memorandum, undated), pp 319–321



reo in Northland, to inform them of the new licensing requirements. The report was generally affirmative and kaupapa-aware on most compliance aspects.<sup>90</sup> It concluded:

It was a pleasure to travel with National Trust and Tino Rangatiratanga Unit representatives to the various Te Kohanga Reo. The enthusiasm for education and licensing of Te Kohanga Reo was wonderful and we believe that the licensing of Kohanga by the Ministry of Education is a positive step as long as the partnership is cherished and developed in a positive and sharing way. The Kaupapa of Te Kohanga Reo must be protected and nurtured.<sup>91</sup>

Generally, however, the experience of kōhanga reo during the transition was more difficult. In 2001, the report of a Crown–Trust joint working group chaired by retired High Court judge Sir Rodney Gallen (the Gallen Report) summarised the overall impact of the transition:

This change resulted in a significant shift from a bulk funded and discretionary approach to more regulatory controls. This change had huge implications at the grass root level. Kohanga reo had to come to terms with the regulatory environment and compliances of the early childhood sector and a mainstream department, whilst maintaining the unique kaupapa and philosophy of the kohanga movement.<sup>92</sup>

Maintaining the kaupapa under the new regulatory regime proved difficult in practice. Dame Iritana described to us how, in the course of a nationwide kaupapa review of kōhanga reo from 1997 to 1999, the Trust:

found that many kōhanga reo were in fact assimilating to ECE, and that the kaupapa of kōhanga reo had been either diluted or ignored . . . We found that some whanau had been putting their staff through ECE courses . . . In other kōhanga reo, the ECE programme had been invasive and kōhanga were following ECE lesson plans, learning outcomes and assessing children in relation to ECE outcomes.<sup>93</sup>

In cases where kōhanga reo were unwilling to come into conformity with the kaupapa, the Trust cancelled their charters, resulting in them also losing their ECE licence.<sup>94</sup> Over the

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90. Document A78 (Ministry of Education, 'Report from Liaison Visits to Te Kohanga Reo, 15 January 1991 to 25 January 1991', memorandum, 29 January 1991), pp 332–337

91. Document A78 (Ministry of Education, 'Report from Liaison Visits to Te Kohanga Reo, 15 January 1991 to 25 January 1991', memorandum, 29 January 1991), p 337

92. Document A24(h) (Crown/Kōhanga Reo National Trust Joint Working Group, *Report to the Ministers of Education and Māori Affairs, Review of the Relationship Between the Crown and Te Kohanga Reo National Trust* (Wellington: Crown/Kōhanga Reo National Trust Joint Working Group, 2001)), p 36

93. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p 22

94. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p 22

period 1997 to 2005, according to Ms Royal-Tangaere, 51 kōhanga reo were disestablished by the Trust, the majority being merged with another kōhanga reo.<sup>95</sup>

Amongst a number of examples of the impact of the ECE regulations described by Ms Harata Gibson, at the time the Trust's district kaupapa kaimahi for Tairāwhiti, was the experience of the rurally-located Pohautea Te Kōhanga Reo at Tikapa Marae in accommodating the Ministry licensing officer's instruction to provide more toys. The whānau purchased a bucket of plastic farm animals and the license was approved. This compliance action, however, angered Tipene Ngata, Sir Apirana Ngata's eldest son and kaumātua of the marae, who called an urgent meeting at which he criticised the purchase of toys as:

a waste of money and an interference with our kaupapa of learning from nature and the environment. As he was speaking, he tipped the bucket upside down on the table – all at once a horse stuck its head in the door to which Tipene said 'Ara kē te pūrari hoiho' (There's the bloody horse). He went on to explain to the hui that the learning is in the environment – we just all needed to get our mokopuna out to explore it!<sup>96</sup>

In Ms Gibson's opinion, a result of this and similar requirements to provide indoor and outdoor play equipment was that 'learning became toy-oriented rather than being based on the natural environment and children's imagination.'<sup>97</sup>

This was a difficult time for the movement. In the five years to 2001, the number of kōhanga reo fell by 24 per cent, total enrolments fell by 31 per cent, and the average enrolment per kōhanga reo declined from 18.6 to 16.7 children (see figure 2.2).

### 2.3.2 Constructive engagement: *Te Whāriki* and *Te Korowai*

Notwithstanding their different starting points, during the first decade of the new regime both the Trust and the Ministry made serious efforts to find workable solutions. Two initiatives stood out. The first was the development of bicultural curriculum guidelines, which the Ministry initiated in the early 1990s. The Trust's nominated experts, Sir Tamati and Lady Tilly Reedy, and Trust staff worked closely with the Ministry's academic advisers.<sup>98</sup> Dame Iritana described the Trust's approach:

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95. Document A81 (Arapera Royal-Tangaere, 'Te Kōhanga Reo Aspirations and Struggles', 2011), p 801, citing a 2006 report to the Trust Board.

96. Document A36 (Harata Gibson, first brief of evidence, 22 December 2011), p 12

97. Document A36 (Harata Gibson, first brief of evidence, 22 December 2011), p 12

98. Document A81 (Arapera Royal-Tangaere, Vyletta Arago-Kemp and Keri Newman, 'Te Kōhanga Reo – Transition, Transmission and Transformation: Meeting the Challenge (A Think Piece)' April 2005), p 467; doc A66, (Anne Meade, brief of evidence, 15 February 2012), pp 14–15. The process by which it was developed is described in the academic papers in doc A74 (Margaret Carr and Helen May, *Te Whāriki: Curriculum Papers*, (Hamilton: Early Childhood Curriculum Project, Waikato University, 1993)), pp 647–862



I talked to the trustees, I said ‘we better be at that table, no use moaning about it afterwards. I would like to suggest that we engage Dr Reedy and his wife’ . . . So, yes, it is possible to be able to work together.<sup>99</sup>

As a result, the Trust had a substantial input into the formulation of the national ECE curriculum *Te Whāriki*, which was completed in 1993 and published in 1996.<sup>100</sup> In his foreword, acting Secretary for Education Lyall Perris described it as:

the first bicultural curriculum statement developed in New Zealand. It contains curriculum specifically for Māori immersion services in early childhood education and establishes, throughout the document as a whole, the bicultural nature of curriculum for all early childhood services.<sup>101</sup>

Although mostly in English, the short kōhanga reo section and text alongside a few key passages were written in Māori. Professor May, called by the Crown as an academic expert on bilingualism, gave us his opinion that, ‘while I think *Te Whāriki* is a very strong document as an early childhood curriculum, it’s a mainstream document.’<sup>102</sup> It was therefore liable to be interpreted differently within mainstream and Māori paradigms and by kōhanga reo whānau, ERO reviewers and Ministry officials.<sup>103</sup>

The second initiative was the production of *Te Korowai*. This foundation document articulated the principles, policies, goals and practice of the kōhanga reo kaupapa within a Māori paradigm and provided procedural information that served as a handbook for Trust staff and kōhanga reo whānau. It configured the Trust’s formal relationships in both directions: as a framework for individual kōhanga reo charters with the Trust; and as the Trust’s charter with the Ministry on behalf of all chartered kōhanga reo.<sup>104</sup>

*Te Korowai* resulted from a Trust initiative to overcome blockages for kōhanga reo in the ECE system. Between 1990 and 1995, kōhanga reo chartered individually to the Trust.<sup>105</sup> The Ministry’s *Statement of Desirable Objectives and Practices* provided for organisations respon-

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99. Dame Iritana Tāwhiwhirangi, under questioning by Crown counsel, first week of hearing, 12 March 2012 (transcript 4.1.3, pp 214–215)

100. Document A64 (Ministry of Education, *Te Whāriki: He Whāriki Mātauranga Mō Ngā Mokopuna o Aotearoa. Early Childhood Curriculum*, (Wellington: Learning Media, 1996), pp 657ff; doc A66 (Anne Meade, brief of evidence, 15 February 2012), pp 14–15)

101. Ministry of Education, *Te Whāriki: He Whāriki Mātauranga Mō Ngā Mokopuna o Aotearoa. Early Childhood Curriculum*, (Wellington, Learning Media, 1996), p7

102. Stephen May, under questioning by claimant counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, p 375)

103. Dame Iritana Tāwhiwhirangi, under questioning by Crown counsel, first week of hearing, 12 March 2012 (transcript 4.1.3, p 215)

104. Document A84 (Te Kōhanga Reo National Trust, *Te Korowai* (Wellington: Te Kōhanga Reo National Trust, 1995), pp 323–541)

105. Document A81 (Arapera Royal-Tangaere, brief of evidence, 22 December 2011), p 18; doc A78 (‘Setting up New Te Kohanga Reo’, in Te Kōhanga Reo National Trust, ‘Panui ki Nga Kohanga Reo Whanau Katoa o Te Motu’, 21 September 1993), pp 104–107)

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sible for multiple ECE services to make general or policy statements; individual charters were still required, but the organisation could sign them with the ECE service's consent.<sup>106</sup> In 1995, the Ministry informed the Trust that kōhanga reo not chartered to the Ministry would not be eligible for the higher 'quality' rate of ECE subsidy that it planned to introduce the following year. The Trust proposed that it charter to the Ministry on behalf of all kōhanga reo, to which the Ministry agreed. *Te Korowai*, which became the Trust's charter with the Ministry, was accordingly drafted so as to align to the *Statement of Desirable Objectives and Practices*, despite the Trust's misgivings that, as a consequence, it did not fully follow the kōhanga reo kaupapa.<sup>107</sup>

**2.3.3 Governance, organisation, and accountability**

By the mid-1990s, the Trust had been operating for more than a decade. From a board dominated in the 1980s by top Government officials, the Trust had evolved into an independent body run by senior Māori leaders.<sup>108</sup>

The Trust functioned as an incorporated society with charitable status. The trust deed stated its purpose as being:

- (a) To promote, support and encourage the use and retention of Te Reo Maori;
- (b) To promote, support and encourage:
  - (i) The kaupapa of Te Kohanga Reo and in particular the goal of total immersion in Te Reo Maori;
  - (ii) The establishment and maintenance within New Zealand of Te Kohanga Reo;
  - (iii) The provision of financial, advisory and administrative assistance and support for the whanau of Te Kohanga Reo.<sup>109</sup>

The deed thus maintained a strong focus on te reo and total immersion, making no explicit reference to educational objectives. It also required the board 'to liaise with the Crown and Government departments and other relevant bodies for the purposes of promoting the kaupapa of Te Kohanga Reo and its administration.'<sup>110</sup>

The deed vested governance in a board of between six and ten trustees, comprising up to two patrons and up to nine other trustees. The board itself nominated and elected new members to fill vacancies and board membership was for life. The board's quorum

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106. Document E67 (Ministry of Education, 'Statement of Desirable Objectives and Practices for Chartered Early Childhood Services', 29 November 1990, *New Zealand Gazette*, 6 December 1990, no 213, pp 4582–4585)

107. Document A81 (Arapera Royal-Tangaere, brief of evidence, 22 December 2011), p18; doc A84 (Te Kohanga Reo National Trust Board, 'Tutohinga/Charter', handbook, 2 October 1995), p 434

108. In 1995 the Trust Board comprised Te Arikini Dame Te Atairangikaahu, Sir John Bennett, Professor Timoti Kāretu, Kahurangi Lady Rose Henare, Te Ao Peehi Kara, Areta Koopu, and Sir Graham Latimer. Document A84 (Te Kohanga Reo National Trust Board, 'Tutohinga/Charter', handbook, 2 October 1995), p 473

109. Document A78 (Te Kohanga Reo National Trust Board, Deed of Trust, December 2002), pp 80–81

110. Document A78 (Te Kohanga Reo National Trust Board, Deed of Trust, December 2002), p 80

was a simple majority and its decisions were preferably reached by consensus.<sup>111</sup> While the deed did not provide for direct accountability to kōhanga reo, its stated purposes required trustees to establish and support kōhanga reo and promote their kaupapa.

The main instrument underpinning the Trust's relationship with individual kōhanga reo was the charter it signed with each of them.<sup>112</sup> The standard charter recognised the kōhanga reo concerned as self-managing and committed it to operate within the kaupapa; to abide by the standards, policies, and review procedures of the Trust; and to utilise its grant funding 'in a way that will maximise the quality of the care and education for nga mokopuna, whilst balancing the interests of the Whanau'. For its part, the Trust would provide support through its district tino rangatiratanga units and its Tohu Whakapakari training course for kōhanga reo kaiako.<sup>113</sup> Kōhanga reo needed Trust approval to acquire or lease premises.<sup>114</sup>

The Trust's formal relationship with the State was governed by a set of interlocking instruments. Legal requirements were set by the early childhood regulations, which prescribed minimum standards, and by the Ministry's *Statement of Desirable Objectives and Practices*, published in 1990, which articulated broadly-defined quality objectives for children's learning and development, in communication and consultation with whānau and stakeholders, and for centre operation and administration.<sup>115</sup> The 'desirable objectives and practices', as we saw above, were formally expressed in *Te Korowai*.<sup>116</sup> In turn, the charters between individual kōhanga reo and the Trust include a commitment to adhere to the principles of *Te Korowai*.<sup>117</sup>

Contractual agreements governed the public funds allocated to kōhanga reo through the Trust. The Trust acted as the central receiver and disbursing of the ECE bulk subsidy and of discretionary capital grants to kōhanga reo. In addition, its operational costs were directly funded under an annual memorandum of agreement with the Ministry.<sup>118</sup> The Trust was thus accountable for itself and on behalf of kōhanga reo. The main exception was the child-care subsidy, which was paid directly to kōhanga reo whānau.<sup>119</sup>

In the mid-1990s the Trust's head office was organised into administration, property, insurance, training, and economic development sections. Its regional administration

111. Document A78 (Te Kōhanga Reo National Trust Board, Deed of Trust, December 2002), pp 81–86

112. Document A84 (Te Kōhanga Reo National Trust Board, 'Tutohinga/Charter', handbook, 2 October 1995), p 471

113. Document A84 (Te Kōhanga Reo National Trust Board, 'Tutohinga/Charter', handbook, 2 October 1995), p 471

114. Document A81 (ERO, *What Counts as Quality in Kohanga Reo* (Wellington: ERO, 1997)), p 553

115. Education (Early Childhood Centres) Regulations 1990; doc E67 (Ministry of Education, 'Statement of Desirable Objectives and Practices for Chartered Early Childhood Services', 29 November 1990, *New Zealand Gazette*, 6 December 1990, no 213, pp 4582–4585); doc A81 (ERO, *What Counts as Quality in Kohanga Reo* (Wellington: ERO, 1997)), pp 546–549

116. Document A84 (Te Kōhanga Reo National Trust Board, 'Tutohinga/Charter', handbook, 2 October 1995), p 434

117. Document A81 (ERO, *What Counts as Quality in Kohanga Reo* (Wellington: ERO, 1997)), p 547

118. Document A81 (ERO, *What Counts as Quality in Kohanga Reo* (Wellington: ERO, 1997)), p 546

119. Document A81 (ERO, *What Counts as Quality in Kohanga Reo* (Wellington: ERO, 1997)), p 550

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covered a network of 12 district and 70 local tino rangatiratanga units, which provided direct support and guidance to kōhanga reo. It was accredited as a training provider and attested kōhanga reo adults working with children as part of licence compliance.<sup>120</sup> In 1995, alongside taking responsibility for assuring kōhanga reo quality standards through *Te Korowai*, the Trust revamped its quality control procedures and established a team to review kōhanga reo nationwide and provide it with self-review information.<sup>121</sup>

The Trust's business and development arm, Te Pātaka Ōhanga, was established in the mid-1990s to raise funds for purposes not covered by state finance. Amongst the assistance provided to kōhanga reo were an asset insurance scheme, a child health fund, IT equipment, and negotiated discounts for vehicle purchases.<sup>122</sup> It also ran the Trust's property pūtea, which disbursed state capital funding as loans to kōhanga reo that were purchasing or upgrading their premises.<sup>123</sup>

#### 2.3.4 Operational funding

The incorporation of kōhanga reo in 1990 into the ECE sector administered by the Ministry of Education brought major changes in the funding regime. In particular, block grants made through the Trust to kōhanga reo were replaced by a subsidy based on hours of child attendance. From the \$12.7 million grant budgeted in 1989–90 for the Trust by the Department of Māori Affairs, ECE funding for kōhanga reo rose to \$19.3 million in 1990–91. This was, in part, a result of eligibility for standard ECE hourly rates. Licensed kōhanga reo could now receive hourly rates of \$7.25 per child under two and \$2.25 per child over two, but limited to a cap of 30 hours per week. Unlicensed kōhanga reo were deemed license-exempt and could claim only the flat hourly rate of \$1 per child.<sup>124</sup>

In its annual agreement with the Trust for 1990–91, the Ministry of Education insisted on pro rata payments according to the actual entitlement of each kōhanga reo, removing the Trust's previous discretion to allocate subsidy payments and to reserve a proportion for the fast-expanding development of new capacity. The net result was a large increase for established, licensed kōhanga reo and a decrease for newer, unlicensed kōhanga reo, which then numbered around 100.<sup>125</sup>

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120. Document A81 (ERO, *What Counts as Quality in Kohanga Reo* (Wellington: ERO, 1997)), pp 545, 548–549

121. Document A81 (ERO, *What Counts as Quality in Kohanga Reo* (Wellington: ERO, 1997)), pp 550–551

122. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 20120), pp 5–6

123. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 20120), pp 5–6, 17

124. Document A81 (Arapera Royal-Tangaere, brief of evidence, 22 December 2011), p 17; doc A78 (Manatū Māori to Chairman, Cabinet Education, Science and Technology Committee, 'Kohanga Reo', memorandum, undated), p 305; Treasury, *Department of Maori Affairs Expenditure Items, Supplementary Estimates of Annual Appropriations and Departmental Budgets of the Government of New Zealand for the Year Ending 30 June 1990*, AJHR, 1990, B-7, p 211; doc A81 (Arapera Royal-Tangaere, 'Te Kōhanga Reo Aspirations and Struggles', 2011), p 799

125. Document A78 (Manatū Māori to Chairman, Cabinet Education, Science and Technology Committee, 'Kohanga Reo', memorandum, undated), pp 305–307

As well as the bulk subsidy, other sources of funding played an important role. One was the childcare subsidy, which until 1993 provided up to 30 hours a week for a caregiver with one or more children attending an ECE centre. According to a Trust calculation at the time, in June 1993 the subsidy covered more than 7,000 mokopuna, or just under half those attending kōhanga reo, with 87 per cent qualifying for the full rate.<sup>126</sup> Changes that year, however, means-tested eligibility and capped entitlement at nine hours a week unless the primary caregiver was either in employment or approved training, or else seriously disabled or ill.<sup>127</sup> By early 1994, the number of kōhanga reo children covered by the subsidy had dropped by a third. Those receiving the full rate had fallen by more than three-quarters, with most ending up on the lowest part-time rate.<sup>128</sup> The change affected many kōhanga reo parents and coincided with the flattening of the hitherto strong expansion of total kōhanga reo enrolment.

### 2.3.5 The property pūtea and the Discretionary Grant Scheme

State funding also covered capital grants for kōhanga reo property development (\$2.35 million in 1990–91).<sup>129</sup> The capital funding was new: during the 1980s individual kōhanga reo had had to raise or borrow their own funds for property and maintenance.<sup>130</sup> Licensing under the 1990 ECE regulations was now not only compulsory but, combined with chartering, also a prerequisite for accessing full ECE funding.<sup>131</sup> Meeting licensing standards often required new or upgraded premises, especially for kōhanga reo seeking licensing approval or compliance.<sup>132</sup>

In 1990, the Trust negotiated an agreement for a Government capital works lump sum to be paid into a property pūtea, which it would operate on the principle of self-reliance as a revolving fund for loans to kōhanga reo.<sup>133</sup> Repayments were usually by deduction

126. Document A78 (Te Kōhanga Reo National Trust Board to Ministry of Education, 'Capital Works Funding', memorandum, 14 June 1994), p 519

127. Document A81 (ERO, *What Counts as Quality in Kohanga Reo* (Wellington: ERO, 1997)), p 550; doc A81 (Arapera Royal Tangaere, brief of evidence, 22 December 2011), p 20.

128. Document A78 (Te Kōhanga Reo National Trust Board to Ministry of Education, 'Capital Works Funding', memorandum, 14 June 1994), p 519; doc A83 (Angus Hartley, second brief of evidence, 7 March 2012), p 13

129. Document A78 (Manatū Māori to Chairman, Cabinet Education, Science and Technology Committee, 'Kohanga Reo', memorandum, undated), p 305; doc A75 (Andrew Hema, first brief of evidence, 22 December 2012), p 2

130. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p 16

131. Unlicensed kōhanga reo were paid an ECE subsidy but at a much lower flat rate. Document A78 (Manatū Māori, Cabinet Education, Science and Technology Committee, 'Kohanga Reo', memorandum, undated), p 305

132. Document A89 (Andrew Hema, second brief of evidence, 7 March 2012), pp 7–8

133. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p 16

from the kōhanga reo's ECE subsidy payments.<sup>134</sup> The Trust's aim was eventually to become independent of Government funding.<sup>135</sup> Under its property pūtea policy, established in 1990, the Trust usually held ownership of the buildings or improvements purchased with Government grant funds. The policy also required that the Trust sign lease agreements on behalf of kōhanga reo.<sup>136</sup> The main purposes of the policy were to secure in perpetuity facilities that it financed for kōhanga reo and to sustain the kaupapa against adaptation to a commercial ECE service.<sup>137</sup>

An initial \$0.99 million from the Department of Māori Affairs in 1989–90 was replaced by \$2.35 million a year from the Ministry of Education over the next four years.<sup>138</sup> The Trust used the proceeds of loan repayments to expand the resources available to kōhanga reo to build and develop their facilities.<sup>139</sup> Between 1989–90 and 1993–94 it was able to translate \$10.4 million received in Government grants into disbursements approximating \$13.3 million to kōhanga reo.<sup>140</sup> This was, however, well below the level of demand from kōhanga reo, whose outstanding applications in 1993–94 alone were, at \$8 million, running at more than three times the annual grant of \$2.35 million. In mid-1994, the Trust told the Ministry that its applications backlog amounted to 230 applications costing \$25 million.<sup>141</sup>

The foundations of the property pūtea scheme were soon eroded. In 1994, the Ministry formed the view that the Trust had received enough seed capital and ended the annual bulk grant.<sup>142</sup> For two years the Trust received no capital funding.<sup>143</sup> After negotiations, in 1996

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134. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 47; doc A75 (Dame Iritana Tāwhiwhirangi, Te Kōhanga Reo National Trust Board, 'Capital Work Funding Meeting with Ministry of Education', report, 23 August 1996), p 29; doc A78 (Sir JM Bennett, Chairman, Te Kōhanga Reo National Trust Board, 'Policy Changes', memorandum, 1 September 1993), p 117; doc A78 (Te Kōhanga Reo National Trust Board, 'Property Putea Policy', 1990), p 494

135. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 47; doc A75 (Dame Iritana Tāwhiwhirangi, Te Kōhanga Reo National Trust Board, 'Capital Work Funding Meeting with Ministry of Education', report, 23 August 1996), pp 29–30

136. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 47; doc A78 (Sir JM Bennett, Chairman, Te Kōhanga Reo National Trust Board, 'Policy Changes', memorandum, 1 September 1993), p 117; doc A78 (Te Kōhanga Reo National Trust Board, 'Property Putea Policy', 1990), pp 493–495

137. Document A75 (Dame Iritana Tāwhiwhirangi, Te Kōhanga Reo National Trust Board, 'Capital Work Funding Meeting with Ministry of Education', report, 23 August 1996), p 30

138. Document A75 (Andrew Hema, first brief of evidence, 22 December 2011), p 2; doc A89 (Andrew Hema, second brief of evidence, 7 March 2012), p 8; doc A62 (Richard Walley, brief of evidence, 15 February 2012), p 47

139. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p 16; doc A78 (Te Kōhanga Reo National Trust Board, 'Property Putea Policy', 1990), pp 492–495

140. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p 17

141. Document A78 (Dame Iritana Tāwhiwhirangi, Te Kōhanga Reo National Trust Board to Ministry of Education, 'Capital Works Funding. Proposal: To Maintain The Annual Capital Works Grant', 14 June 1994), p 516; doc A89 (Andrew Hema, second brief of evidence, 7 March 2012), pp 7–8

142. Document A75 (Andrew Hema, first brief of evidence, 22 December 2011), pp 2–3; doc A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p 17; doc A62 (Richard Walley, brief of evidence, 15 February 2012), p 47

143. Document A75 (Andrew Hema, first brief of evidence, 22 December 2011), p 2; doc A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p 17; doc A89 (Andrew Hema, second brief of evidence, 7 March 2012), p 8



the Ministry brought kōhanga reo under the Māori pool of its Discretionary Grants Scheme (DGS), which it had set up the previous year to provide capital funding to community-based ECE centres. For the first two years its funding was earmarked for kōhanga reo, but thereafter it was opened to any ECE centre seeking to increase Māori participation.<sup>144</sup> The DGS provided project-specific rather than general purpose funds, which were aligned to the Ministry's priorities and subject to its approval.<sup>145</sup> The funds provided were substantially reduced: DGS payments from May 1997 to May 2000 amounted to \$3.25 million.<sup>146</sup>

Whilst acknowledging Ministry officials' early flexibility, the Trust was critical of the terms of the DGS and protested at what it considered to be inadequate consultation.<sup>147</sup> It nevertheless persevered, with Ministry approval, with the property pūtea as a revolving fund supporting a broader range of unfunded purposes for the movement as a whole.<sup>148</sup>

In 2000, following a complaint from a kōhanga reo whānau, the Ministry raised concerns about the legal propriety of the scheme and the auditor-general ruled that the use of DGS grant funds for loans was illegal.<sup>149</sup> The matter was referred to the Crown–Trust joint working group chaired by Sir Rodney Gallen.<sup>150</sup> The working group's report in 2001 noted that feedback to the Trust from kōhanga reo indicated continued support for the pūtea scheme, even though, as the report pointed out, their repayments out of other income placed kōhanga reo at a disadvantage. The report recommended that repayments to the property pūtea be ended and that the Ministry of Education and Te Puni Kōkiri provide adequate capital funding for the development needs of kōhanga reo within the framework of

144. Document A75 (Andrew Hema, first brief of evidence, 22 December 2011), p3; doc A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p17; doc A24(h) (Crown/Kōhanga Reo National Trust Joint Working Group, *Report to the Ministers of Education and Māori Affairs, Review of the Relationship Between the Crown and Te Kohanga Reo National Trust* (Wellington: Crown/Kōhanga Reo National Trust Joint Working Group, 2001)), p 47; doc A62 (Richard Walley, brief of evidence, 15 February 2012), pp 48–49

145. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p17

146. Document A89 (Andrew Hema, second brief of evidence, 7 March 2012), pp 7–8; doc A75 (A Hema and N Ihaka, Te Kōhanga Reo National Trust Board to Ministry of Education and Te Puni Kōkiri, 'Property Pūtea: DGS', memorandum, 11 December 2001), pp 102, 106

147. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012, p17; doc A75 (Andrew Hema, first brief of evidence, 22 December 2011), p3; doc A75 (Dame Iritana Tāwhiwhirangi, Te Kōhanga Reo National Trust Board to Howard Fancy, Secretary for Education, 7 October 1996), pp 25–26; doc A75 (Dame Iritana Tāwhiwhirangi, Te Kōhanga Reo National Trust Board, 'Capital Work Funding Meeting with Ministry of Education', report, 23 August 1996), pp 27–31

148. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012, p17; doc A24(h) (Crown/Kōhanga Reo National Trust Joint Working Group, *Report to the Ministers of Education and Māori Affairs, Review of the Relationship Between the Crown and Te Kohanga Reo National Trust* (Wellington: Crown/Kōhanga Reo National Trust Joint Working Group, 2001)), pp 48–49

149. Document A75 (Andrew Hema, first brief of evidence, 22 December 2011), pp 7–8; doc A62 (Richard Walley, brief of evidence, 15 February 2012), p 48; Education Standards Act 2001, s84; doc A75 (A Hema and N Ihaka, Te Kōhanga Reo National Trust Board to Ministry of Education and Te Puni Kōkiri, 'Property Pūtea: DGS', memorandum, 11 December 2001), p102

150. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), pp 17–18

2.3.6

the movement's kaupapa.<sup>151</sup> The Trust was obliged to end the use of DGS grants for property loans and the Government passed retrospective validating legislation.<sup>152</sup> In effect, the Trust lost its development resource in return for a vaguely worded commitment to more broadly-based Government development funding in the future.<sup>153</sup>

**2.3.6 Licensing**

All licensed kōhanga reo now came under the 1990 ECE regulations. In 1995, the principles and much of the detail of the regulatory standards were written into or implied in the text of *Te Korowai*, which explicitly acknowledged the 1990 ECE regulations 'that are in line with the Trust's minimum standards', but articulated within a Māori conceptual framework.<sup>154</sup>

The ECE compliance regime, designed for purpose-built ECE centres, was an uneasy fit for kōhanga reo, most of which were accommodated in a variety of community premises. Ms Gibson described what became in Tairāwhiti a general move to purpose-built accommodation. At its early 1990s peak, this largely rural district had 49 (58 per cent) of its 85 kōhanga reo based in marae, another 21 (25 per cent) in homes, and the remainder in halls, schools, and other buildings. By 2011, just three of the 37 remaining kōhanga reo were in marae and none were home-based, while 33 were in purpose-built premises.<sup>155</sup> The extent of movement out of marae may have varied regionally: Matiu Kingi stated that the six kōhanga reo in the Kaitiāia area are still located on or near marae.<sup>156</sup>

Ms Gibson said the main reason for the move in Tairāwhiti was for regulatory compliance. She described a number of situations where regulatory requirements had conflicted with marae facilities and tikanga Māori: the use of change tables, forcing nappy-changing into outside toilets; the fencing of exclusive kōhanga reo outside areas from roads, rivers, and other parts of the marae or school; children's sleeping arrangements; and an emphasis on toys and outside play equipment rather than the natural environment. Such prescriptions had, she informed us, tended to damage relations between kōhanga reo whānau and Trust staff, who had to advise them to comply in order to get their licence and remain open.

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151. Document A24(h) (Crown/Kōhanga Reo National Trust Joint Working Group, *Report to the Ministers of Education and Māori Affairs, Review of the Relationship Between the Crown and Te Kohanga Reo National Trust* (Wellington: Crown/Kōhanga Reo National Trust Joint Working Group, 2001)), pp 42–44, 47–49

152. Education Standards Act 2001, s 84; doc A75 (A Hema and N Ihaka, Te Kōhanga Reo National Trust Board to Ministry of Education and Te Puni Kōkiri, 'Property Putea: DGS', memorandum, 11 December 2001), p 105

153. Document A75 (A Hema and N Ihaka, Te Kōhanga Reo National Trust Board to Ministry of Education and Te Puni Kōkiri, 'Property Putea: DGS', memorandum, 11 December 2001), pp 102–108

154. Document A84 (Te Kōhanga Reo National Trust, *Te Korowai* (Wellington: Te Kōhanga Reo National Trust, 1995). See in particular goals 1B (accountability), 2 (mokopuna growth and learning experience, whānau strengths and skills), 3 (special needs), 4 (health, safety, environment), 7 (managing employment and finance), 10 (health, safety and equipment) and 11 and 12 (self-review and monitoring).

155. Document A36 (Harata Gibson, brief of evidence, 22 December 2011), pp 4–5. For '1990–1995', the text states a total of 83 kōhanga reo and the table sums to 85.

156. Document A37 (Matiu Kingi, brief of evidence, 18 January 2012), p 4



Ms Gibson attributed part of the change to greater prescription in the 1998 ECE regulations, although these were similar in most respects to the 1990 set. She also described a switch in the 1990s from relaxed and tikanga-aware oversight to more rigid enforcement, which she associated with a change in licensing officer, implying that the Ministry allowed wide latitude in how its staff interpreted the regulations locally.<sup>157</sup> Trust staff attempted to assist in finding solutions that minimised the adverse impact on kaupapa-based practice, while satisfying officials as to compliance.<sup>158</sup> The Trust also included fairly detailed specifications in the guidelines for its property pūtea, on which many kōhanga reo relied for assistance when moving to or upgrading their own premises.<sup>159</sup>

### 2.3.7 Performance reviewing and the Education Review Office

The incorporation of the kōhanga reo movement into the ECE sector brought its operations under the scrutiny of the Ministry and ERO. In August 1988, *Education to be More*, the report of the Government-appointed Early Childhood Care and Education Working Group, had recommended that the review function be undertaken largely by the Ministry. However, *Before Five*, the Government's policy statement on ECE, issued in December 1988, opted for independent reviewing, whose approach it envisaged as being 'essentially developmental' as well as assuring compliance.<sup>160</sup> ERO's mandate under the 1990 amendment to the Education Act 1989, which brought all licensed kōhanga reo under its ambit, simply required it to evaluate performance.<sup>161</sup>

During the 1990s, compliance with the ECE regulations tended to dominate the concerns of ERO's reviewers. ERO's analyses in 1993 and 1997 of sets of kōhanga reo evaluation reviews faulted substantial minorities of kōhanga reo as below the minimum standard on a number of regulatory criteria. These included a wide range of health, safety and hygiene infringements, as well as record-keeping, staff employment, financial management, documenting policy, and involving parents and whānau. However, in all of the main categories a majority were found to be in compliance.<sup>162</sup>

157. Document A36 (Harata Gibson, brief of evidence, 22 December 2011), pp 5–14

158. Document A36 (Harata Gibson, brief of evidence, 22 December 2011), pp 6–13; doc A80 (Vaine Daniels, brief of evidence, 18 January 2012), p 5

159. See the 'building regulations check list' in the Trust's 1990 property pūtea policy. Document A78 (Te Kōhanga Reo National Trust Board, 'Property Pūtea Policy', 1990), pp 511–513

160. Document A81 (Early Childhood Care and Education Working Group, *Education To Be More: Report of the Early Childhood Care and Education Working Group* (Wellington: Department of Education, 1988)), p 283; doc A81 (Minister of Education, *Before Five: Early Childhood Care and Education in New Zealand* (Wellington: Department of Education, December 1988), pp 331, 338–339

161. Education Amendment Act 1990, ss 316–318

162. Document A78 (ERO, *Overview Analysis: Assurance Audits of Te Kohanga Reo*, (Wellington: ERO, 25 June 1993)), pp 123–124; doc A81 (ERO, *What Counts as Quality in Kohanga Reo* (Wellington: ERO, 1997)), pp 555–562

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2.4

In 1997, ERO published a national report on quality in kōhanga reo.<sup>163</sup> Based on 88 reviews undertaken during 1995 and 1996, it concentrated on te reo transmission and whānau self-management rather than standard early learning measures, as well as covering financial management and health and safety. It assessed the performance of the Trust and kōhanga reo, identifying scope for improvement but also bringing out areas of achievement and strength by highlighting positive case examples and drawing out criteria of high-quality performance.

The ERO report paid close attention throughout to the Trust's policies, the kōhanga reo kaupapa, and their practical application. In respect of the Trust, it reached positive conclusions on, amongst other aspects, the promotion of te reo immersion; improving new whānau members' te reo competence; the impact of Tohu Whakapakari training; the range of teaching and whānau learning resources; *Te Korowai* as a kaupapa, policy, and resource guide; and guidelines and procedures for employment, financial management, and property occupation.<sup>164</sup> Amongst 100 kōhanga reo reviewed between April 1995 and October 1996, the report focused on te reo transmission, finding that some 27 per cent were unable to fulfil their commitment to immersion consistently for lack of te reo expertise and that in another 9 per cent little or no te reo was spoken. Some, it noted, practised tikanga Māori despite a shortage of fluent speakers.<sup>165</sup> Sixteen years later we were not furnished with any more recent comparative figures by ERO. This raised issues for us, as we discuss in chapter 10. We discuss later in this chapter what has happened in terms of ERO since 1996.

**2.4 THE TRIPARTITE AGREEMENT AND THE MARGINALISATION OF KŌHANGA REO, 2002–10**

**2.4.1 ECE expansion, kōhanga reo decline**

The sharp fall in the total kōhanga reo enrolment from 1996 to 2001 stabilised at just over 10,000 between 2002 and 2005, and then fell again to just over 9,000 in 2008 before rising slowly to 9,600 in 2011.<sup>166</sup> The number of kōhanga reo continued to fall, from 586 in 2001 to 463 in 2011, while the average number of children per kōhanga reo slowly rose. Data for June 2012 supplied by the Trust indicate a slight rise in the number of kōhanga reo to 471 but a fall in the total enrolment (Māori and non-Māori) to 9,071 (see figure 2.3).<sup>167</sup>

163. Document A81 (ERO, *What Counts as Quality in Kohanga Reo* (Wellington: ERO, 1997)), pp 541–567

164. Document A81 (ERO, *What Counts as Quality in Kohanga Reo* (Wellington: ERO, 1997)), pp 550–553

165. Document A81 (ERO, *What Counts as Quality in Kohanga Reo* (Wellington: ERO, 1997)), pp 554–555

166. The data presented in this and the following three paragraphs are drawn or calculated from the Ministry of Education's Education Counts website (<http://www.educationcounts.govt.nz/>, accessed 26 July 2012). The Ministry's data tables record a small number of non-Māori children attending kōhanga reo, ranging from 24 in 2002 to 489 in 2011.

167. Memorandum 3.4.13 (claimant counsel, memorandum providing additional information, 1 August 2012); doc E15 [table attached to memo 3.4.13].

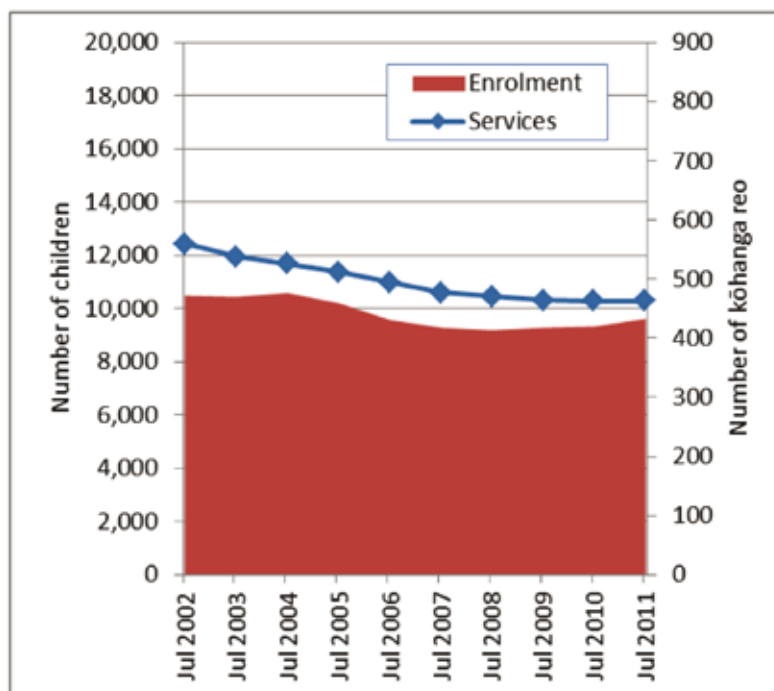


Figure 2.3: Number of enrolled children and kōhanga reo, 2002–2011

Sources: Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, Te Taumata Tuarua, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 409, tbl 5.3; Ministry of Education, 'Education Counts: Statistics', spreadsheet 'Māori in ECE', <http://www.educationcounts.govt.nz/statistics/ece2/mori-in-ece>, accessed 11 September 2012

The slow and fluctuating decline in kōhanga reo enrolments after 2001 was part of a major structural change in Māori participation in ECE as a whole: it was not a neutral outcome. Over the decade 2002–11, total Māori enrolment in licensed ECE centres grew by 32 per cent to 40,941. This trend in part reflected a rising ECE participation rate, which at around 43 per cent of all Māori mokopuna aged under five years old in 2001 was similar to that for Pasifika and well below the 77 per cent estimated for the rest of the population.<sup>168</sup> While the number of Māori mokopuna in kōhanga reo fell by between 700 and 1,200<sup>169</sup> and the number in home-based care rose by 2,000, education and care centres nearly doubled their numbers to account for most of the net increase of around 10,000 in total Māori enrolment. Notwithstanding a slight rise in the number of Māori children in kōhanga reo from 8,679 in 2007 to 9,142 in 2011, the kōhanga reo share of total Māori enrolment dropped from 33 per

168. The approximate proportion of Māori, Pasifika and other children aged 0–4 years attending an ECE service in 2001 is based on the graph 'Apparent ECE participation by ethnicity by age, 2001' in doc A76 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki. A 10-Year Strategic Plan for Early Childhood Education*, (Wellington: Ministry of Education, 2002), p 453. The proportion of Māori children starting school who had previously attended an ECE centre rose from 84.6 per cent in 2002 to 90.0 per cent in 2011

169. The decrease in Māori children may be overstated owing to a discontinuity in the reported data from 2007, onwards, with a sudden increase in the number of non-Māori children attending kōhanga reo from below 25 to around 450–550, spread across most regions of the North Island.

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2.4.1

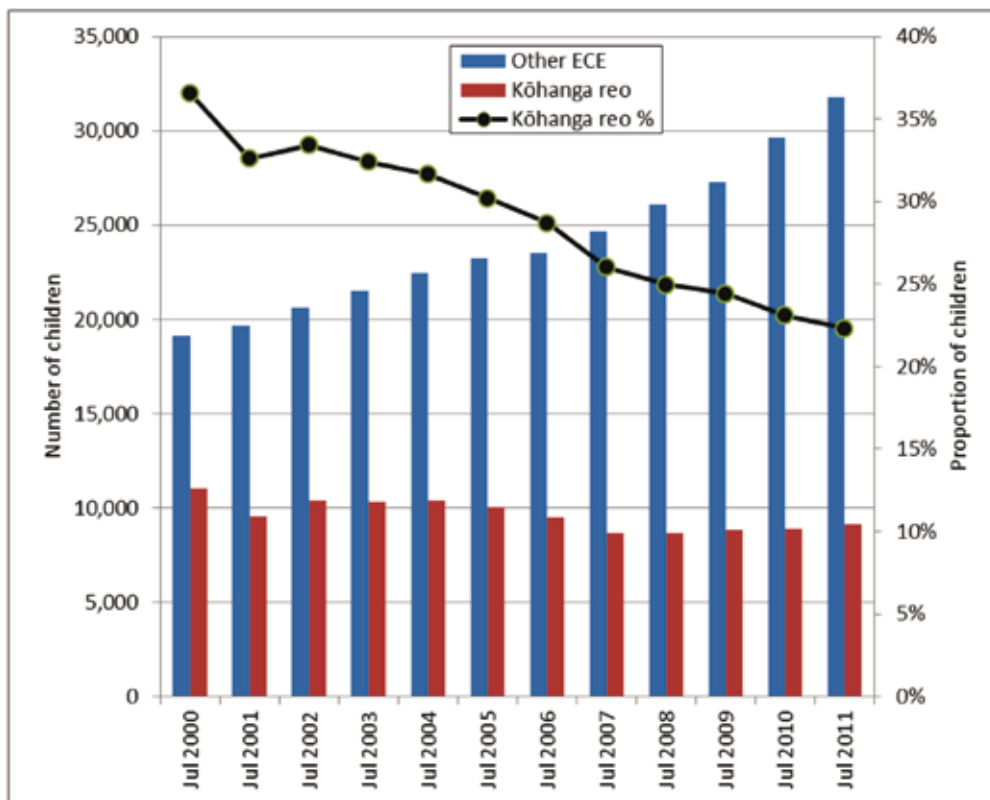


Figure 2.4: Total Māori enrolment in kōhanga reo and other licensed ECE services, 2000–2011

Sources: Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 409, tbl 5.3; Ministry of Education, 'Education Counts: Statistics', spreadsheet 'Māori in ECE', <http://www.educationcounts.govt.nz/statistics/ece2/mori-in-ece>, accessed 11 September 2012

cent in 2002 to 26 per cent in 2007 and 22 per cent in 2011. In contrast, the share of Māori mokopuna enrolled in education and care centres rose from 32 per cent to 47 per cent over the decade (see figure 2.4).<sup>170</sup>

The general effect was a marked decline in the proportion of Māori mokopuna involved in total immersion. The number of other licensed ECE centres functioning at a full immersion level, with te reo Māori spoken during 81–100 per cent of teaching contact time, remained very small – 11 centres in 2011 with a Māori roll of 233 children.<sup>171</sup> Unlicensed puna kōhungahunga, parent-led playgroups mostly speaking te reo, peaked in 2004 at 580 children but by 2011 had declined to 26 centres with a roll of 278.<sup>172</sup> The combined total of

170. Calculated from the table 'Māori in ECE' on the Education Counts website (<http://www.educationcounts.govt.nz/>, accessed 26 July 2012)

171. Education Counts website, table 'Māori in ECE' (<http://www.educationcounts.govt.nz/>, accessed 26 July 2012)

172. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 409

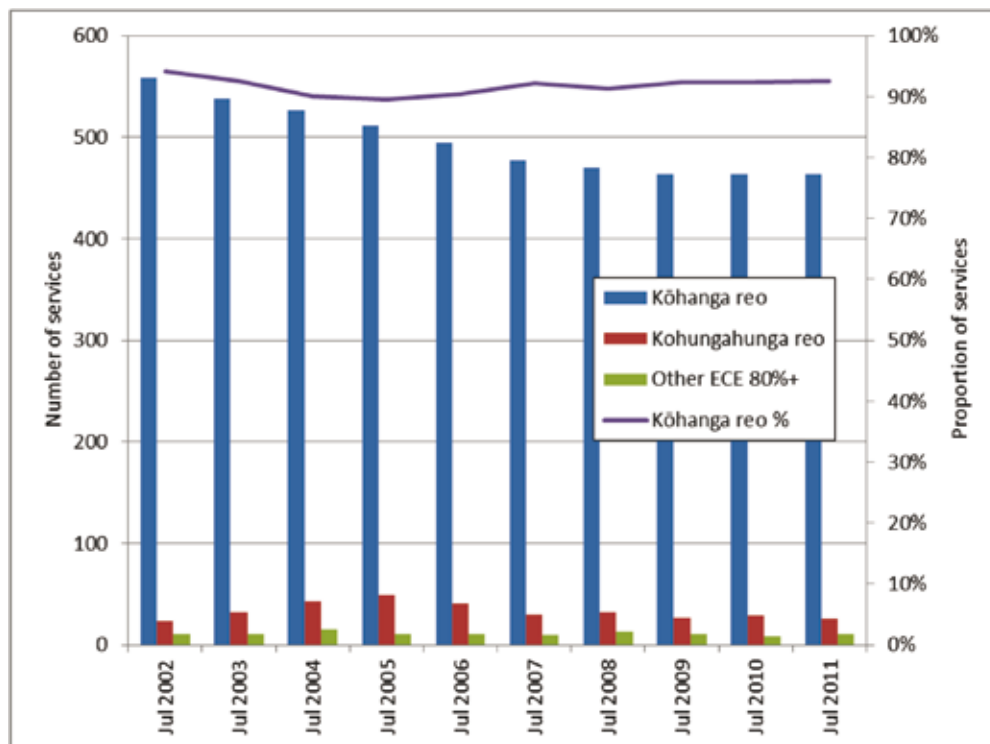


Figure 2.5: Number of ECE te reo Māori immersion services, 2002–2011

Sources: Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 409, tbl 5.3; Ministry of Education, 'Education Counts: Statistics', spreadsheets 'Māori in ECE' and 'ECE services', <http://www.educationcounts.govt.nz/statistics/>, accessed 11 September 2012

511 children, the great majority of whom would have been Māori, did not compensate for the larger fall in the kōhanga reo Māori enrolment and was actually below the total of 581 children at puna kōhungahunga recorded in 2002 (see figures 2.5 and 2.6).

Overall, the total number of mokopuna in full immersion at licensed early childhood centres remained static during a decade of strong expansion in Māori ECE attendance. In contrast, the number of Māori children enrolled in centres where Māori was spoken 50 per cent of the time or less increased by 8,872 between 2002 and 2011. By 2011, the proportion of Māori mokopuna in licensed full immersion centres, excluding home-based care,<sup>173</sup> had dropped from 36 per cent to 25 per cent, while the share of those in the 50 per cent or less category had risen from 64 per cent to 74 per cent.<sup>174</sup> In other words, exposure to full immersion learning of te reo Māori was steadily losing ground (see figure 2.7).

173. In 2011, 3,028 Māori children, or 7 per cent of the total Māori enrolment in licensed ECE, were in home-based care.

174. Calculated from Education Counts, 'Māori in ECE' (Excel spreadsheet, Wellington: Ministry of Education, 16 May 2012), [http://www.educationcounts.govt.nz/\\_data/assets/excel\\_doc/0016/105631/Maori-in-ECE.xls](http://www.educationcounts.govt.nz/_data/assets/excel_doc/0016/105631/Maori-in-ECE.xls).

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2.4.2

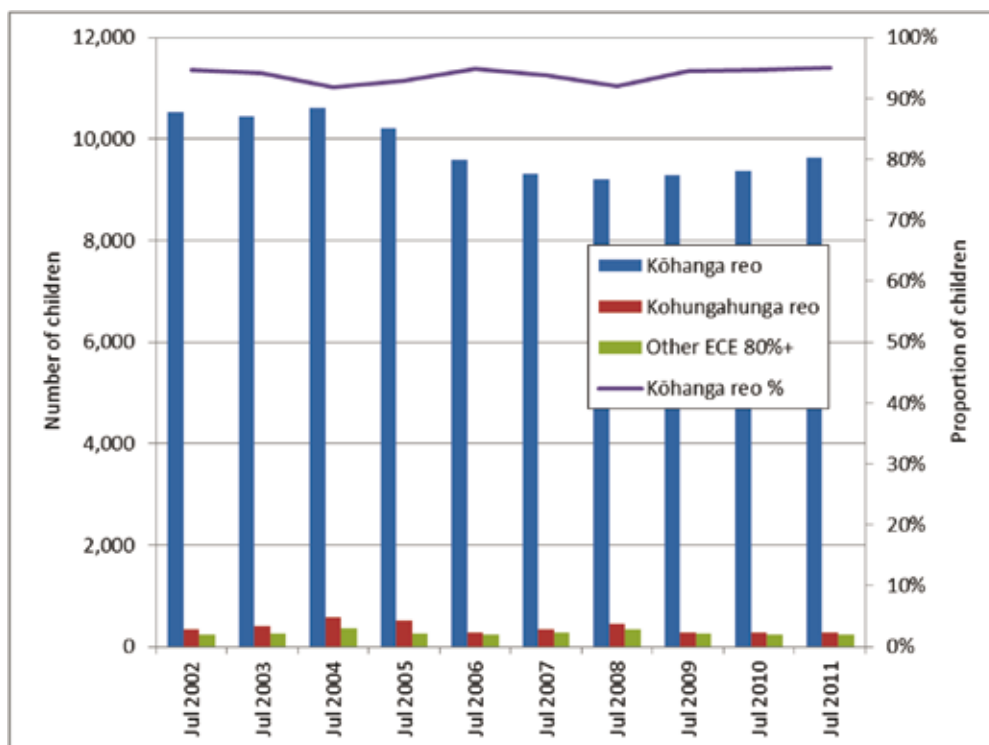


Figure 2.6: Total enrolments in ECE te reo Māori immersion services, 2002–2011

Sources: Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 409, tbl 5.3; Ministry of Education, 'Education Counts: Statistics', spreadsheets 'Māori in ECE' and 'ECE enrolments', <http://www.educationcounts.govt.nz/statistics/>, accessed 11 September 2012

2.4.2 Government ECE policy and strategy

The first decade of the new millennium witnessed a concerted Government drive to expand and improve the ECE sector. The main instrument was a sector programme, launched in September 2002 with the publication of a 10-year strategic plan, *Pathways to the Future Ngā Huarahi Arataki*.<sup>175</sup> The plan set three goals: improving service quality, increasing participation in quality ECE services, and promoting collaborative relationships. Its strategic framework focused on communities with low participation rates, on improving the learning environment, and on child development and educational achievement. Key points of focus for implementation would be removing barriers to participation, promoting ECE benefits, extra

175. Document A64 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki. A 10-Year Strategic Plan For Early Childhood Education* (Wellington: Ministry of Education, 2002)), pp 99–131. The published version can be found as a PDF file at: <http://www.minedu.govt.nz/NZEducation/EducationPolicies/EarlyChildhood/ECEStrategicPlan/PathwaysToTheFutureEnglishPlanAndTranslations.aspx>.

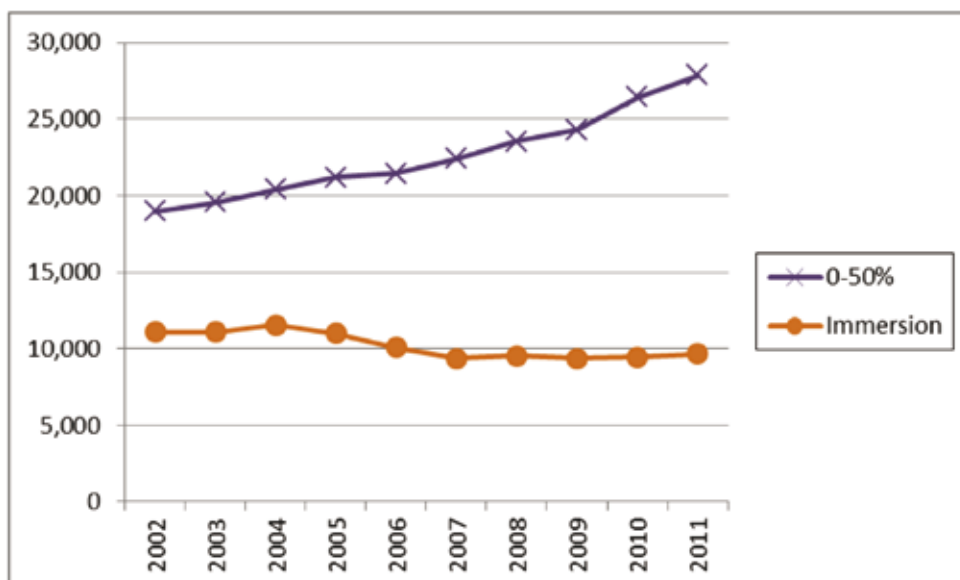
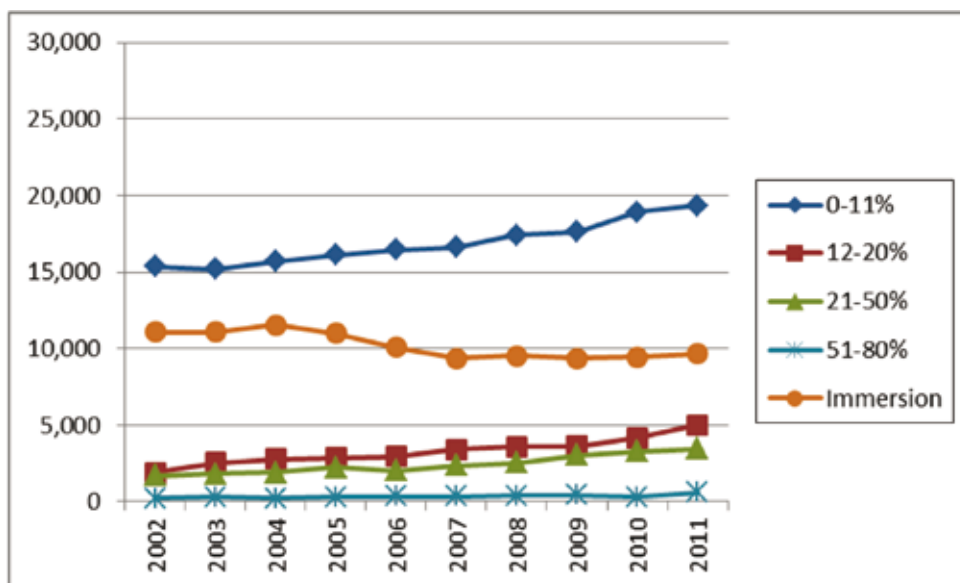


Figure 2.7: Māori children in ECE by proportion of te reo spoken in contact time, 2002–2011. Note: The data is for licensed ECE services only, except for 'Immersion', which includes licence-exempt kōhanga reo and unlicensed puna kōhungahunga as well as licensed kōhanga reo and 81–100% te reo education and care centres.

Sources: Ministry of Education, 'Education Counts: Statistics', spreadsheets 'Māori in ECE' and 'ECE enrolments', <http://www.educationcounts.govt.nz/statistics/>, accessed 11 September 2012; Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, pp 409–410, tables 5.3 and 5.4



funding, raising the number of registered teachers and teacher-child ratios, and strengthening ECE links with parents, schools, and Government support agencies.<sup>176</sup>

The plan outlined ‘specific strategies for the building of an ECE sector responsive to the needs of Māori and Pasifika peoples.’<sup>177</sup> These would aim at raising Māori participation, making ECE services more appropriate and effective for Māori, and strengthening Crown–Māori relationships. As well as relations with iwi, the plan envisaged working ‘more collaboratively with the Trust’ in light of the Gallen Report and saw this as helping to ‘support quality and participation in kōhanga reo in a way that supports the kaupapa of the kōhanga reo movement.’<sup>178</sup> It promised collaborative work with Māori to identify barriers, and better information for parents and whānau.<sup>179</sup> Research was to investigate ‘what factors in ECE make the most difference for the development and success of Māori children’, including the transition from immersion ECE to school, ‘ways to better support Te Reo Māori immersion ECE services,’ and ‘a better understanding of how services led by parents and whānau and home-based services achieve quality.’<sup>180</sup> It signalled targeted equity funding, an expanded discretionary grants scheme, and a review of funding for ECE services provided by parents and whānau.<sup>181</sup>

Although it acknowledged that the kōhanga reo programme included tikanga as well as immersion te reo and extended to whānau as well as mokopuna, the plan articulated its approach to Māori within an ECE frame of reference; revitalising te reo was not mentioned as an objective. Government efforts would rather be directed to ensuring that ‘Māori have a choice of ECE services that best meet their needs.’<sup>182</sup> To that end, it also undertook to assist Māori-run, ‘stand-alone services operating without support from umbrella organisations’ and to improve the responsiveness of mainstream ECE services to Māori needs.<sup>183</sup>

While insisting that having all teachers registered was important for quality services for Māori, the plan excluded kōhanga reo from its compulsory targets for registered teachers in ECE services. It acknowledged that kaumātua were integral and that field-based training

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176. Document A64 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki. A 10-Year Strategic Plan for Early Childhood Education* (Wellington: Ministry of Education, 2002)), pp 103–105; doc A66 (Anne Meade, brief of evidence, 15 February 2012), pp 11–14

177. Document A64 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki. A 10-Year Strategic Plan for Early Childhood Education* (Wellington: Ministry of Education, 2002)), p 103

178. Document A64 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki. A 10-Year Strategic Plan for Early Childhood Education* (Wellington: Ministry of Education, 2002)), pp 109–110

179. Document A64 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki. A 10-Year Strategic Plan for Early Childhood Education* (Wellington: Ministry of Education, 2002)), pp 109–100

180. Document A64 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki. A 10-Year Strategic Plan for Early Childhood Education* (Wellington: Ministry of Education, 2002)), pp 121, 124, 127, 130

181. Document A64 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki. A 10-Year Strategic Plan for Early Childhood Education* (Wellington: Ministry of Education, 2002)), pp 113, 115–117, 123

182. Document A64 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki. A 10-Year Strategic Plan for Early Childhood Education* (Wellington: Ministry of Education, 2002)), pp 107, 113, 121

183. Document A64 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki. A 10-Year Strategic Plan for Early Childhood Education* (Wellington: Ministry of Education, 2002)), p 114



worked best for teachers entering Māori ECE services.<sup>184</sup> But it made no mention of the Trust's established Tohu Whakapakari qualification, instead proposing 'to work in partnership with Māori to develop a teacher education course for Māori immersion ECE teachers'.<sup>185</sup>

Many of the major initiatives in the following decade trace back to *Ngā Huarahi*. They include:

- ▶ the promotion of teacher-led ECE and teacher registration;
- ▶ higher hourly subsidy rates geared to the proportion of registered teachers on the staff of ECE services;
- ▶ the introduction of 20 hours free ECE for three- and four-year-olds;
- ▶ a wider scope for the DGS and its replacement in 2010 by Targeted Assistance for Participation Scheme (TAPS); and
- ▶ revamped ECE regulations and the promulgation of *Te Whāriki*.

Kōhanga reo featured in the Ministry's programme mainly to the extent that they could assist in meeting the Government's ECE objectives of improving quality and raising participation rates. *Ka Hikitia*, the Ministry of Education's five-year strategy for Māori education in the period 2008–12, set general goals that included raising the rate of Māori participation in ECE to 95 per cent by 2012, but none were specifically targeted on raising participation in te reo immersion. Its general goals for te reo-based ECE focused mainly on improving quality rather than revitalising te reo: agreeing on shared outcomes with the Trust; promoting teacher registration; and quality exemplars and research on quality improvement.<sup>186</sup>

#### 2.4.3 The Tripartite Relationship Agreement

While policy work on *Ngā Huarahi* was under way, representatives of the Trust met Minister of Education Trevor Mallard in November 2000 to present the Trust's strategic plan and request a direct relationship with the Crown. Out of this initiative came the formation of a Crown–Trust joint working party, chaired by Sir Rodney Gallen.<sup>187</sup> In 2001, the working party's report recommended that the Ministry of Education, Te Puni Kōkiri, and the Trust

184. Document A64 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki. A 10-Year Strategic Plan for Early Childhood Education* (Wellington: Ministry of Education, 2002)), pp 120–121, 123

185. Document A64 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki. A 10-Year Strategic Plan for Early Childhood Education* (Wellington: Ministry of Education, 2002)), p 119

186. Document A64 (Ministry of Education, *Ka Hikita: Managing for Success – Maori Education Strategy, 2008–2012* (Wellington: Ministry of Education, 2009)), p 83; Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 417

187. Document A24(h) (Crown/Kōhanga Reo National Trust Joint Working Group, *Report to the Ministers of Education and Māori Affairs, Review of the Relationship Between the Crown and Te Kohanga Reo National Trust* (Wellington: Crown/Kōhanga Reo National Trust Joint Working Group, 2001)), p 36

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enter into a new relationship that incorporated the three organisation's agreed principles and shared outcomes.<sup>188</sup>

The resulting Tripartite Relationship Agreement, concluded on 27 March 2003, recognised the objectives of language revitalisation amongst mokopuna and their whānau, broad whānau development, and early learning situated within a Māori cultural setting. The Agreement committed the partners to work together to achieve shared outcomes in Māori language revitalisation, holistic whānau development, and high quality early childhood learning within a whānau-based, Māori cultural environment.<sup>189</sup>

Dame Iritana noted the Trust's appreciation:

We took the Tripartite Agreement seriously, and we were pleased that it recognised that kōhanga reo were not an early childhood education provider but domains for Māori language development, Māori development and education.<sup>190</sup>

The Tripartite Agreement coincided with a concerted Government effort to involve ECE organisations in designing and implementing *Ngā Huarahi* and to strengthen its engagement with Māori. As a result, a broad stream of policy development, implementation, planning, and problem-solving initiatives emerged, in some of which the Trust became involved to varying degrees in consultative or joint working processes. They included:

- ▶ the Strategic Plan Working Group on Early Childhood Education, convened by Dr Meade, which included two Trust representatives amongst its 31 members (2000–02) and led to *Ngā Huarahi*;
- ▶ ERO's development during 2001–04 of an evaluation framework and guidelines specifically for kōhanga reo;
- ▶ representation on the reference group for the school curriculum *Te Matauranga* during 2006–08, contributing in particular on the transition from ECE and consistency with *Te Whāriki*;<sup>191</sup>
- ▶ joint work by the Ministry and the Trust during 2006–08 on shared outcomes for Trust services directly funded by the Ministry;
- ▶ participation in the Ministry's 2007 national symposium 'Travelling Pathways to the Future: Ngā Huarahi Arataki';

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188. Document A24(h) (Crown/Kōhanga Reo National Trust Joint Working Group, *Report to the Ministers of Education and Māori Affairs, Review of the Relationship Between the Crown and Te Kohanga Reo National Trust* (Wellington: Crown/Kōhanga Reo National Trust Joint Working Group, 2001)), pp 42–43, 45

189. Document A64 ('Tripartite Relationship Agreement between Te Kohanga Reo National Trust and the Ministers of Education and Maori Affairs', 2003), p 386

190. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p 15

191. Document A78 (Karl Le Quesne, senior manager, Early Childhood Regional Education to Minister of Education and Associate Minister of Education, 'Education Report: Kohanga Review – Comprehensive Overview', 8 April 2008), p 204

- ▶ the joint Ministry–Trust Funding, Quality and Sustainability Working Group on statutory recognition of the Trust, funding options, and sustaining kōhanga reo property owned by the Trust (2008–10);
- ▶ the promulgation of the national ECE curriculum framework in 2008; and
- ▶ new ECE regulations and licensing criteria in 2008.<sup>192</sup>

In practice, the Tripartite Agreement operated at varying levels of engagement and intensity. Following the development of its 25-year strategic plan, *Te Ara Tuāpare*, in early 2008, the Trust attempted to revive the partnership. A list of meetings held under the Tripartite umbrella shows 24 face-to-face encounters over the 29-month period from January 2008 to March 2010, four of them at ministerial level.<sup>193</sup> But the Ministry and the Trust continued to pull in different directions. A Ministry summary of the 2006 PricewaterhouseCoopers (PWC) review of the Trust's costs clearly articulated the gap:

PWC makes observations as to the shared philosophies of the Trust and Ministry, whilst working under two different paradigms:

- ▶ The Ministry focuses on early childhood (preschool) education and the infrastructure to support this – buildings, educational standards, funding, risk management;
- ▶ The Trust is focused on language acquisition, and has an entitlement through the Treaty of Waitangi to be self determining and maintain their rangatiratanga.

PWC perceives that in respect of value, both organisations are dissatisfied, as a result of the two paradigms in which they operate. The Trust and the Ministry agree that whilst the organisations operate with some different objectives, there is significant overlap . . .<sup>194</sup>

The PWC report observed that the Tripartite Agreement was, in practice, largely bilateral given the marginal involvement of Te Puni Kōkiri.<sup>195</sup> The latter's limited engagement was potentially significant, given its lead responsibility for the Māori language strategy. Te Puni Kōkiri's 2011 post-election ministerial briefing did not mention language revitalisation

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192. Document A66, (Anne Meade, brief of evidence, 15 February 2012), p 11, 18–19; doc A56 (Graham Stoop, brief of evidence, 15 February 2012), p 7; doc A78 (Karl Le Quesne, senior manager, Early Childhood Regional Education to Minister of Education and Associate Minister of Education, 'Education Report: Kohanga Review – Comprehensive Overview', 8 April 2008), p 204; doc A4, vol 2 (Pania Tahau-Hodges, 'Draft report on the outcomes of Te Kohanga Reo Working Group: report prepared for Ministry of Education', October 2012), pp 228–261; doc A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p 14; doc A64 (Karl Le Quesne, senior manager, Early Childhood Education to Minister of Education and Associate Minister of Education, 'Education Report: A Curriculum Framework for Early Childhood Education', 4 July 2008), p 758; doc A22 (Karl Le Quesne, senior manager, Early Childhood Education to Minister of Education and Associate Minister of Education, 'Education Report: Te Kōhanga Reo National Trust – Emerging Issues', 5 February 2008), pp 306–308

193. Document A1(a) (Te Kōhanga Reo National Trust Board, 'Tripartite Meetings', summary, 2008–2010), pp 19–30

194. Document A78 (Rawiri Brell, deputy secretary, Ministry of Education to Minister of Education, 'Education Report: Te Kohanga Reo National Trust Update', 24 October 2006), p 705

195. Document A78 (Rawiri Brell, deputy secretary, Ministry of Education to Minister of Education, 'Education Report: Te Kohanga Reo National Trust Update', 24 October 2006), p 706

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through immersion education. It referred to the Trust only as a risk factor in respect of its Treaty claim, now before us.<sup>196</sup>

Alongside the Tripartite Agreement and working relationships between the Trust and Government agencies, a series of reviews and inquiries have considered the situation of kōhanga reo and the Trust:

- ▶ The Crown–Trust working party chaired by Sir Rodney Gallen in 2001 made recommendations concerning the legality of the Trust’s property pūtea loan scheme and options for conducting the relationship between the Crown and the Trust. Its other two main recommendations, for additional development funding and a gradual transfer of kōhanga reo to iwi, were not taken up.<sup>197</sup>
- ▶ The PwC costing review of the Trust in 2006, which was contracted by the Ministry of Education, endorsed the Trust’s financial management, but no concrete action resulted from its conclusion that the Trust itself was underfunded.<sup>198</sup>
- ▶ The Māori Affairs Select Committee conducted a general inquiry in 2008 into Māori participation in ECE. The Government response to its recommendations amounted to a reassertion of existing policy and practice.<sup>199</sup>
- ▶ The independent ECE Taskforce appointed by the Minister of Education included kōhanga reo in its 2011 report. The Ministry neither informed the Trust beforehand nor consulted the Trust during and after its review process.<sup>200</sup>

2.4.4 Financial resources

(1) *Incentivising teacher-led services*

Up to 2004, kōhanga reo were part of a single scheme for the funding of all ECE services. In 1996, when the Ministry of Education introduced a higher rate of ‘quality’ funding for chartered ECE centres, the Trust negotiated access to the scheme by virtue of *Te Korowai*. This enabled kōhanga reo that met a defined staff threshold for kaiako qualified or in training for

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196. Te Puni Kōkiri, *Briefing to the Incoming Minister of Māori Affairs* (Wellington, 2011), p 47

197. Document A24(h) (Crown/Kōhanga Reo National Trust Joint Working Group, *Report to the Ministers of Education and Māori Affairs, Review of the Relationship Between the Crown and Te Kohanga Reo National Trust* (Wellington: Crown/Kōhanga Reo National Trust Joint Working Group, 2001)), pp 47–49

198. Document A78 (PricewaterhouseCoopers, ‘Costing Review of Te Kohanga Reo National Trust’, Report Commissioned by Ministry of Education, 31 March 2006), pp 653–695; doc A78 (Rawiri Brell, deputy secretary, Ministry of Education to Minister of Education, ‘Education Report: Te Kohanga Reo National Trust Update’, 24 October 2006), pp 697–705

199. Document A76 (Māori Affairs Committee, ‘Inquiry into Māori Participation in Early Childhood Education’, September 2008), pp 634–671; doc A76 (‘Government response to Report of Māori Affairs Committee Inquiry into Māori Participation in Early Childhood Education’, undated), pp 695–701

200. Document A1 (Tina Olsen-Ratana, brief of evidence in support of application for urgency, 25 July 2011), pp 7–8

the Trust's Tohu Whakapakari qualification to access the higher 'quality' hourly rate of ECE subsidy.<sup>201</sup>

Differential hourly rates of subsidy became a divisive influence following the Government's decision to promote the employment of registered ECE teachers and fund each type of ECE service on the basis of its cost drivers.<sup>202</sup> The aim was to improve ECE service quality, principally by expanding the cadre of formally-trained ECE teachers. From 2005, the ECE subsidy was restructured to provide higher hourly rates for ECE services with registered teachers. The Ministry divided the sector into higher cost 'teacher-led' and lower cost 'family/parent-led' streams. Kōhanga reo were consigned to the latter by virtue of not being required to have registered teachers. While teacher-led ECE centres were placed on a graduated five-band scale that increased the hourly rate according to the proportion of registered teachers on their staff, kōhanga reo continued on a separate two-point 'standard' and 'quality' scale. Although the kōhanga reo 'quality' level recognised the employment of one or more Tohu Whakapakari-qualified kaiako, there was no equivalent sliding scale for higher proportions of kaiako.<sup>203</sup> Funded hours per child for license-exempt kōhanga reo were also cut from 30 to 20 per week.<sup>204</sup>

The non-recognition of Tohu Whakapakari as a teaching qualification blocked kōhanga reo from alternatively accessing the teacher-led rates. At first, kōhanga reo were excluded from the teacher-led rates altogether. In 2006, they were allowed access but only if they employed registered ECE teachers.<sup>205</sup> Up until 2010, this carried the additional incentive of automatic access to free ECE payments, which were initially restricted to teacher-led centres.<sup>206</sup> Only three kōhanga reo have attempted to qualify in this manner to date.<sup>207</sup>

## (2) Other sources of funding

The introduction in July 2007 of 20 hours free ECE for three- and four-year-olds was limited to centres with registered teachers and hence initially excluded kōhanga reo. Late that year, the Ministry extended eligibility to kōhanga reo with at least one Tohu

201. Document A81 (Arapera Royal-Tangaere, brief of evidence, 22 December 2011), pp 18–19; doc E10 (Ministry of Education, *Early Childhood Education Funding Handbook*, (Wellington: the Ministry, 2005)), chapter 3-C-4

202. Document A43 (Minister of Education, 'Early Childhood Education Funding: Proposed New System', Proposal to Cabinet Policy Committee, 23 March 2004), pp 25–48

203. Document A64 (Heather Penny, acting senior manager, Early Childhood and Regional Education to Minister of Education, 'Education Report: Change to ECE Funding Rules – Widening access to teacher-led rates', September 2006), pp 640–641; doc E10 (Ministry of Education, *Early Childhood Education Funding Handbook*, (Wellington: the Ministry, 2005)), chapter 3-C-4

204. Document A81 (Arapera Royal-Tangaere, 'Te Kōhanga Reo Aspirations and Struggles', 2011), p 805

205. Document A64 (Heather Penny, acting senior manager, Early Childhood and Regional Education to Minister of Education, 'Education Report: Change to ECE Funding Rules – Widening access to teacher-led rates', September 2006), pp 639–642

206. Document A64 (Heather Penny, acting senior manager, Early Childhood and Regional Education to Minister of Education, 'Education Report: Change to ECE Funding Rules – Widening access to teacher-led rates', September 2006), p 643

207. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 33

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Whakapakari-qualified kaiako. Not until July 2010 was the scheme opened to all kōhanga reo.<sup>208</sup> Partial uptake by kōhanga reo led to the 20 hours ECE subsidy comprising 20.9 per cent of total Government funding for kōhanga reo in 2010–11, still far below the 53.3 per cent in the rest of the ECE sector.<sup>209</sup> The hourly rates were slightly less than double the ECE subsidy rate set for children two years old and above.<sup>210</sup> Conversely, the ECE subsidy contributed the majority of Government funding to kōhanga reo and substantially more than for the rest of the ECE sector (58.5 per cent compared to 37.8 per cent in 2010–11).<sup>211</sup>

Kōhanga reo were able to access two other sources of Government subsidy. One was equity funding, which was targeted at reducing educational disparities. Of its four components, all kōhanga reo qualified as providing a service conducted in a language other than English, and some also by serving communities of low socio-economic status.<sup>212</sup> Equity funding formed a much higher proportion of total Government funding for kōhanga reo than in other ECE services (7.2 per cent compared to 0.5 per cent in 2010–11). In furthering the same aim of lowering barriers to participation, kōhanga reo kept their fees low; the average over 1997 to 2010 was 5 per cent of total income, compared to around 20 per cent for the ECE sector as a whole.<sup>213</sup> The other funding source was the childcare subsidy, which contributed a higher share of Government funding than for the rest of the sector (13.5 per cent compared to 8.2 per cent in 2010–11) (see figure 2.8).

**(3) Funding for the Trust**

From the early days of the Trust, the Government has provided operational funding towards its administrative and supporting role. This provision, the only one of its kind in the ECE sector, has been negotiated as part of the Memorandum of Agreement between the Trust and the Ministry, annually between 1990 and 2008, and since then every three years. It covers the extensive head office and district services provided by the Trust under three heads: advice and support, administration of funding for kōhanga reo, and disbursement of

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208. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, pp 408–409; doc A62 (Richard Walley, brief of evidence, 15 February 2012), p 41

209. Document A83 (Angus Hartley, 'Average Funding to TKR and ECE 2010–11', table, 7 March 2012), p 23; doc A62 (Richard Walley, brief of evidence, 15 February 2012), p 26

210. Document A43 (Angus Hartley, brief of evidence, 22 December 2011, exhibit AH11), pp 10–13

211. Document A83 (Angus Hartley, 'Average Funding to TKR and ECE 2010–11', table, 7 March 2012), p 23; doc A62 (Richard Walley, brief of evidence, 15 February 2012), p 26

212. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 29–30

213. Document A83 (Angus Hartley, second brief of evidence, 7 March 2012), p 4; doc A83 (Angus Hartley, 'Analysis of Kohanga Reo Audits', table, 7 March 2012), p 17; doc A62 (Richard Walley, brief of evidence, 15 February 2012), p 23

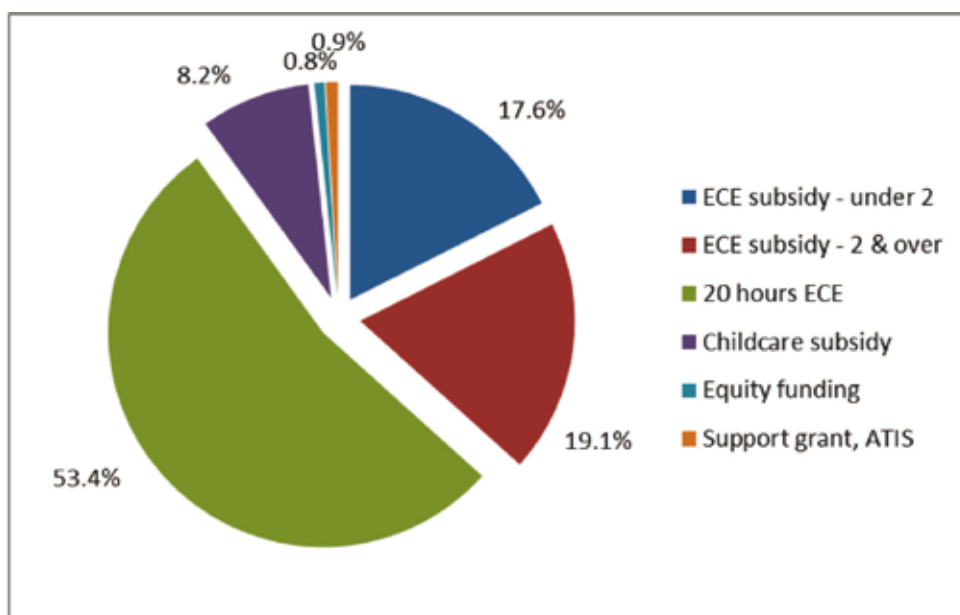
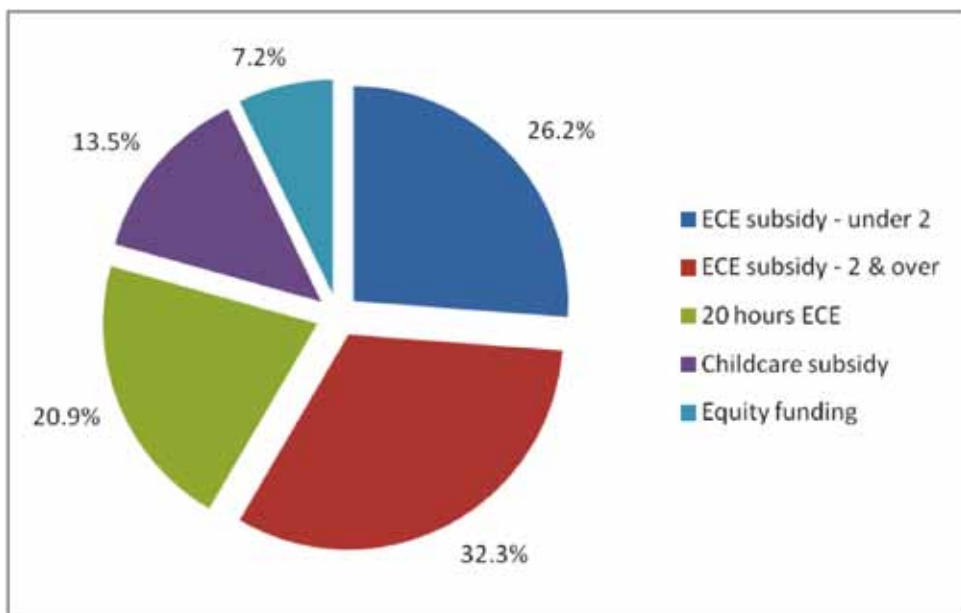


Figure 2.8: Government funding for ECE providers, 2010–11. Top: Kōhanga reo; above: other ECE services.

Note: ATIS is the Annual Top-up for Isolated Services.

Source: Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 26



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capital finance for kōhanga reo under the Discretionary Grants Scheme (DGS) and Targeted Assistance for Participation Scheme (TAPS).<sup>214</sup>

In 1990–91, the first full year of operation under the Ministry of Education, the budgeted amount for the Trust's 'administrative and other services' was \$2.643 million.<sup>215</sup> Since at least as far back as 1997, the annual payment has remained capped at \$2.56 million.<sup>216</sup> Had this amount been pegged to the consumer price index, by the end of 2011 it would have been some 57 per cent higher, or just over \$4 million.

The adequacy of funding was considered in two reviews. In 2001, the Gallen Report recommended that an additional \$4.16 million a year be provided to enable the Trust to sustain quality in kōhanga reo.<sup>217</sup> In 2006, the costings review commissioned by the Ministry from PwC found that the Trust's costs were \$0.214 million or 8 per cent above the \$2.56 million cap, and that they were reasonable compared to other NGOs. It concluded that the \$50 per hour paid by the Ministry for funding and advice services did not cover the Trust's costs and should be set at \$70 per hour. This would still provide no gross margin for development, which PwC recommended should be set at 11.2 per cent.<sup>218</sup> In total, the review estimated the sustainable funding level at \$3.085 million and the Trust's deficit for the services funded at \$0.525 million, or a 20 per cent shortfall.<sup>219</sup>

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214. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), pp7–10; doc A64 (Ministry of Education and Te Kōhanga Reo National Trust, 'Master Agreement to Provide Services for Nga Kohanga Reo', 2008), pp 392–445. The 2005 Master Agreement ran for three years but its funding schedule was negotiated annually: doc A22 ('Master Agreement to Provide Services for Nga Kōhanga Reo Between Ministry of Education and Te Kōhanga Reo National Trust', 8 March 2005), pp 1183–1230

215. Document A78 (Manatū Māori to Chairman, Cabinet Education, Science and Technology Committee, 'Kōhanga Reo', memorandum, undated), p 305

216. Document A93 ('Meeting between Ministry of Education and Te Kōhanga Reo National Trust: Master Agreement: 24.05.2011', minutes), p 50; doc A78 (Apryll Parata, deputy secretary, Maori education to Minister of Education, 'Briefing: Statement of Position – Report on Kaupapa Maori Education Provision', 25 March 2009), p 191; doc A78 (Rawiri Brell, deputy secretary, Ministry of Education to Minister of Education, 'Education Report: Te Kōhanga Reo National Trust Update', 24 October 2006), p 701; doc A22 (Secretary for Education and Te Kōhanga Reo National Trust Board, 'Agreement for the Provision of Services between the Secretary for Education and Te Kohanga Reo National Trust Board for the Period 1 January 2002 to 31 December 2002', 2002), p 1069; doc A83 (Angus Hartley, second brief of evidence, 7 March 2012), pp 14–15; doc A63 (Rawiri Brell, brief of evidence, 15 February 2012), p 10; Dame Iritana Tāwhiwhirangi, under questioning by claimant counsel, first week of hearing, 14 March 2012 (transcript 4.1.3, p 228); Rawiri Brell, under questioning by claimant counsel, second week of hearing, 20 March 2012 (transcript 4.1.4, p 189). In 2008, the draft three-year Master Agreement described this amount as an annual 'budget cap': doc A64 (Ministry of Education and Te Kōhanga Reo National Trust, 'Master Agreement to Provide Services for Nga Kohanga Reo', 2008), p 408.

217. Document A24(h) (Crown/Kōhanga Reo National Trust Joint Working Group, *Report to the Ministers of Education and Māori Affairs, Review of the Relationship Between the Crown and Te Kohanga Reo National Trust* (Wellington: Crown/Kōhanga Reo National Trust Joint Working Group, 2001)), p 44

218. Document A78 (PricewaterhouseCoopers, 'Costing Review of Te Kohanga Reo National Trust', report commissioned by Ministry of Education, 31 March 2006), pp 657–658, 679, 683–685

219. Document A78 (PricewaterhouseCoopers, 'Costing Review of Te Kohanga Reo National Trust', report commissioned by Ministry of Education, 31 March 2006), pp 682–683



These findings did not lead to a raising of the funding cap. With the pūtea also no longer being replenished, the Trust was left with little other funding for its broader development and support goals.<sup>220</sup>

#### (4) Capital funding

The DGS remained the principal Government source of capital funding for kōhanga reo until its replacement in 2010 by TAPS. Both schemes focused on improving participation rates by creating new or additional ECE places, rather than on upgrading existing facilities.<sup>221</sup> Targeting was loosened in 2005, when the DGS's Māori and other pools were combined into a single ECE fund and its scope was extended to areas of high population growth.<sup>222</sup> In 2010, the introduction of TAPS shifted the focus to particular localities with low ECE participation. It lifted the restriction to community-based ECE services to bring in privately-owned services as well, and tended to favour partially over fully funded proposals.<sup>223</sup> This broader scope pitched kōhanga reo into competition for capital finance with other ECE services and advantaged those able to raise finance of their own.

Although building maintenance had long been built into the calculation of the ECE subsidy, in particular with the introduction of cost-based rates in 2005, the cost pressures on kōhanga reo precluded many from setting aside part of their operational funding to maintain and upgrade their premises.<sup>224</sup> This capital deficit was exposed when, in December 2008, the 1998 early childhood regulations were replaced with new regulations that set a deadline of November 2014 for all existing services to be relicensed.<sup>225</sup> In 2009, a national survey undertaken by the Trust with funding from Te Puni Kōkiri revealed that some 37 per cent of kōhanga reo would need to upgrade their premises in order to achieve regulatory compliance (see figure 2.9). Notwithstanding initiatives to source finance from the Ministry's annual budget and through TAPS, from which a potential \$2 million was under

220. Document A75 (Andrew Hema, first brief of evidence, 22 December 2011), p 8

221. Document A75 (Ross Boyd, senior manager, education management policy, Ministry of Education to Minister of Education, 'Early Childhood Discretionary Grants Scheme Changes', 5 November 2004), pp14-15, 18; doc A75 (Ministry of Education, 'Response to Kohanga Concerns Raised to Ministry of Education Personnel', undated), p 40

222. Document A75 (Andrew Hema, first brief of evidence, 22 December 2011), p 3

223. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 49-51; doc A23(e) (Ministry of Education, 'ECE Participation Programme, Targeted Assistance for Participation', from [www.lead.ece.govt.nz](http://www.lead.ece.govt.nz), accessed 21 November 2011), p 23

224. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 34, 44-45; doc E10 (Ministry of Education, *Early Childhood Education Funding Handbook*, (Wellington: the Ministry, 2005)), chapter 3-A-3; doc A43 (Minister of Education to chair, Cabinet Policy Committee, 'A New System for Early Childhood Education Funding', POL (04) 47, 23 March 2004), p 351; doc A43 (Angus Hartley, brief of evidence, 22 December 2011), pp 3, 5; do A89 (Andrew Hema, second brief of evidence, 7 March 2012), p 5

225. Education Act 1989, s 319L(1); Education (Early Childhood Services) Regulations 2008; doc A62 (Richard Walley, brief of evidence, 15 February 2012), p 4; doc A64 (Ministry of Education and Te Kōhanga Reo National Trust, 'Early Childhood Education 2008 Regulatory System Implementation Re-licensing Protocol', 11 November 2009), pp 650-654

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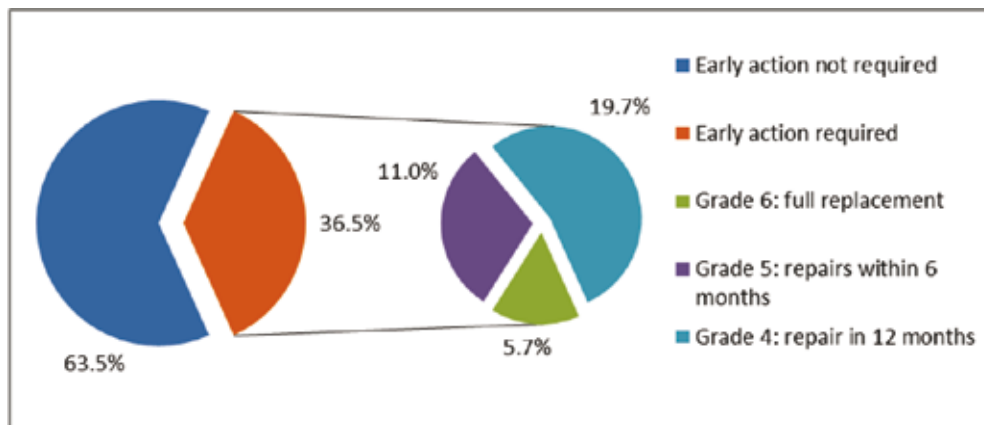


Figure 2.9: Kōhanga reo at risk of not meeting relicensing standard, 2010

Source: Document A93 (Te Kōhanga Reo National Trust, table of assessments of kōhanga reo premises requiring action, not dated), pp 62–82

discussion between the Ministry and the Trust during the first half of 2012, most of the estimated cost of around \$20 million had yet to be found at the time of our hearings.<sup>226</sup>

#### 2.4.5 Regulatory compliance and reviewing

##### (1) A revised statutory framework

In May 2006, legislation amending the Education Act 1989 brought in a major revision of part 26, concerning early childhood education and care. It enabled the Minister of Education to prescribe a curriculum framework. Oversight of licensed ECE services was to function at two levels: regulations setting minimum standards; and criteria for assessing compliance. The Ministry of Education’s ‘desirable objectives and practices’ were discontinued. The Minister was given discretion to vary the curriculum framework, regulations, and licensing criteria by type of service. The Minister was also required to consult affected organisations before imposing a curriculum framework or licensing criteria, which was done in the course of 2006.<sup>227</sup>

226. Document D1 (Stephen Gover, acting senior manager, education system strategy to Minister of Education, ‘Education Report: Budget 2011 – Process Information and Assessment of Pressures’, 5 November 2010), pp 66–73; doc A93 (Richard Walley, senior policy manager, early childhood education to Nikorima Broughton, Te Kōhanga Reo National Trust Board, ‘Property List’, email, 23 June 2011), p 53; doc A62 (Richard Walley, brief of evidence, 15 February 2012), p 51; doc A93 (Nikorima Broughton, brief of evidence, 7 March 2012), pp 2–3; doc E8 (Ministry of Education, ‘Targeted Assistance for Participation Funding Opportunities Hui – Poneke/Wellington Central: Minutes’, 18 April 2012), pp 1–2

227. Education Act 1989, ss 314, 317; doc A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), pp 18–21

**(2) Promulgating 'Te Whāriki'**

*Te Whāriki*, the general ECE curriculum published in 1996, had been in place for a decade when the Ministry decided to make its core elements mandatory as an instrument of its 10-year strategic plan for ECE, *Ngā Huarahi*. Although the Ministry and the Trust disagreed on how much of *Te Whāriki* should be promulgated, a compromise saw the Trust's kaupapa-specific version, *Te Whāriki a Te Kōhanga*, included in a dedicated kōhanga reo section of the curriculum framework when it was promulgated in December 2008.<sup>228</sup> The framework reproduced the wording of the four principles and five strands in *Te Whāriki* as stated in English (principles and strands) and Māori (principles only). A new Māori text was added for the strands. Alongside the English and Māori texts (parts A and B), the Trust's Māori text, compulsory for its affiliated kōhanga reo, was placed as part C.<sup>229</sup>

**(3) The regulatory regime**

Under the revamped regulatory regime that came into force in 2008, the ECE regulations applied to all services, including kōhanga reo. Although the Ministry used the new flexibility provided by the amended legislation to produce licensing criteria applying specifically to kōhanga reo, they were nearly the same, with the exception of the curriculum, as the general licensing criteria for other ECE services.<sup>230</sup> The criteria covered in considerable detail a broad range of minimum standards for food preparation, food and drink, sanitary facilities and hygiene, health and safety, emergency equipment and procedures, building facilities, and outdoor space.

The licensing criteria were promulgated in English only. The Trust requested that a te reo version be produced. The Ministry produced a literal translation, to which the Trust responded with its own expert version.<sup>231</sup> Only after the Trust protested did the Ministry drop its insistence that the English version should have precedence in law.<sup>232</sup> However, agreement on the Māori version to be used was not concluded and the matter remained unresolved at the time of our hearings.<sup>233</sup>

228. Document A48 (Titoki Black and Arapera Royal-Tangaere, 'Mandating or Legislating Te Whāriki', 13 March 2007), pp 48–51; Education (Early Childhood Services) Regulations 2008; doc A64 (Karl Le Quesne, group manager, early childhood education and early childhood and regional education to Minister of Education, 'Education Report: A Curriculum Framework for Early Childhood Education', 4 July 2008), p 762, *Education: Education Act, 1989, Replacement Notice – Education (Early Childhood Education Curriculum Framework) Notice*, 3 September 2008, *New Zealand Gazette*, 4 September 2008, no 136, pp 3617–3619

229. *Education (Early Childhood Education Curriculum Framework) Notice*, 3 September 2008, *New Zealand Gazette*, 4 September 2008, no 136, pp 3617–3619

230. The non-curriculum variations, in PF5, PF18, HS7, HS25, HS31 and GMA5, were matters of detail rather than substance.

231. Document A90 (Wharehuia Milroy, second brief of evidence, 7 March 2012), p 2 and exhibits TWM2–1 and TWM2–2

232. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 13–14; doc A79 (Karl Le Quesne, group manager, early childhood education, Ministry of Education and Associate Minister of Education, 'Education Report: Status of Māori Translation of Kōhanga Reo Criteria', 2 October 2008), pp 171–174

233. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 14

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Kōhanga reo must comply with some 44 pages of regulations and 22 pages of licensing criteria. The regulations set five general standards, as well as covering ill-treatment, contact with ill people, and the collection of children.<sup>234</sup> One standard provided for the exclusion of kōhanga reo from having to meet the 50 per cent staffing threshold of ECE-qualified teachers that applied to most other service types, except in individual cases approved after consultation with the Trust.<sup>235</sup> This exception followed a case in which Ministry changed its funding rules in late 2006 to allow the Mana Tamariki Kōhanga Reo, although classed as 'parent-led', to access teacher-led hourly rates after confirming that it had the Trust's approval to do so.<sup>236</sup>

The other four general standards each had complementary sets of licensing criteria: 13 for curriculum; 38 for premises and facilities; 33 for health and safety; and 12 for governance, management, and administration. Their implementation demanded a total of 38 distinct types of required documentation.<sup>237</sup>

Although rather differently presented and worded, the licensing criteria had substantial continuity from the 1985 regulations through their 1990 and 1998 revisions. But there were significant changes. One example was the dropping of the 1998 requirement for the premises to have 'at least 2 separate outside doors that allow people to get out easily', with which it was difficult for some marae-based kōhanga reo to comply.<sup>238</sup> Another was the elaboration of nappy-changing requirements from 'suitable arrangements for changing napkins if children likely to wear napkins' in 1998 to 'nappy changing facilities of rigid and stable construction . . . in a designated area near to handwashing facilities', together with a documented nappy-changing procedure.<sup>239</sup>

Regulatory compliance persisted as a source of friction between kōhanga reo whānau and licensing and review officers, who were required to evaluate in terms of the prevailing ECE regulations. A common complaint in claimant testimony at our hearings was that the 1998 ECE regulations were too open-ended, allowing officials to make inconsistent interpretations and adopt arbitrary 'rules of thumb'.<sup>240</sup> The 2008 revision of the regulations was

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234. Document B1, pp 117–144 Education (Early Childhood Services) Regulations, 2008; doc A64 (*Licensing Criteria for Kohanga Reo Affiliated with Te Kohanga Reo National Trust*, 2008), pp 616–637

235. For qualifications, adult/child ratios, and service size.

236. Document A64 (Heather Penny, acting senior manager, early childhood and regional education to Minister of Education, 'Education Report: Change to ECE Funding Rules – Widening Access to Teacher-led Rates', 19 September 2006), pp 639–644

237. Document A64 (*Licensing Criteria for Kohanga Reo Affiliated with Te Kohanga Reo National Trust*, 2008), pp 616–637

238. Education (Early Childhood Services) Regulations 2008, reg 24(1)(d); doc A36 (Harata Gibson, brief of evidence, 22 December 2011), p 13

239. Document A64 (*Licensing Criteria for Kohanga Reo affiliated with Te Kohanga Reo National Trust* 2008 pursuant to regulation 41 of the Education (Early Childhood Services) Regulations 2008, PF25, HS3), pp 624, 626

240. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 11, 19 ; doc A86 (Harata Gibson, second brief of evidence, 7 March 2012), pp 3, 6, 7, 10

in part intended to provide a clearer guide to practice.<sup>241</sup> There was nevertheless a risk that greater prescription might in some cases limit adjustment to Māori cultural practices.

From December 2008, the 1998 and 2008 regulatory regimes ran in parallel as a growing number of kōhanga reo were relicensed during a six-year transitional period.<sup>242</sup> This required adaptation to a new regime with two levels of prescription (regulations and licensing criteria), a different style of bureaucratic language, and a more elaborate set of standards and obligations.

#### **(4) The Education Review Office and compliance reviewing**

The Education Review Office's review programme remained the main Government instrument for evaluating regulatory compliance and service quality. ERO reviews were also used by other Government agencies to provide proxy indicators, for example for the achievement of Te Puni Kōkiri's Māori language strategy.<sup>243</sup>

Shortly after the turn of the century, ERO reformed its review methodology to place greater emphasis on an 'assess and assist' approach, on self-review and self-audit, and on stakeholder participation.<sup>244</sup> At the same time, it began to adapt its reviewing regime (which during the 1990s had been the same for kōhanga reo as for other types of ECE service) to the specific character of kōhanga reo. The initiative arose out of a meeting in May 2001 between the chief executives of ERO and the Trust 'to establish a working party to develop a review process and evaluation criteria for the external review of kōhanga reo by the Educational Review Office'.<sup>245</sup> Signed in September 2001, the agreement provided for joint representation on the working party, which would 'reflect the principles of a partnership' and start by assessing the review processes formulated by the recently established ministerial working party to develop a review methodology for kura kaupapa Māori.<sup>246</sup>

Over the following three years, the ERO–Trust working party review, field testing, and consultation hui with kōhanga reo kaumātua and whānau led to the production of a kōhanga reo-specific review. *Framework for Kohanga Reo Education Reviews and Evaluation Indicators for Education Reviews in Kohanga Reo* were published by ERO in January 2004

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241. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 11

242. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 4–5

243. Tipene Chrisp, under questioning by the Tribunal, claimant counsel, and Crown counsel, second week of hearing, 22 March 2012 (transcript 4.1.4, pp 466–476)

244. Document A56 (Graham Stoop, brief of evidence, 15 February 2012), pp 6–7; doc A57 (ERO, *Framework and Resources for Early Childhood Education Reviews: Education Reviews in Early Childhood Education Services*, (Wellington: ERO, 2002)), pp 191–193

245. Document A57 (Te Kōhanga Reo National Trust and ERO Joint Working Party, Terms of Reference and Tasks, 19 September 2001), pp 533–534

246. Document A57 (Te Kōhanga Reo National Trust and ERO Joint Working Party, Terms of Reference and Tasks, 19 September 2001), p 534; doc A57 ('Report to the Minister of Education of the Ministerial Working Party to Develop a Review Methodology for Kura Kaupapa Māori that Operate in accordance with Te Aho Matua', February 2001), pp 497–532

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and May 2005 respectively.<sup>247</sup> The *Framework* adapted ERO's general framework for ECE reviews, released in 2002, to the kōhanga reo kaupapa and institutional context. It made prominent reference to the principles of *Te Aho Matua*, which had been legislated in 1999 as the foundation statement for kura kaupapa Māori with Te Rūnanga Nui o Ngā Kura Kaupapa Māori as its kaitiaki.<sup>248</sup> In turn, the *Evaluation Indicators* drew heavily on the guiding themes, principles, and aims of *Te Korowai*, stating explicitly that 'ERO has designed its evaluation indicators to support the kōhanga reo philosophy and approach.'<sup>249</sup>

As part of a greater emphasis on self-assessment, ERO encouraged kōhanga reo to undertake self-audits of their compliance with the minimum legal standards.<sup>250</sup> Its aim was to focus its external reviews less on legal compliance and more on service performance and improvement, although it acknowledged the tension between the two functions.<sup>251</sup> ERO's unpublished draft monograph on kōhanga reo, written in 2008, nonetheless found one or more areas of non-compliance in 60 per cent of the 55 kōhanga reo on which it completed reviews between January and May 2007.<sup>252</sup>

Alongside self-audit, ERO also promoted a process of self-review, which was written into the licensing criteria as a standard that 'helps the service maintain and improve the quality of education and care.'<sup>253</sup> This corresponded with long-established kōhanga reo practice.<sup>254</sup> ERO positioned its regular round of three-yearly external reviews as complementing the process and results of ECE services' internal self-assessment, and assuring their adequacy.<sup>255</sup>

Kōhanga reo considered that they tended to be marked down on their performance against standards defined in conventional ECE terms.<sup>256</sup> The more explicitly critical remarks in the 2008 monograph were directed to such educational aspects as learning programmes (too structured and adult-directed, or not sufficiently responsive to particular group needs), assessment, planning, and evaluation processes (insufficient information collected and used), and the physical learning environment (variable quality). ERO found that its conclu-

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247. Document A57 (ERO, *Framework for Kohanga Reo Education Reviews: Education Reviews in Kohanga Reo*, (Wellington: ERO, 2004)), pp 1–84

248. Education Act 1989, ss 155 A & B; doc A57 (ERO, *Framework for Kohanga Reo Education Reviews: Education Reviews in Kohanga Reo*, (Wellington: ERO, 2004)), pp 5–6

249. Document A57 (ERO, *Evaluation Indicators for Education Reviews in Kohanga Reo* (Wellington: ERO, 2005, revised January 2006)), pp 36–40

250. Described as a 'Management Assurance Statement' in document A81 (ERO, 'Early Childhood Monographs: The Quality of Education and Care in Kohanga Reo', draft, 2008), p 582.

251. Document A57 (ERO, *Framework for Kohanga Reo Education Reviews: Education Reviews in Kohanga Reo*, (Wellington: ERO, 2004)), pp 9–10, 12

252. Document A81 (ERO, 'Early Childhood Monographs: The Quality of Education and Care in Kohanga Reo', draft, 2008), pp 582–583

253. Document A64 (Licensing Criteria for Kōhanga Reo affiliated with Te Kōhanga Reo National Trust 2008) Regulations 2008, Criterion GMA6), p 632

254. Document A49 (Arapera Royal-Tangaere, 'Comparative Review of Education Review Office Reports', 2012), p 11

255. Document A57 (ERO, *Framework for Kōhanga Reo Education Reviews*, (Wellington: ERO, 2004)), p 9

256. Document A49 (Arapera Royal-Tangaere, 'Comparative Review of Education Review Office Reports', 2012), pp 8, 41–42, 44–45



sions were close to those of the section on kōhanga reo in its monograph on quality in ECE services, published in 2000, in respect both of areas for improvement and of the proportion of kōhanga reo affected.<sup>257</sup>

Claimant witnesses were critical of the ability of ERO and its reviewers to assess their culturally-specific performance and outcomes.<sup>258</sup> On the other hand, the 2008 monograph affirmed high quality in kaupapa-relevant standards such as te reo development (good support, stimulating activities, high-quality spoken reo), tikanga (warm and friendly interactions, practice reflecting tikanga Māori values), and, where whānau management was working well, a high level of whānau engagement in decision-making.<sup>259</sup>

ERO's use of supplementary reviews, usually triggered by recommendations in regular three-yearly reviews, were a widespread cause of tension and misunderstanding amongst kōhanga reo whānau. ERO's approach to supplementary reviews revealed a degree of ambivalence. Dr Graham Stoop, ERO's chief executive, told us that ERO regarded them as a means of support and as not necessarily having negative implications. But ERO's unpublished monograph linked them with poor performance: 'Where the performance of a kōhanga reo gives ERO cause for concern, ERO carries out an additional review, called a supplementary review, within 12 months.' It also pointed to a much higher incidence of supplementary reviews for kōhanga reo than for other ECE service types.<sup>260</sup> Many of the affected kōhanga reo saw them as evidence of a failure to understand their kaupapa-based practice. Outside the kōhanga reo movement, they were commonly seen as marks of failure, not least by the ECE Taskforce that reported in 2011.<sup>261</sup>

#### 2.4.6 Tohu Whakapakari and teacher registration

In 1994, the Trust obtained approval of its Tohu Whakapakari qualification by the New Zealand Qualifications Authority at level 7, equivalent to a tertiary degree. It was also recognised for course funding by the Tertiary Education Commission, and the Trust became a recognised tertiary education provider.<sup>262</sup> In mid-2007, according to Ministry data,

257. Document A81 (ERO, 'Early Childhood Monographs: The Quality of Education and Care in Kohanga Reo', draft, 2008), p 583

258. Document A84 (Titoki Black, third brief of evidence, 7 March 2012), pp 9–12; doc A49 (Arapera Royal-Tangaere, 'Comparative Review of Education Review Office Reports', 2012), pp 44–45; doc A36 (harata Gibson, brief of evidence, 22 December 2011), pp 18–19

259. Document A81 (ERO, 'Early Childhood Monographs: The Quality of Education and Care in Kohanga Reo', draft, 2008), p 576

260. Document A81 (ERO, 'Early Childhood Monographs: The Quality of Education and Care in Kohanga Reo', draft, 2008), p 575

261. Document A4, vol 1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), p 167

262. Document A81 (Arapera Royal-Tangaere, brief of evidence, 22 December 2011), p 27; doc A78 (Karl Le Quesne, senior manager, Early Childhood Regional Education to Minister of Education and Associate Minister of Education, 'Education Report: Kohanga Reo – Comprehensive Overview', 8 April 2008), p 202

approximately 264 kaiako qualified in Tohu Whakapakari were working in kōhanga reo, with another 293 in training. In late 2010, the Trust put the number of qualified kaiako ‘currently working within the movement’ at 431, with 69 per cent of kōhanga reo employing at least one.<sup>263</sup>

The extra funding provided to centres employing staff with a qualification approved by the New Zealand Teachers Council created a strong incentive for the Trust to seek recognition from the council of Tohu Whakapakari as a teaching qualification. In 2003, the Trust accordingly submitted an application. It did not, however, proceed to a decision and was not resubmitted.<sup>264</sup> The Trust found itself confronted with incompatibilities between Tohu Whakapakari as kōhanga reo-dedicated training and standard Teachers Council requirements. Three of the latter requirements in particular caused difficulty: practice teaching outside a kōhanga reo environment, a general rather than Māori conceptual framework, and Teachers Council-approved, academically-qualified trainers, which would complicate the central role of kaumātua as well as undermining other whānau involvement in the Tohu Whakapakari training process. In the end, the Trust concluded that conformity would require too much compromise of the kaupapa, and in 2007 it decided not to resubmit its application to the Teachers Council.<sup>265</sup>

Kōhanga reo were thus left in a position where they could only access higher hourly funding rates by employing registered ECE teachers not necessarily competent in te reo me ngā tikanga Māori, and where kaiako were likely to be able to achieve higher pay by qualifying as ECE teachers. The range of scholarships and other incentives targeted at Māori and Pasifika ECE teacher trainees and registered teachers over the last decade has been restricted to Teachers Council-approved qualifications and has thus excluded those qualified through or taking the Trust’s courses.<sup>266</sup>

## 2.5 KŌHANGA REO, TE REO MĀORI, AND MĀORI EDUCATIONAL SUCCESS

In its *Ko Aotearoa Tēnei* report on the Wai 262 claim, the Tribunal calculated that, had the rate of Māori participation in kōhanga reo been sustained at its 1993 peak of 14,000, total

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263. Document A78 (Karl Le Quesne, senior manager, Early Childhood Regional Education to Minister of Education and Associate Minister of Education, ‘Education Report: Kohanga Reo – Comprehensive Overview’, 8 April 2008), p 200; doc A79 (Te Kōhanga Reo National Trust, ‘Te Reo Māori Committee Review Submission’, December 2010), pp 563, 583, 585

264. Document A81 (Arapera Royal-Tangaere, brief of evidence, 22 December 2011), pp 30–32

265. Document A79 (Tina Olsen-Ratana, fourth brief of evidence, 22 December 2011), p 12; doc A81 (Arapera Royal-Tangaere, brief of evidence, 22 December 2011), pp 29–32; doc A67 (Peter Lind, brief of evidence, 15 February 2012), pp 4–5

266. Document A60 (Karl Le Quesne, brief of evidence, 15 February 2012), pp 23–25



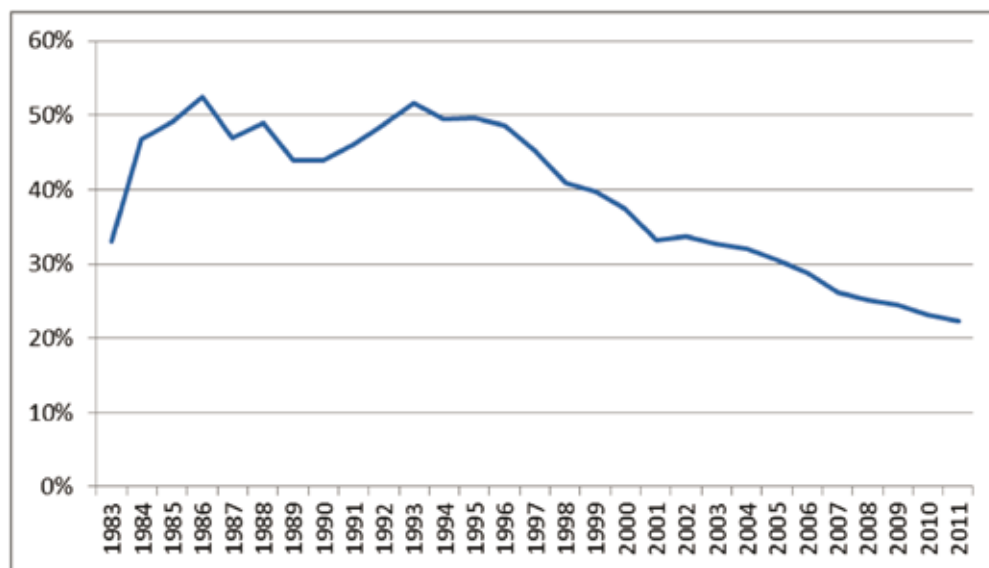


Figure 2.10: Māori children enrolled in licensed ECE: proportion in kōhanga reo, 1983–2011. Note: Because the sources vary on the numbers of kōhanga reo and their total and Māori enrolment in the 1980s, the pre-1991 statistics should be treated as approximate.

Sources: Document E51 (Lisa Davies and Kirsten Nicholl, *Te Mana i Roto i nga Mahi Whakaakoranga – Maori in Education* (Wellington: Ministry of Education, 1993), pp 27–29, 105, tbl A1); Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), pp 409–410, tables 5.3 and 5.4; Ministry of Education, 'Education Counts', spreadsheet 'Early childhood education time-series', [http://www.educationcounts.govt.nz/\\_data/assets/file/0005/7286/ECE-index-2004.xls](http://www.educationcounts.govt.nz/_data/assets/file/0005/7286/ECE-index-2004.xls), accessed 5 October 2012

Māori enrolment would have increased to 18,300 mokopuna by 2008. Instead, it had fallen to 8,700, leaving a deficit of 9,600.<sup>267</sup>

In its early years, the kōhanga reo movement had been the driving force in expanding Māori participation in ECE. At the 1993 peak, kōhanga reo made up 49 per cent of all mokopuna enrolments.<sup>268</sup> High population growth and a rising ECE participation rate led to an increase of 30 per cent in the total Māori enrolment in ECE between 1993 and 2008, but kōhanga reo Māori numbers fell during that time by 38 per cent. Nor were other ECE services filling the te reo gap: the few providing full immersion (te reo Māori spoken in more than 80 per cent of formal contact time) have never catered for more than a few hundred mokopuna (see figure 2.10).

One measure of the consequences of falling kōhanga reo enrolments is the proportion of mokopuna able to speak te reo Māori. As *Ko Aotearoa Tēnei* remarked, census results point to a decline in the proportion of te reo speakers amongst Māori children aged under 10,

<sup>267</sup> Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 408

<sup>268</sup> Fifty-two per cent of all Māori children in licensed ECE services.

from 21.9 per cent in 1996 to 18.2 per cent in 2006 in the under-five age band, and from 22.1 per cent to 18.8 per cent in the five-to-nine-years band.<sup>269</sup>

This decline parallels the fall in kōhanga reo enrolments, and hence also the supply of reo-trained mokopuna into Māori-medium education in primary schools.<sup>270</sup> Between 2002 and 2011, the estimated number of children in final-year ECE immersion fell by 26 per cent from 3,204 to 2,384 children.<sup>271</sup> The approximate entry and retention rate, calculated as a proportion of the following year's intake into levels 1 and 2 Māori-medium primary school classes, rose sharply from 56 per cent in 2002 to 85 per cent in 2011 (see figure 2.11). Thus while the school intake fell more slowly over the decade, by 7 per cent between 2002 and 2011, the shrinking supply from ECE immersion was threatening to fall below the capacity of Māori-medium school education, which was already at best static. The decline in fluent te reo speakers amongst young Māori children, taken together with the inevitable loss of older native speakers, threatens the long-term sustainability of te reo Māori itself.<sup>272</sup>

Although Te Puni Kōkiri claimed a more positive overall trend in te reo usage and proficiency on the basis of its 2001 and 2006 Māori language surveys, the Ministry of Education has indicated its awareness of the potential consequences of the continuing decline in kōhanga reo numbers.<sup>273</sup> Professor May informed us that establishing full language competence in childhood would normally require six to eight years of full immersion learning.<sup>274</sup> Preschool exposure in kōhanga reo would thus establish the foundation, but several more years of immersion would be required in primary school to ensure success.

It was indeed a prominent concern of whānau in the 1980s and early 1990s that the school system adapt to continue the preschool learning of te reo me ngā tikanga Māori as their mokopuna moved on from kōhanga reo.<sup>275</sup> Insufficient primary school capacity in Māori-medium immersion and bilingual teaching persisted through the 1990s, with a shortage of

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269. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, pp 408, 437, tbl 5.11

270. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 436

271. The data, assumptions and method of calculation are presented in full in tables nn and nn in chapter 4.

272. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 440

273. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, pp 408, 438–441

274. Document A71 (Stephen May, brief of evidence, 20 February 2012), p 16

275. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, pp 431, 435; doc A78 (Minister of Maori Affairs, 'Memorandum for Cabinet Committee on Expenditure: Te Kohanga Reo – Whanau Centres', undated), p 28; doc A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), p 519–520

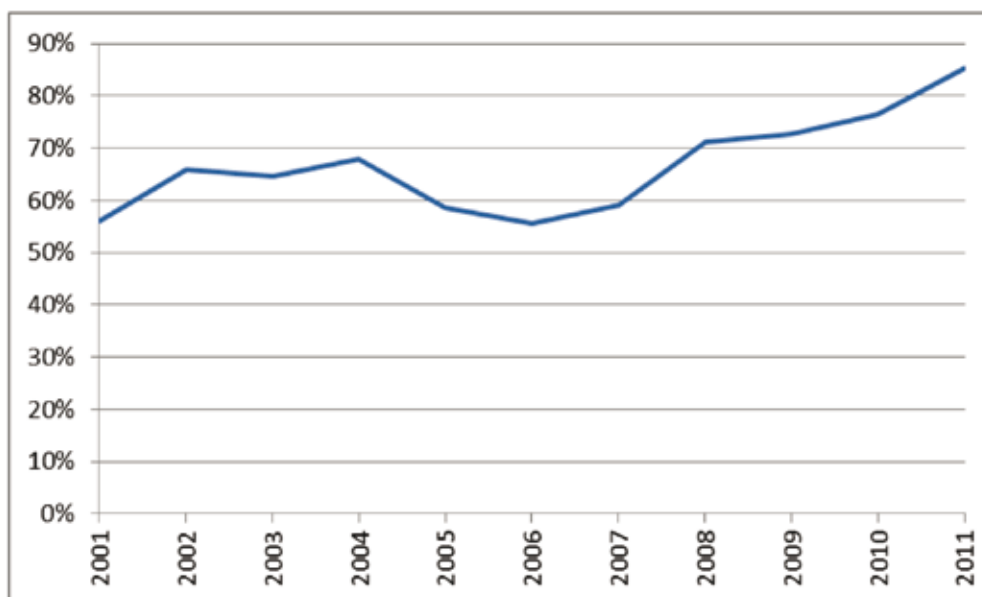


Figure 2.11: Approximate rate of transition from immersion ECE into Māori-medium school education, 2001–2011. Note: The estimate is of the final-year enrolment in te reo immersion ECE as a proportion of the following year’s intake into level 1 (80–100 per cent) and level 2 (50–80 per cent) Māori-medium primary school classes. For further explanation see table 4.3.

Sources: See table 4.3

fluent te reo teachers a key constraint.<sup>276</sup> A Ministry briefing paper acknowledged that, in 2009, access to ‘good kaupapa Maori education pathways . . . is [still] the exception rather than the norm. This means that for a child enrolled in kōhanga reo, it is not a given that they will have ready access to quality primary and secondary schooling options.’<sup>277</sup>

The claimants argue that kōhanga reo make an important contribution to Māori achieving educational success as Māori, which is one of the key goals of *Ka Hikitia*.<sup>278</sup> Unfortunately, there is a dearth of data and research on educational outcomes: Rawiri Brell, deputy secretary for early childhood and regional education, told us that preschool children are outside the data system used by the Ministry to track school students individually through their educational career, and that it was therefore not possible to measure the comparative educational progress of ex-kōhanga reo school students.<sup>279</sup>

276. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, pp 417–418, 425–429

277. Document A78 (Apyll Parata, deputy secretary, Māori education to Minister of Education, ‘Briefing: Statement of Position – Report on Kaupapa Maori Education Provision’, 25 March 2009), p 192

278. Submission 3.3.3 (claimant counsel, closing submissions, ), pp 50–53; doc A64 (Ministry of Education, *Ka Hikitia – Managing for Success*, (Wellington: Ministry of Education, 2008), pp 78–80, 83

279. Rawiri Brell, under questioning by the Tribunal, second week of hearing, 20 March 2012 (transcript 4.1.4, pp 200–201)

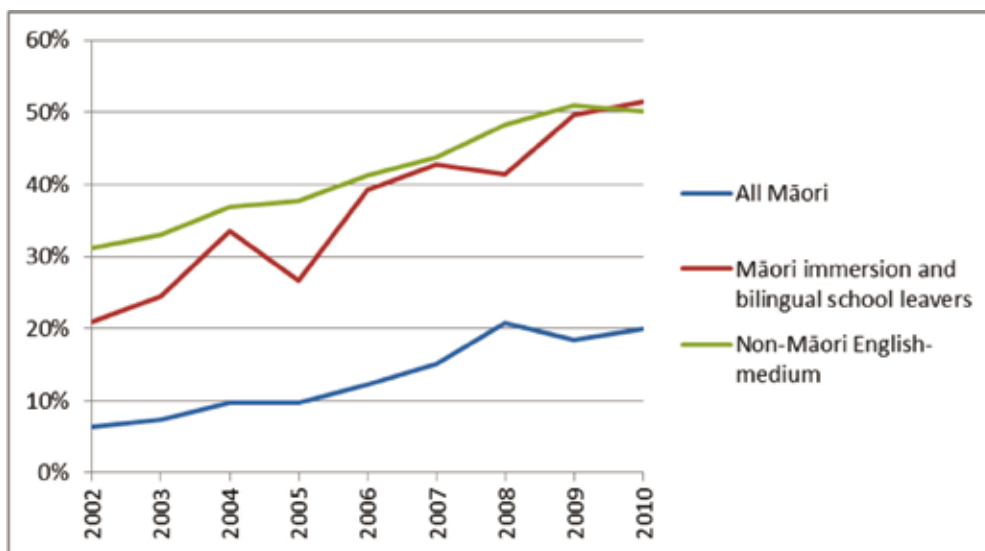


Figure 12: Proportion of Māori and non-Māori school leavers qualified to attend university, 2002–2010

Source: Ministry of Education, 'Ka Hikitia Targets', spreadsheet 'Ka-Hikitia-Targets.xls', <http://www.educationcounts.govt.nz/topics/31351/36805>, accessed 24 May 2012

We have no data on the progress through the school system of the much larger numbers of kōhanga reo children who completed their schooling in an English-medium environment. Professor Wharehuia Milroy nevertheless affirmed the high quality and increasing numbers of Māori entering tertiary education who started in kōhanga reo.<sup>280</sup> The only statistics available show that the proportion of Māori school leavers qualifying for university entrance has tripled within a decade, from 7.7 per cent in 2002 to 23.1 per cent in 2010, and that for those coming through the Māori-medium pathway it has more than doubled (from 21 to 51.5 per cent, see figure 2.12).<sup>281</sup> To the extent that kura kaupapa Māori and Māori-medium classes have contributed, the kōhanga reo foundation is likely to have been significant.

### 2.6 A BREAKDOWN IN RELATIONSHIPS

As part of their attempt to revive the partnership envisaged in the Tripartite Agreement, in September 2008 the Trust, the Ministry and Te Puni Kōkiri formed a joint Funding, Quality and Sustainability Working Group.<sup>282</sup> As well as reviving the tripartite relationship,

280. Document A34 (Wharehuia Milroy, brief of evidence, 22 December 2011), pp 8–9

281. Ministry of Education, 'Ka Hikitia Targets', tab 'Leavers – Maori Medium with UE' in spreadsheet 'Ka-Hikitia-Targets.xls', <http://www.educationcounts.govt.nz/topics/31351/36805>, accessed 24 May 2012

282. Document A60 (Karl Le Quesne, brief of evidence, 15 February 2012), pp 3–4

its mandate was to examine three of the major unresolved issues confronting them: support for the Trust's work to ensure high quality provision; the sustainability of the kōhanga reo network, including property, stability and growth in participation; and an improved funding regime.<sup>283</sup>

Working Group discussions proceeded over the next two years but the draft report on their outcomes prepared for the Ministry in October 2010 had few concrete proposals to document.<sup>284</sup> From late 2010, the Working Group lapsed into inactivity following the diversion of senior Ministry staff to assist the Government's response to the Canterbury earthquakes and to support the recently established ECE taskforce.<sup>285</sup> Alongside the Working Groups's two years of effort to resolve longstanding areas of disagreement, specific points of friction arose. One was the translation of the 2008 licensing criteria and their legal recognition in te reo Māori. Another concerned the sourcing of finance for the upgrading of the more than a third of kōhanga reo premises assessed as unlikely to be able to meet the threshold standard for relicensing under the 2008 regulations.<sup>286</sup>

At a lunch meeting in October 2010, the Honourable Anne Tolley, Minister of Education, undertook that the independent ECE taskforce, appointed that month, would consult the Trust.<sup>287</sup> Although some kōhanga reo whānau participated in the taskforce's national consultation and submission round, neither the Taskforce nor the Ministry consulted the Trust before the Taskforce's final report, *An Agenda for Amazing Children*, was published in June 2011.<sup>288</sup>

The Trust was thus neither informed nor afforded the opportunity to respond to the strongly critical remarks made by the Taskforce in its report. The kōhanga reo movement, it asserted 'has, for some time, been viewed as too hot a political issue to touch'. It questioned the quality of ECE provision in kōhanga reo and 'national body leadership for all children who attend kōhanga reo, and whether the Trust is a key barrier or contributor to the original aspiration of the movement'. In its view, 'meaningful change is overdue and must be addressed'. Having pointed to the high incidence of ERO supplementary reviews as an indicator of poor quality in kōhanga reo, it exhorted the Government to 'think seriously about the way it invests in kōhanga reo', highlighted the amount of ECE subsidy expended

283. Document A1(a), app 3 (Ministry of Education, 'Terms of Reference – Kōhanga Reo Funding, Quality and Sustainability Working Group', 12 September 2008)

284. Document A5, annex B (Pania Tahau-Hodges, 'Report on the Outcomes of Te Kōhanga Reo Working Group', report prepared for the Ministry of Education, 2010)

285. Document A60 (Karl Le Quesne, brief of evidence, 15 February 2012), p 4

286. Document A90 (Wharehuia Milroy, second brief of evidence, 7 March 2012), p 2; doc A62 (Richard Walley, brief of evidence, 15 February 2012), pp 13–14, 61; doc A79 (Tina Olsen-Ratana, fourth brief of evidence, 22 December 2011), pp 6–8; doc A93 (Nikorima Broughton, brief of evidence, 7 March 2012), pp 4–6

287. Document A5 (Tina Olsen-Ratana, second brief of evidence, 16 August 2011), p 3

288. Document A4, vol 1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), pp 61–455

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on kōhanga reo subject to supplementary reviews, and recommended generally 'that a service without a satisfactory performance report not be able to access Government funding'.<sup>289</sup>

A number of its other recommendations were relevant to kōhanga reo and the Trust.

Following meetings and an exchange of letters during July 2011 between the Trust and the Ministry and Te Puni Kōkiri,<sup>290</sup> on 25 July 2011 the Trust filed its claim, which this Tribunal has now heard under urgency. We now turn to consider the Treaty principles applicable to the claim.

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289. Document A4, vol1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), pp 167, 329, 335

290. Document A1(a), apps 5–8

HE KUPU ONAMATA MŌ TE KŌHANGA REO

2.6

Date	Number		Total	Children		Total
	Licensed	Licence-exempt		Licensed	Licence-exempt	
July 1982	—	—	50	—	—	—
July 1983	—	—	170	—	—	4,132
July 1984	—	—	269	—	—	6,389
July 1985	—	—	377	—	—	7,536
July 1986	162	—	466	—	—	8,327
July 1987	197	—	512	—	—	8,460
July 1988	—	—	521	—	—	8,596
July 1989	—	—	584	—	—	8,724
July 1990	—	—	616	—	—	10,108
July 1991	—	—	630	—	—	10,451
July 1992	—	—	719	—	—	12,617
July 1993	—	—	809	—	—	14,514
July 1994	773	46	819	12,508	1,035	13,543
July 1995	738	36	774	14,015	248	14,263
July 1996	704	63	767	13,279	1,023	14,302
July 1997	675	30	705	13,104	401	13,505
July 1998	613	33	646	11,689	361	12,050
July 1999	600	50	650	11,859	524	12,383
July 2000	583	29	612	11,138	381	11,519
July 2001	562	24	586	9,524	214	9,738
July 2002	545	14	559	10,389	138	10,527
July 2003	526	12	538	10,319	130	10,449
July 2004	513	13	526	10,418	191	10,609
July 2005	501	11	512	10,070	146	10,216
July 2006	486	8	494	9,493	89	9,582
July 2007	470	7	477	9,236	69	9,305
July 2008	467	3	470	9,165	43	9,208
July 2009	464	0	464	9,288	0	9,288
July 2010	463	0	463	9,370	0	9,370
July 2011	463	0	463	9,631	0	9,631
July 2012	471	0	471	9,070	0	9,070

Table 2.1: Number of kōhanga reo and total enrolment, 1982–2012. Note: Because the sources vary on the numbers of kōhanga reo and their total and Māori enrolment in the 1980s, the pre-1991 statistics should be treated as approximate; total numbers of kōhanga reo are for December of the respective year until 1987, March for 1988.

MATUA RAUTIA: REPORT ON THE KŌHANGA REO CLAIM

2.6

Table 2.1 sources: Document A76, p 495, tbl 1; doc A81, p 797; Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 409, tbl 5.3; Education Counts, 'Māori in ECE' (Excel spreadsheet, Wellington: Ministry of Education, 16 May 2012), [http://www.educationcounts.govt.nz/\\_data/assets/excel\\_doc/0016/105631/Maori-in-ECE.xls](http://www.educationcounts.govt.nz/_data/assets/excel_doc/0016/105631/Maori-in-ECE.xls); memo 3.4.13; doc E15; doc E51, pp 27–29, 105, tbl A1



CHAPTER 3

**NGĀ MĀTĀPONO, NGĀ MĀTĀTIKA,  
NGĀ HERE O TE TIRITI O WAITANGI  
TREATY PRINCIPLES, RIGHTS, AND OBLIGATIONS**



The Treaty of Waitangi records an agreement executed by the Crown and Māori which embodied in its terms a fundamental exchange of rights and obligations, and which, 172 years later, is 'of the greatest constitutional importance to New Zealand'.<sup>1</sup>

The Treaty comprises an English and a Māori text. Over the years since this Tribunal was established, and in accordance with the Treaty of Waitangi Act 1975, this Tribunal has identified principles that underpin it. The evolution of this jurisprudence has been advanced by the courts. The Privy Council, for example, has made it clear that the 'principles' of the Treaty of Waitangi are the 'underlying mutual obligations and responsibilities' it places on the Crown and Māori.<sup>2</sup>

The Crown acquired the right to govern under article 1 of the Treaty, but with that right came the promise to guarantee Māori rangatiratanga, or authority and control, and the obligation to actively protect taonga (all their valued possessions) as recorded in article 2.

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1. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513, 516

2. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513, 517

Painting by Robyn Kahukiwa reproduced by permission of Te Kōhanga Reo National Trust Board

MATUA RAUTIA: REPORT ON THE KŌHANGA REO CLAIM

This exchange is referred to as the overarching Treaty principle of partnership.<sup>3</sup> Both parties assumed the responsibility to act reasonably and with the utmost good faith,<sup>4</sup> and Māori were assured of having the same rights as British citizens, through article 3.

Thus, in signing the Treaty, the Crown and Māori cemented a relationship, often turbulent and on occasions disturbing, but a relationship nonetheless that has lasted since 1840 and one that will last into the future especially where underpinned by the settlement of Treaty of Waitangi claims. In its purest form that continuing relationship should, as the Privy Council held, be founded on ‘reasonableness, mutual cooperation and trust’.<sup>5</sup>

For the purposes of this inquiry, through the Tribunal’s statement of issues, we asked the claimants and the Crown to consider what are their respective rights, interests, and duties under the Treaty as they concern or affect kōhanga reo and Te Kōhanga Reo National Trust Board. In particular, we asked the parties to address these questions:

1. To what extent has the Crown fulfilled its Treaty duties, if any, concerning te reo Māori education for children aged 0–5 years, kōhanga reo and the Trust?
2. What is the relationship between kōhanga reo and preserving and protecting te reo me ngā tikanga Māori?
3. Is kōhanga reo and its kaupapa a taonga for passing on te reo, tikanga and wairua Māori to children aged 0–5 years, for whānau development, and for enabling Māori to be Māori?
4. If so:
  - (a) Is the Trust kaitiaki of this taonga and what is the nature of that kaitiakitanga?
  - (b) Who exercises tino rangatiratanga in relation to kōhanga reo and its kaupapa?<sup>6</sup>

We include in our analysis reference to those Tribunal reports and court judgments that have analysed the health of te reo Māori, and discuss how they have shaped the principles that are relevant to the Crown’s actions, policies, and legislation concerning te reo me ngā tikanga Māori.<sup>7</sup>

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3. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi* (Wellington: Legislation Direct, 2011), p 23

4. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), p 450

5. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513, 517

6. Claim 1.4.1 (statement of issues for the Kōhanga Reo urgency inquiry, 25 November 2011), pp 2–3

7. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Maori Claim*, 4th ed (Wellington: GP Publications, 1996); Waitangi Tribunal, *Maori Electoral Option Report* (Wellington: Brooker’s, 1994); Waitangi Tribunal, *Te Whānau o Waipareira Report* (Wellington: GP Publications, 1998); Waitangi Tribunal, *The Wānanga Capital Establishment Report* (Wellington: GP Publications, 1999); Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001); Waitangi Tribunal, *He Maunga Rongo: Report on the Central North Island Claims, Stage 1* (Wellington: Legislation Direct, 2008); Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (Wellington: Legislation Direct, 2011); *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513; *Ngai Tahu Māori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553

### 3.1 TREATY ANALYSIS: RELEVANT PRINCIPLES

In this section we consider the submissions of the parties concerning the principles of the Treaty of Waitangi relevant to reporting on this claim.

#### 3.1.1 The claimants' submissions

The claimants, through Mai Chen, submitted that the principle of partnership applies and that that means there is a duty on both parties to 'act reasonably, honourably and in the utmost good faith'.<sup>8</sup>

Ms Chen acknowledged that the Crown has 'the right to govern, including the power to make laws for the good order and security of the country'.<sup>9</sup> However, she claimed, with the Crown's rights come corresponding duties:

- ▶ to actively protect kōhanga reo (to a high degree given the importance of kōhanga reo and te reo me ngā tikanga Māori to Māori and the Crown's contribution to their decline); as well as
- ▶ the Māori exercise of rangatiratanga over these taonga;
- ▶ to formulate good, wise and efficient policy . . . ;
- ▶ to make informed decisions about kōhanga reo; and
- ▶ to give an effective remedy for any past breaches of the Treaty.<sup>10</sup>

She also asserted that the claimants have the following rights:

- ▶ the right to be Māori;
- ▶ the right of whānau to exercise rangatiratanga over kōhanga reo, including autonomy and the power to control these taonga in accordance with tikanga;
- ▶ the right to develop kōhanga reo;
- ▶ the right to korero Māori;
- ▶ the right of the Trust Board to exercise kaitiakitanga;
- ▶ the right to be consulted on matters affecting kōhanga reo; and
- ▶ the right to an effective remedy for any past breaches of the Treaty.<sup>11</sup>

The claimants acknowledged that they have the following corresponding duties:

- ▶ to acknowledge the Crown's (qualified) right to govern;
- ▶ to cooperate and (sometimes) compromise; and
- ▶ to be accountable (especially for the expenditure of public money).<sup>12</sup>

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8. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 19

9. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 19

10. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 19

11. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 19

12. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 19

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3.1.1

However, the claimants rejected the Crown's view that Māori rangatiratanga is to be qualified by balancing Māori interests with other interests. Rather, the Crown must 'respect the autonomy of Māori within their own sphere', and 'kōhanga reo whānau must be free to run kōhanga reo in a Māori way, in accordance with [its] kaupapa and taking into account their needs and aspirations.'<sup>13</sup> This, they contended, goes to the essence of the right to self-management or regulation.<sup>14</sup>

Ms Chen contended that kōhanga reo, the Trust, and their kaupapa are taonga. She submitted that kōhanga reo rolls are declining because of Crown actions and that both kōhanga reo and te reo me ngā tikanga Māori are, therefore, at risk. For this reason, 'the Crown's duty of active protection requires it to both take vigorous steps to support kōhanga reo, but also to get out of the way of the whānau and the Trust'.<sup>15</sup>

The claimants also argued that 'the Crown has failed to properly exercise kawanatanga in respect of kōhanga reo by failing to make good, wise and efficient policy'. In this respect they pointed to the Crown continuing to treat kōhanga reo as early childhood education (ECE) providers.<sup>16</sup> They alleged further that the Crown has failed to fully inform itself of the kaupapa of kōhanga reo. The Crown has, in their view, 'incentivised' a departure from kōhanga reo by whānau and their mokopuna by developing, implementing, or interpreting policies and regulations 'contrary to the kaupapa of kōhanga reo, whānau development and tikanga Māori'. Such policies and regulations particularly impact on their funding and human resource time so as to meet compliance costs. This has all been at the expense of the kaupapa of kōhanga reo.<sup>17</sup>

The claimants argued that they represent the Treaty partner in their relationship with the Crown and that this means that the kōhanga reo movement should be 'properly supported'. This will then enable them to take back their rangatiratanga or control over their Māori initiative to promote te reo through kōhanga reo, and implement ideas that will ensure the language's survival. Ms Chen pointed out that this was a matter that the Wai 262 Tribunal reported on in some detail.<sup>18</sup>

She also contended that a contributing factor to the Crown's failure to make good, wise, and efficient policy is the lack of meaningful engagement, consultation, and input with and from the Trust (as kaitiaki) and kōhanga reo whānau on matters affecting kōhanga reo. In comparison, the Trust, she asserted, have 'bent over backwards to cooperate' with the Crown.<sup>19</sup>

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13. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 21

14. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), pp 21–22

15. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 24

16. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 25

17. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 26

18. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), p 450; submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 27

19. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), pp 26–27

The claimants said that in this case the Crown has failed to actively protect kōhanga reo by:

- (a) Treating kōhanga reo solely as providers of early childhood education and assimilating them into the regulatory framework for early childhood education;
- (b) Failing to specifically address the issue of declining kōhanga reo rolls’;
- (c) Terminating the property pūtea scheme in 2001 and failing to provide comparable funding to replace it – resulting in a significant loss to kōhanga reo whānau of revenue and autonomy [as a result of the degrading of the capital assets that form the physical ‘nests’ within which kōhanga reo operate]; and
- (d) Failing to take action to prevent and/or mitigate damage caused by the *ECE Taskforce Report* and comments made by ECE Taskforce members.<sup>20</sup>

Ms Chen submitted that article 3 imposes duties on the Crown to, first, ‘protect its citizens from discrimination (direct or indirect),’ and secondly to ‘take affirmative action to assist and advance kōhanga reo as a means for Māori to achieve equality.’<sup>21</sup> The correlating rights she identified were the right of any citizen to be free from discrimination (direct or indirect) and ‘the right to Crown support for kōhanga reo as a means of achieving equality.’<sup>22</sup> She relied on the Waitangi Tribunal’s *Napier Hospital and Health Services Report* and its discussion on the conferral of citizenship rights under article 3 to assert these Treaty duties and rights.<sup>23</sup> Ms Chen submitted that the Crown has discriminated against Māori in relation to kōhanga reo, as it has:

- (a) Failed to treat kaiako qualifications developed specifically for the kaupapa of kōhanga reo equally with early childhood qualifications;
- (b) Failed or refused to fund kōhanga reo equally with other early childhood services; and
- (c) . . . [assimilated kōhanga reo] into the ECE sector.<sup>24</sup>

Ms Chen submitted that the Crown had ‘failed to fund and support kōhanga reo as a means of allowing Māori to attain equality with other citizens.’ She alleged further that the Crown had ‘failed to take adequate joint measures in a quality relationship with the Trust Board to arrest the decline of participation in kōhanga reo as the best vehicle for the preservation of te reo me ngā tikanga Māori.’ She relied on the principle of options for Māori to be able to ‘choose their own social and cultural path.’<sup>25</sup>

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20. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 25

21. Ibid, p 19

22. Ibid

23. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), pp 62–64

24. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 28

25. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 30

**3.1.2 The Crown's submissions**

The Crown argued that, while the Crown has certain duties under the Treaty of Waitangi, the 'Trust is not "the" Treaty partner, but the Trust and the Crown may owe each other responsibilities, shaped by the particular context, including their past patterns of engagement'.<sup>26</sup> Thus the Crown contended that it is also 'obliged to maintain cordial Treaty relationships' with other groups, such as iwi, who have 'interests in the management of language revitalisation in their rohe'. Iwi may also 'engage [the] Crown's obligations' and thus may need to be accommodated when they do signal an interest. Where there are many interests, the Crown submitted, it is entitled to accommodate these interests in 'reasonable ways, providing it acts fairly and in good faith'.<sup>27</sup> In a context such as this, 'a "relational" analysis is needed [from the Tribunal], where the obligations of balancing and mutual obligation are stressed'. This is the framework that the Tribunal should use to consider whether the Crown is meeting its obligations under the Treaty.<sup>28</sup>

As a result, the Crown submitted that 'the Crown-Māori relationship in an area such as education:

- ▶ Should not be static, tying either party irrevocably to previous practice or to a status quo;
- ▶ Should not be seen as merely bilateral between one Māori group and the Crown, but rather as part of a web of relationships entered into between Māori groups and the Crown, and between Māori; and
- ▶ Should be dynamic, to adapt as communities, priorities and knowledge changes.<sup>29</sup>

The Crown asked the Tribunal to focus on the Treaty relationship 'identifying what [are] the appropriate respective roles of Māori' and the Crown. This might be done by requiring a consideration of:

- ▶ the interests of both the holders of kawanatanga and rangatiratanga in the issue, and the specific relationship or interaction that generate[s] those interests;
- ▶ obliging each party to take reasonable steps to understand the relationship of the other to the issue; and . . .
- ▶ obliging the Crown to be reasonably informed, and to act in good faith towards the Māori party to the relationship.<sup>30</sup>

Counsel also argued that the focus should be 'on particular engagement of the parties accommodating each other, rather than identifying areas into which the other may not advance'.<sup>31</sup> In closing submissions counsel elaborated further, claiming that the approach

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26. Submission 3.3.2 (Crown counsel, opening submissions, 19 March 2012), p 28

27. Ibid

28. Ibid, p 30

29. Ibid, p 28

30. Submission 3.3.2 (Crown counsel, opening submissions, 19 March 2012), pp 26-27

31. Ibid, p 27

taken in the Tribunal's jurisprudence for historical inquiries, defining 'rangatiratanga as a sphere of activity or authority into which the Crown cannot intervene except to a "minimum . . . necessary" level for the State to function', should not be adopted in terms of contemporary claims such as this.<sup>32</sup> Rather, the Crown argued, the weight of Tribunal jurisprudence in contemporary inquiries stresses a mutually engaged approach.<sup>33</sup>

The Crown's preferred approach was one that suggests the Tribunal should not 'rely on categorising one group as a "partner" or their interest as taonga'.<sup>34</sup> In the context of this claim, the Crown accepted that it has an obligation to protect te reo Māori but did not accept that kōhanga reo are taonga.<sup>35</sup> It said that its obligations with respect to te reo Māori 'are not limited to a specific body' such as the Trust.<sup>36</sup> Further to that, it considers that it is 'entitled' to take into account, amongst other factors, 'the economic efficiency of different funding proposals and structures, particularly when it is argued [as the Trust has done] that an entirely separate regulatory structure is necessary to discharge Treaty obligations'.<sup>37</sup> Added to this, Crown counsel argued that the principle of options 'obliges the Crown to maintain a range of options for parents, and shapes the reasonable steps of protection for the Crown', and further that 'funding should follow whānau choice rather than direct it',<sup>38</sup> whether or not, in other words, that choice is of early childhood te reo immersion.

The Crown acknowledged that it is for us to decide whether it has 'achieved the right policy balance [in terms of these issues] and the ways in which that balance might be adjusted'.<sup>39</sup> The Crown asked the Tribunal to consider whether that balance should be adjusted, bearing in mind the need for 'accommodation and cooperation'. The Crown was concerned that we do not delineate 'strict boundaries between Māori [rangatiratanga] and Crown [kāwanatanga] spheres, or [insist on] reducing the Crown's kawatanga responsibility to that of funder and financial auditor'.<sup>40</sup> It was submitted that our understanding of kawatanga and rangatiratanga in the context of contemporary settings such as those relevant to this claim should involve an 'ongoing reconciliation between the objectives of kōhanga reo and those of the Crown'. Each party should acknowledge each other's obligations and aspirations and 'find common purpose'.<sup>41</sup>

The Crown provided some delineation of responsibilities by pointing to the Wai 262 report's observations that 'Māori have a duty to take reasonable steps to preserve te reo in

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32. Ibid, p 20 fn 6

33. Ibid, p 20

34. Ibid, p 27

35. Ibid, pp 33–34

36. Ibid, p 27

37. Ibid, pp 31

38. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 26, 62; submission 3.3.2 (Crown counsel, opening submissions, 19 March 2012), p 35

39. Submission 3.3.2 (Crown counsel, opening submissions, 19 March 2012), p 30

40. Submission 3.3.2 (Crown counsel, opening submissions, 19 March 2012), p 30

41. Submission 3.3.2 (Crown counsel, opening submissions, 19 March 2012), pp 7, 27–28



their own home and communities’, to partner, and to be prepared to ‘compromise with the Crown’. The Crown noted that the Wai 262 Tribunal stated that Māori should cooperate and ‘take advantage of whatever opportunities for language transmission are put in place by the State – even if they resent what they perceive as the State’s excessive “capture” of the process’. State ‘capture’, the Tribunal said, was ‘simply the corollary of state funding’.<sup>42</sup> The Crown contended that ‘this flows from [the] mutual obligations of reasonable cooperation’. If ‘the Trust chooses not to engage with government mechanisms that might well produce significantly more funding, that is a decision for the Trust, rather than evidence of Treaty breach’.<sup>43</sup> The Crown further contended that the Wai 262 Tribunal’s conclusions are relevant to whether Crown funding should bring with it some Crown control.<sup>44</sup>

In terms of the claims of assimilation and discrimination, the Crown contended that we must bear in mind that the essence of equal protection, as found by the United Nations Human Rights Committee and by the courts of New Zealand, ‘is the provision of equal treatment in equal circumstances. A distinction based upon a legitimate objective’ such as seeking to raise the numbers of ECE teachers with a recognised qualification, is not a difference in treatment for kōhanga reo and therefore it does not discriminate.<sup>45</sup> The Crown has, it was contended, ‘acted to make greater funding available [for kōhanga reo] and has provided avenues – first through the Teachers Council and then through the joint working group’ on quality, sustainability and funding – to ensure that they can access higher rates of funding based upon numbers of kaiako with a recognised ECE qualification.<sup>46</sup>

The Crown also maintained that its funding policies have a neutral effect, enabling equal choice for Māori parents between kōhanga reo and other ECE centres.<sup>47</sup>

### 3.2 TRIBUNAL ANALYSIS AND FINDINGS

Having set out what the essential arguments were for the claimants and the Crown, we turn to reflect on the established principles and findings concerning the Treaty of Waitangi from previous Waitangi Tribunal and relevant court decisions.

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42. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), p 468; submission 3.3.2 (Crown counsel, opening submissions, 19 March 2012), p 32

43. Submission 3.3.2 (Crown counsel, opening submissions, 19 March 2012), p 32

44. Submission 3.3.2 (Crown counsel, opening submissions, 19 March 2012), pp 30, 32

45. Submission 3.3.2 (Crown counsel, opening submissions, 19 March 2012), p 36

46. Submission 3.3.2 (Crown counsel, opening submissions, 19 March 2012), p 36

47. Submission 3.3.2 (Crown counsel, opening submissions, 19 March 2012), p 4, 14; submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 62



### 3.2.1 Recognition of te reo Māori as a taonga

In 1986, the Waitangi Tribunal released its first report on the Crown's Māori language obligations under the Treaty of Waitangi.<sup>48</sup> A classic quotation from one of the claimant witnesses, Sir James Henare, is worth repeating here as it explains the importance of te reo Māori to those who brought that claim:

The language is the core of our Maori culture and mana. Ko te reo te mauri o te mana Maori (The language is the life force of the mana Maori). If the language dies, as some predict, what do we have left to us? Then, I ask our own people who are we?

'Language' according to Oliver Wendell Holmes, 'is a solemn thing, it grows out of life, out of its agonies and its ecstasies, its wants and its weariness. Every language is a temple in which the soul of those who speak it is enshrined'. Therefore the taonga, our Maori language, as far as our people are concerned, is the very soul of the Maori people. What does it profit a man to gain the whole world but suffer the loss of his own soul? What profit to the Maori if we lose our language and lose our soul? Even if we gain the world. to be monolingual, a Japanese once said, is to know only one universe.<sup>49</sup>

After hearing evidence from many eminent scholars, including Sir James, who had become a founding patron of the kōhanga reo movement, the Waitangi Tribunal concluded that te reo Māori, as an essential part of culture, was a taonga or valued possession guaranteed by the Treaty, and that the Crown had significant responsibilities for its survival. The Tribunal noted that, if the language is lost, so much else will be lost in terms of Māori culture.<sup>50</sup> In this respect it accepted this proverb as apt:

Ka ngaro te reo, ka ngaro taua, pera i te ngaro o te Moa  
If the language be lost, man will be lost, as dead as the moa

There is a great body of Maori history, poetry and song that depends upon the language. If the language dies all of that will die and the culture of hundreds and hundreds of years will ultimately fade into oblivion. It was argued before us that if it is worthwhile to save the Chatham Islands robin, the kakapo parrot or the *notornis* of Fiordland, is it not at least as worthwhile to save the Maori language?<sup>51</sup>

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48. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Maori Claim*, 4th ed (Wellington: GP Publications, 1996)

49. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Maori Claim*, 4th ed (Wellington: GP Publications, 1996), p34

50. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Māori Claim*, 4th ed (Wellington: GP Publications, 1996), pp17–18, 20–21

51. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Māori Claim*, 4th ed (Wellington: GP Publications, 1996), p7

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3.2.1

The Tribunal accepted the evidence for the claimants from Professor Hirini Moko Mead that the article 2 phrase in the Māori version of the Treaty, namely ‘o ratou taonga katoa,’ ‘covers both tangible and intangible things and can best be translated by the expression “all their valued customs and possessions”’.<sup>52</sup> This, the Tribunal considered, was in accordance with its previous conclusions on the term taken from the *Report on the Kaituna River Claim* and *Report on the Motunui–Waitara Claim*, where it accepted the phrase to mean ‘all things highly prized’, and it was consistent with the Tribunal’s decision in the *Report on the Manukau Claim* where it found that “‘taonga’ in the context of the Treaty means more than objects of tangible value.’ In the Tribunal’s view it was plain that the language was an essential part of the culture and must be regarded as ‘a valued possession.’<sup>53</sup> The Tribunal further accepted submissions made for the claimants that the Crown’s obligation requires active protection rather than in a ‘passive permissive sense’ to ensure that the Māori people have and retain their language and culture.<sup>54</sup> The Tribunal noted that the survival of the language depended on more than the efforts of Māori given the great risks to the survival of the language.<sup>55</sup>

The Tribunal noted the renewed effort by Māori to revitalise the language. It pointed to the kōhanga reo movement and explained that infants went:

to a place where nothing but Maori is spoken. They have their day filled with activity games, songs and other pastimes to be found in any kindergarten but all in Maori. Within a surprisingly short time they master Maori fluently in a childish way until they are five or six years of age when they go to an orthodox primary school. By that time they are able to carry on an animated conversation in Maori and we watched them doing so in a kohanga reo that we visited. One of the notable features of the place we were taken to was the mixture of children both Maori and pakeha all playing happily in a perfect demonstration of racial harmony, all New Zealanders together.<sup>56</sup>

The Tribunal recorded that, for the 6,000 enrolled mokopuna in 1985/86, the parents took an active part in the running of kōhanga reo and paid fees for each child attending. The cost differed from place to place, but in 1985/86, \$25 per child per week was a common charge. The Tribunal thought this to be a ‘significant sum of money for Maori families especially when it [was] certain that many are not well-to-do members of the higher income group

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52. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Māori Claim*, 4th ed (Wellington: GP Publications, 1996), p 20

53. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Māori Claim*, 4th ed (Wellington: GP Publications, 1996), p 20

54. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Māori Claim*, 4th ed (Wellington: GP Publications, 1996), p 20

55. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Māori Claim*, 4th ed (Wellington: GP Publications, 1996), p 12

56. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Māori Claim*, 4th ed (Wellington: GP Publications, 1996), p 12

in society'.<sup>57</sup> The Tribunal considered that, although the Māori language was 'suffering from the effects of decades of opposition to its propagation, many Maori parents [were] making valiant efforts to repair the damage that it has suffered'.<sup>58</sup>

However, the Tribunal was uncertain whether their rescue attempt would be successful. This was primarily because Māori efforts were being 'nullified' by the education system. Parents were worried, according to the Tribunal, 'that their children [would] lose their Maori language fluency after six months or so at primary school'. The Tribunal recorded the view that children, once in the education system, were being 'swamped with English and never hear so much as one word of Maori'.<sup>59</sup>

The Tribunal opined that:

The education system in New Zealand is operating unsuccessfully because too many Maori children are not reaching an acceptable standard of education. For some reason they do not or cannot take full advantage of it. Their language is not adequately protected and their scholastic achievements fall far short of what they should be. The promises in the Treaty of Waitangi of equality in education as in all other human rights are undeniable. Judged by the system's own standards Maori children are not being successfully taught, and for this reason alone, quite apart from a duty to protect the Maori language, the education system is being operated in breach of the Treaty.<sup>60</sup>

The Tribunal also considered what had been happening in terms of the language in broadcasting, but it refrained from making detailed comments about this, merely declaring its view that the Treaty 'promotes a partnership in the development of the country and a sharing of all resources'. It was, in the Tribunal's view, 'consistent with the principles of the Treaty that the language and matters of Maori interest should have a secure place in broadcasting'.<sup>61</sup> It also found that, if there was any impediment in the legislation that governed the manner in which the New Zealand Broadcasting Corporation operated, then that legislation itself might be inconsistent with the principles of the Treaty.<sup>62</sup>

The Tribunal's findings and recommendations were followed by a number of developments, including the passage of the Maori Language Act 1987, which recognised the language as an official language of New Zealand, the establishment of the Māori Language

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57. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Māori Claim*, 4th ed (Wellington: GP Publications, 1996), p12

58. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Māori Claim*, 4th ed (Wellington: GP Publications, 1996), p12

59. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Māori Claim*, 4th ed (Wellington: GP Publications, 1996), pp12-13

60. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Māori Claim*, 4th ed (Wellington: GP Publications, 1996), p38

61. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Māori Claim*, 4th ed (Wellington: GP Publications, 1996), p41

62. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Te Reo Māori Claim*, 4th ed (Wellington: GP Publications, 1996), p41

Commission Te Taura Whiri i te Reo Māori, and the further growth in kōhanga reo and other Māori-medium programmes including kura kaupapa Māori. But in the area of broadcasting, it took the litigation pursued by the New Zealand Māori Council to produce results.

### 3.2.2 The Privy Council and te reo Māori

The New Zealand Māori Council essentially considered broadcasting as an effective mechanism for exposing people to te reo Māori and contributing to language revitalisation. They became deeply concerned about the possible effects the restructuring of the New Zealand Broadcasting Corporation in 1988 might have on the survival of the language.<sup>63</sup>

That year, the New Zealand Māori Council sought declarations from the High Court to prevent the Crown transferring assets of the New Zealand Broadcasting Corporation to newly created state-owned enterprises, on the grounds that it would be unlawful, as such action was contrary to section 9 of the State-Owned Enterprises Act 1986. After taking several years to work its way through the New Zealand courts, the matter was appealed to the Privy Council.<sup>64</sup>

In 1994, Lord Woolf began the Privy Council's judgment by noting that the Māori language was: in a state of serious decline; by this time an official language of New Zealand; a taonga (or highly prized treasure); and part of the 'national cultural heritage of New Zealand'.<sup>65</sup> Lord Woolf noted that section 9 of the State-Owned Enterprises Act 1986 provided that nothing in the Act permitted the Crown to 'act in a manner inconsistent with the principles of the Treaty of Waitangi'.<sup>66</sup> In their Lordships' opinion, the 'principles' are the 'underlying mutual obligations and responsibilities which the Treaty places on the parties' to its terms.<sup>67</sup> They went on to state that:

Foremost among the 'principles' are the obligations which the Crown undertook of protecting and preserving Maori property, including the Maori language as part of taonga, in return for being recognised as the legitimate government of the whole nation by Maori. The Treaty refers to this obligation in the English text as amounting to a guarantee by the Crown.<sup>68</sup>

But while the solemn nature of the Crown's obligations to protect and preserve te reo Māori as a taonga is emphasised by the Privy Council's judgment, that obligation is not 'absolute and unqualified'. If it were, this would, in their Lordships' view, be inconsistent with the 'Crown's other responsibilities as the Government of New Zealand and the relationship

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63. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513, 514

64. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513, 514

65. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513, 514

66. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513, 515–516

67. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513, 517

68. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513, 517

between Maori and the Crown.’ That relationship should be founded upon ‘reasonableness, mutual cooperation and trust.’<sup>69</sup> The Privy Council went on to state that it was 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.’<sup>70</sup> They were also of the view that, while ‘the obligation on 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.’ The example given of where the Crown’s obligation may be modified included ‘times of recession.’<sup>71</sup>

The Privy Council was also clear that, where a taonga is in a particularly vulnerable state, as is the case with te reo Māori, this should be taken into account by the Crown in deciding how to fulfil its obligations, and this may require that it take ‘especially vigorous action for its protection.’ This state may arise where the vulnerable state of the taonga 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.’ They concluded that, indeed, ‘any previous default of the Crown could, far from reducing, increase the Crown’s responsibility.’<sup>72</sup>

This Tribunal, faced with interpreting which principles of the Treaty of Waitangi are relevant to the claim before us, has had particular regard to the Privy Council’s findings on te reo as a taonga, on the state of te reo Māori, and on the nature of the Crown’s obligation to protect it. It is now accepted by the Waitangi Tribunal and the courts that the Māori language is a taonga – highly prized by the Māori people, and essential to the survival of their culture. It is also accepted that the Crown has an obligation to ‘actively protect’ all taonga, including te reo Māori.

These decisions from the last two decades raise the issue of what the Crown should do to actively protect te reo Māori. The Tribunal has recently addressed this issue.

### 3.2.3 The Wai 262 report

The recent re-emphasis of the importance of te reo Māori by the Waitangi Tribunal is outlined in *Ko Aotearoa Tēnei*.<sup>73</sup> That report concerned claims that were essentially about mātauranga Māori or ‘the unique Māori way of viewing the world, encompassing both traditional knowledge and culture’ and the preservation of these taonga for cultural identity and the ‘relationships that culture and identity derive from.’<sup>74</sup> The Tribunal also reviewed

69. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513, 517

70. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513, 517

71. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513, 517

72. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513, 517

73. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, *Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), pp 387–487

74. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity*, *Te Taumata Tuatahi* (Wellington: Legislation Direct, 2011), p xxiii

claimant concerns regarding the vitality of tribal dialects. As part of its response to those concerns, the Tribunal considered the Crown's support for te reo Māori generally.<sup>75</sup>

The Tribunal noted that te reo Māori is a taonga and the 'platform upon which mātauranga Māori stands, and the means by which Māori culture and identity are expressed'. Without it, the Tribunal stated, 'that identity – indeed the very existence of Māori as a distinct people – would be compromised'.<sup>76</sup>

The Tribunal reviewed the current health of te reo Māori and it recommended reforms.<sup>77</sup> It noted that the use of te reo Māori was in decline and it pointed to the corresponding decline in the supply of fluent mokopuna as a potential major cause.<sup>78</sup> In this respect the Tribunal noted, amongst other things, the relative decline in kōhanga reo enrolments.<sup>79</sup>

The Tribunal considered what the relevant principles were governing the situation regarding the state of the language, and it concluded that the following components were relevant to the Crown's obligation to actively protect te reo Māori:

- ▶ *Partnership*: In this respect the Tribunal noted that 'the survival of te reo can be achieved only in a paradigm of genuine partnership between Māori and the Crown'. The Tribunal noted that neither the Crown, nor Māori acting alone, can ensure the protection of te reo Māori. 'The revival of the Māori language can only happen if the challenge is owned by Māori', be they kaupapa-based groups or kin groups such as iwi. This means the Crown should 'transfer enough control' to enable a sense of Māori ownership whilst 'ensuring that its own expertise and resources remain central to the effort'.<sup>80</sup>
- ▶ *A Māori-speaking government*: 'The Government must accept . . . that it should not be an English-speaking monolith'.<sup>81</sup>
- ▶ *Wise policy*: The Tribunal stated that the kāwanatanga principle that underpins the Treaty 'requires the exercise of good and responsible government by the Crown, in exchange for Māori acknowledging the Crown's right to govern'. The Tribunal expressed its view that this 'requires the Crown to formulate good, wise and efficient policy'. Furthermore, and 'in light of the importance of the taonga and the wide call on the resources of the

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75. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), pp 442, 453–466, 708–709

76. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi* (Wellington: Legislation Direct, 2011), p 154

77. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi and Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), ch 5

78. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi* (Wellington: Legislation Direct, 2011), p 157

79. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi* (Wellington: Legislation Direct, 2011), pp 157–161

80. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), pp 443, 450

81. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), p 450



State in other areas, this means there is ‘a particular need for the highest standards of transparent, insightful, and cost-effective policy’. In the case of te reo Māori a genuinely transparent strategic joint Crown–Māori policy was needed.<sup>82</sup>

The articulation of ‘wise policy’ as a principle of the Treaty, defined as ‘good, wise and efficient policy’, we consider, does not accurately reflect the obligation of the Crown. Rather, the definition is capable of being contradictory. At the simplest level what is wise is not necessarily efficient. What is good and/or wise to one government may be considered bad and unwise by a successor, which might proceed to repeal it. Meaning no disrespect to those on the Wai 262 Tribunal, we consider that Tribunal articulated the principle inappropriately as a standard for policy making in Aotearoa/New Zealand. Thus we prefer the term ‘effective and efficient policy’ to describe this aspect of the Crown’s obligation.

- ▶ *Adequate resources*: ‘Once policies of the requisite quality have been developed, there must be enough resources made available to implement them so that there is no gap between rhetoric and reality’. This concerns the Crown’s right to make laws, being subject to the ‘reciprocal obligation . . . to accord the Māori interest an appropriate priority’. Thus, in decisions made about resource allocation, ‘te reo Māori is entitled to a “reasonable degree” of preference and must receive a level of funding that accords with this status.’<sup>83</sup>

The Tribunal also identified a Māori obligation to kōrero Māori in the home and in other domains. The Tribunal’s view was that:

those who simply complain that the Crown has robbed Māori of their reo need to bear in mind the nature of the Māori obligation too. As Robert McGowan says with respect to rongoā, it exists all around for those who wish to grasp it.<sup>84</sup>

Māori should also be prepared to compromise and ‘work with the Crown on reviving’ the language and ‘take advantage of opportunities for learning or listening to te reo’. ‘Māori language revivalists’, the Tribunal said, ‘must also be open-minded about what kind of Māori language education is appropriate’. This may include recognising that total immersion is not the only way to revitalise te reo. Referring to the work of Professor Stephen May, the Tribunal noted that partial immersion of 50 per cent instruction time once a child reaches primary school can be as effective as offering full immersion. Therefore, Māori should be ‘open-minded about what revival methods will work’, for all three approaches – immersion,

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82. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), pp 450–452

83. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), pp 450, 452, 484 footnote 176

84. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), p 468

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bilingualism, and subject course teaching – make a contribution to the cause. The Tribunal added that whānau should also strive to avoid conflict and infighting involving kōhanga reo and kura.<sup>85</sup>

In terms of education, the Wai 262 Tribunal found that the Crown was responsible for damaging mātauranga Māori and its traditional systems of transmission – and, according to that Tribunal, it did so intentionally.<sup>86</sup>

That was the object of government education policy for a significant period. Secondly, faced with the prospect that Māori would fail educationally in both cultures and lose their mātauranga, the Crown has at last been working to repair some of this damage. Since the 1980s, then, we have seen genuine state support for, first, kōhanga reo, then kura kaupapa Māori, and eventually wānanga. The sophistication of that support now includes even an entire Māori-medium school curriculum.

Thirdly it is clear that the transmission of mātauranga Māori, as well as Māori success in the education system, are valid Treaty interests. Māori must assume their own responsibilities, but the State has an enormous role to play. Fourthly, these goals are also in the national interest.

Fifthly, and finally, the model that will produce the best outcomes in Māori education is partnership – other models will not work. The Crown on its own, for example, cannot successfully transmit mātauranga in the education system or anywhere else – the idea is absurd.

But neither can Māori succeed on their own, as they lack the resources, if not the motivation. Rather, the trick for the Crown is to empower and support the community.

There is already a degree of partnership in the education system, where kōhanga reo, kura kaupapa, and wānanga receive state support but maintain a reasonable measure of autonomy.

Where there is state funding, then legitimate issues arise around standardisation across educational qualifications and accountability to the taxpayer. Where Crown funding exists there must be a degree of systemisation, albeit one that does not stifle Māori motivation. The right balance is crucial, because the education system is vital to the preservation of mātauranga Māori, and Māori educational achievement is crucial to national prosperity.<sup>87</sup>

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85. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), pp 452–453, 466–468

86. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington, Legislation Direct, 2011), p 559

87. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), pp 559–560



The Wai 262 Tribunal concluded that the Crown's 'Māori language agenda is not working'.<sup>88</sup> It also found that most of the key indicators showed that the language was going backwards. It recommended that Te Taura Whiri i te Reo Māori be 'revamped' and that it function as a 'Crown–Māori partnership' through a Crown and Māori electoral college process with responsibility for approving 'Māori language plans' for central and local government, State-funded schools, and broadcasters. It would also have responsibility for approving ECE, primary, secondary and tertiary level curricula involving te reo. Setting targets for training teachers of te reo, monitoring the health of the language, and providing 'a dispute-resolution service' for kōhanga reo and kura kaupapa were also recommended as functions of Te Taura Whiri.<sup>89</sup> To meet the aspirations of some communities for local authority, the Tribunal suggested that, with a 75 per cent majority of kōhanga reo in favour, the kōhanga reo within a particular tribal rohe should be able to move from under the control of the Trust to iwi control.<sup>90</sup>

### 3.2.4 Relevant principles to this claim

Based on the above, and a number of additional decisions of the Waitangi Tribunal and the Courts, we consider the relevant principles in this claim to be:

- ▶ partnership, with its underpinning of reciprocity, or the essential exchange of kōwanatanga for rangatiratanga, requiring the parties to act towards each other with the utmost good faith, reasonableness, mutual cooperation, and trust.

There are several components of the partnership principle that are particularly relevant:

- Kōwanatanga, requiring the exercise of effective and responsible government by the Crown, in exchange for Māori acknowledging the Crown's right to govern, and requiring the Crown to actively protect taonga. The Crown needs to formulate effective and efficient policy, which in the context of this claim requires a joint Crown–Māori policy framework focused on te reo Māori in ECE. Development of such a policy should be based on informed research, information-gathering, consultation, and adequate resourcing;
- Rangatiratanga, and the right of Māori to exercise autonomy and kaitiakitanga whilst remaining partners with the Crown, including the right to exercise kaitiakitanga and the right to development. Māori also have obligations, in terms of which Māori should take reasonable action, particularly in the home, to preserve

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88. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), p 477

89. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), pp 477–478

90. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), p 478

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te reo and choose to speak Māori in Māori-specific domains such as marae and hui. Māori should also be prepared to work with the Crown by taking advantage of opportunities provided to learn or listen to te reo and by engaging fully with the Crown in the development of Māori language policies.

- Partnership and compromise. We acknowledge that the nature of the Treaty partnership and the bounds of the Māori rangatiratanga sphere and the Crown's kāwanatanga sphere may be interpreted in different ways by the parties. They may also differ on what is the appropriate degree of effort required from the Crown to protect te reo Māori, what compromises should be made to respect Māori autonomy and the extent to which the Crown should interfere with the exercise of that autonomy given its broader obligation to govern for the benefit of all New Zealanders. We acknowledge the difficulty and our recommendations address how the parties may work together to achieve the important goal of actively protecting te reo Māori, through kōhanga reo and ECE.

► The principles of equity and options are also relevant.

**(1) Partnership**

The principle of partnership describes the relationship between the Crown and different kin-groups such as iwi, hapū, and whānau, Māori organisations, or Māori generally. The nature of the partnership will vary depending on the subject matter at issue, as will the rights, duties, and obligations exercisable under the principle of partnership.<sup>91</sup>

Thus the Tribunal has found that, although iwi, hapū, and whānau are often referred to as the Treaty partners, the Treaty speaks of all Māori, urban or tribal.<sup>92</sup> This view recognises that common descent through direct iwi and hapū kinship cannot provide a complete explanation of Māori identity, given the natural dynamics of group formation and interaction, prior to and after European settlement, and given the impact of urbanisation.<sup>93</sup> Thus, the Te Whānau o Waipareira Tribunal found that the Treaty was a 'living document', speaking to all Māori interests 'according to their circumstances . . . [and] irrespective of their original tribal structures.'<sup>94</sup> We prefer to see it as speaking to each in support of the other. That is because their rights and obligations will vary and depend on the unique circumstances of the issues that they may be confronted by at any particular time.

We accept the Crown may need to adjust its relationships with Māori depending on the nature of the issue before it and the need to accord Māori an appropriate priority where

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91. Waitangi Tribunal, *Te Whānau o Waipareira Report* (Wellington: GP Publications, 1998), pp 19–20, 28–31

92. Waitangi Tribunal, *Te Whānau o Waipareira Report* (Wellington: GP Publications, 1998), pp 16, 19, 30–31

93. Waitangi Tribunal, *Te Whānau o Waipareira Report* (Wellington: GP Publications, 1998), pp 17–19

94. Waitangi Tribunal, *Te Whānau o Waipareira Report* (Wellington: GP Publications, 1998), pp 16

there may be impacts on a taonga, or where it needs to take ‘especially vigorous action’ to protect a taonga.<sup>95</sup>

This means, in the context of the ECE sector, that the Crown should acknowledge that kōhanga reo remain the largest service provider of te reo Māori immersion education. The Trust and kōhanga reo have maintained the confidence of a large number of Māori from a range of different settings, including iwi and urban Māori. While there has been some decline in support, as we noted in chapter 2, the Trust remains the predominant chosen representative for kōhanga reo.

Thus it must be the Crown’s duty to its Treaty partner, when seeking to work to revitalise the language through kōhanga reo, to consult with the Trust and to engage in research on kōhanga reo. As kōhanga reo affiliated to the Trust are the largest providers of Māori language immersion education, the relationship between the Crown and the Trust must also be the most important relationship within the ECE sector to the Crown, when it considers how it will discharge its duty to actively protect te reo Māori.

The Crown, for that reason, owes partnership duties to kōhanga reo whānau and the Trust because it has Treaty obligations to Māori people, especially Māori children, and has duties relevant to te reo Māori.

If this partnership is to go forward, the claimants and the Crown need to work with each other by acting reasonably, with mutual cooperation and good faith. In this respect, the claimants acknowledged that a joint effort by the two partners must be applied to the issues that they have raised in this claim.<sup>96</sup> Indeed, the principle of partnership requires this. As explained in the decision of the Tribunal on urgency, the relationship between the claimants and the Crown has been strained in recent times, aggravated further by the ECE Taskforce report in 2011. Together, the Crown and the claimants will need to reconstitute what is clearly a fractured relationship in order to meet the objective of ensuring the active protection and transmission of te reo Māori.

## (2) *Kāwanatanga*

Under *kāwanatanga* in the preamble and article 1 of the Treaty, the Crown has the right to govern and make laws for the peace and good government of Aotearoa.<sup>97</sup> Thus it may determine ECE policy in accordance with the principles of effective government and for the benefit of all New Zealanders. In doing so, it is entitled to ensure ‘standardisation across educational qualifications and accountability to the taxpayer’. And, where Crown funding

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95. Waitangi Tribunal, *The Wānanga Capital Establishment Report* (Wellington: GP Publications, 1999), pp 44–45; *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513, 517

96. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 19

97. Waitangi Tribunal, *The Wānanga Capital Establishment Report* (Wellington: GP Publications, 1999), p 45

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does exist, there may be a ‘degree of systemisation, albeit one that does not stifle Māori motivation.’<sup>98</sup>

The Crown has these kāwanatanga obligations in terms of te reo Māori, which are not limited to whānau, hapū, and iwi kin groups, as te reo Māori is of concern to all Māori, especially to kōhanga reo and the Trust. Thus relational webs of interests concerning different facets of te reo Māori promotion and protection will inevitably compete for the Crown’s attention and limited resources, both inside and outside of the education field.

But in the ECE sector, there are only a limited number of countervailing interests that could impact on its ongoing support for kōhanga reo so as to ensure its obligation to actively protect the language. In chapter 2 we explained that there are only a small number of ECE services offering total immersion or bilingual ECE with 50 per cent instruction or more. As we will go on to discuss in chapter 4, while bilingual education of 50 per cent or less is available in a number of other ECE services, it is not offered at the level necessary to ensure the transmission of te reo to children who can then enter the primary education sector ready to complete the time needed to become fully bilingual and biliterate.

The numbers of kōhanga reo and mokopuna enrolled there are thus still significant, despite the decline as a movement, compared to other ECE immersion services such as iwi services, puna reo, and puna kōhungahunga, whose capacity is minimal in comparison.

Therefore, the Crown’s obligation to accord te reo an appropriate priority should in the first instance, and as a matter of logic, target the greatest number for the greater good of the language. The kōhanga reo movement, as the movement with the highest number of children learning te reo, is where the Crown’s resources for te reo Māori in ECE should be prioritised.

**(3) Rangatiratanga and kaitiakitanga**

Under article 2 of the Treaty, Māori were guaranteed the full protection of their rangatiratanga over their taonga. Rangatiratanga involves the notions of control, autonomy, and self-governance or self-management.<sup>99</sup> This means that the Crown’s right to make laws is qualified by the guarantee of Māori rangatiratanga and protection of taonga. It requires that the Crown accord to Māori an appropriate priority where their interests are, or are likely to be, affected by Crown actions or policies.<sup>100</sup>

The Wai 262 Tribunal explained, and we accept, that ‘kaitiakitanga is the obligation, arising from the kin relationship’ that Māori enjoy with all taonga, whether animate or

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98. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), p 560

99. Waitangi Tribunal, *He Maunga Rongo: Report on the Central North Island Claims, Stage 1*, vol 1 (Wellington: Legislation Direct, 2008), p 174; Waitangi Tribunal, *The Wānanga Capital Establishment Report* (Wellington: GP Publications, 1999), p 47

100. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), p 452

inanimate depending on the realm of the gods from which the taonga descends, to nurture and care for the well-being and mauri of that taonga.<sup>101</sup>

The Trust serves an essential purpose as the representative for those kōhanga reo who affiliate to it. As the Te Whānau o Waipareira Tribunal found:

Rangatiratanga resides in a community. While legal structures may be established by Maori groups for their own purposes, they merely reflect or approximate the locus of rangatiratanga, and the legal structure should not be mistaken for the community.<sup>102</sup>

It is through this relationship with its kōhanga reo membership that the Trust has been charged to exercise *their* rangatiratanga and kaitiakitanga at the national level for the purposes of promoting the kaupapa of the movement with the Crown so as to improve matters of policy, regulation, and funding. It is the national conduit through which the Crown can reach its membership.

The consequence of that is that the Crown must, in Treaty terms, share responsibility and control with kōhanga reo, and with the Trust as the representative of its membership, to develop a policy framework that will respect the kaupapa of kōhanga reo.<sup>103</sup> This is essentially what the Crown agreed to do when it entered the Tripartite Agreement in 2003.<sup>104</sup> It also acknowledged that, in giving effect to the agreement, the Crown's actions should reflect the principles inherent in the Treaty of Waitangi. It then committed itself, together with the Trust, to ensuring the survival of te reo Māori and its use within the whānau and early childhood domains.<sup>105</sup> The question we examine in the chapters which follow is whether these high ideals, consistent with the principles of partnership, kāwanatanga, and of rangatiratanga and kaitiakitanga, have been translated into policy and practice.

The Crown should also provide for a high degree of autonomy and control by kōhanga reo and the Trust, to enable them to feel that they still have some ownership over their own endeavours to revive te reo Māori.<sup>106</sup> The Crown should only intervene in their work where necessary, for example when concerned about the health and safety of mokopuna. It should also ensure 'its own expertise and resources remain central' to the kōhanga reo movement's efforts to transmit te reo through partnership processes and adequate resources.<sup>107</sup>

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101. Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi* (Wellington: Legislation Direct, 2011), p 23

102. Waitangi Tribunal, *Te Whānau o Waipareira Report* (Wellington: GP Publications, 1998), p 25

103. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), p 450

104. Document A64 ('Tripartite Relationship Agreement between Te Kōhanga Reo National Trust and the Ministers of Education and Māori Affairs', 2003), pp 383–390

105. Document A64 ('Tripartite Relationship Agreement between Te Kōhanga Reo National Trust and the Ministers of Education and Māori Affairs', 2003), pp 385–386

106. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), p 450

107. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 19

Such an approach would be consistent with article 2 of the Treaty of Waitangi and with New Zealand's affirmation of the United Nations Declaration on the Rights of Indigenous Peoples, including the statement in article 13 that indigenous peoples 'have the right to revitalize, use, develop and transmit to future generations their . . . languages'. The declaration further calls on states to take 'effective measures to ensure this right is protected'.<sup>108</sup>

### 3.2.5 Extent of the Crown's obligation to protect te reo in ECE

The Crown has accepted that the Māori language is a taonga and has declared as much in the preamble of the Maori Language Act 1987. It has also accepted that it has an obligation to protect te reo Māori.

The Tribunal has recently found that 'the health of te reo remains fragile at best'.<sup>109</sup> Consequently, the Crown is obliged to take what the Privy Council called 'especially vigorous action' in such circumstances for the active protection of te reo Māori.<sup>110</sup> In meeting its obligation to te reo, we note the Wai 262 Tribunal considered that it was 'vital' the Crown aim to increase the percentage of Māori children participating in Māori language learning.<sup>111</sup> We consider this should start by encouraging and incentivising participation in te reo Māori ECE, with a priority to be accorded to kōhanga reo due to its emphasis on protecting and revitalising te reo Māori and given the breadth of its national coverage.

However, we do not go so far as to find that kōhanga reo are taonga. In this we draw a distinction with the finding of the Wananga Capital Establishment Tribunal that wānanga – the 'ancient process of learning that encompasses te reo and mātauranga Maori' – are taonga in their own right, albeit in their modern form only to the extent that they give life to te reo and mātauranga.<sup>112</sup> Rather, we consider kōhanga reo as an essential vehicle for the transmission of the taonga itself (which is te reo), and for the exercise of rangatiratanga over it.

In *Ko Aotearoa Tēnei* the Tribunal found that 'taonga have mātauranga Māori relating to them, and whakapapa that can be recited' about them. Taonga, it said, 'will have kōrero tuku iho (a body of inherited knowledge) associated with them, the existence and credibility of which can be tested'.<sup>113</sup>

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108. Document B1 (United Nations Declaration on the Rights of Indigenous Peoples, 2 October 2007, A/RES/61/295, art 13), p 573. The declaration was adopted by the United Nations on 13 September 2007 and affirmed by New Zealand in 2010.

109. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), p 441

110. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513, 517

111. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), p 469

112. Waitangi Tribunal, *The Wananga Capital Establishment Report* (Wellington: Legislation Direct, 1999), p 48

113. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 1 (Wellington; Legislation Direct, 2011), p 269



Because kōhanga reo do not have these essential characteristics, we consider that the Trust and kōhanga reo are not taonga, in and of themselves. Nonetheless, they are so linked to the taonga of te reo and mātauranga Māori that they cannot exist in isolation from these, and the taonga cannot survive in isolation from them. The essential link with te reo Māori was described by Professor Wharehuia Milroy, who told us that the ‘treasure must have a house. A language nest.’<sup>114</sup> The importance of kōhanga reo to language survival and revitalisation goes to the fact that it is the largest ECE domain for 0–5 year olds where te reo me ngā tikanga can be found at 81–100 per cent immersion. Thus, in our view, they are so linked to the taonga that, without them, at this point in time – both in terms of the health of te reo and the way that mātauranga is transmitted in this modern world – the longer-term survival of te reo Māori me ngā tikanga would be jeopardised. This is because the availability of other immersion or bilingual options in ECE is comparatively minimal.

In such situations, where such a link to taonga exists the Crown must recognise that treaty principles are relevant and that one of those includes the ‘active protection of Maori interests.’<sup>115</sup> In this case, this refers to the interests of the Trust and its kōhanga reo membership in protecting, reviving, and transmitting te reo Māori.

Therefore, in order for the Crown to discharge its obligation to te reo Māori and Māori people at this time, it should actively seek to protect te reo by taking ‘especially vigorous action’ through kōhanga reo. Based on the findings and recommendations in *Ko Aotearoa Tēnei*, the Crown should do so by providing, in cooperation with the Trust, a sound policy and regulatory environment, coupled with appropriate resourcing so the kōhanga reo movement can operate according to its own kaupapa.

### 3.2.6 The principles of equity and options

In the *Maori Electoral Option Report* the Tribunal found that the Crown is under a Treaty obligation to actively protect Māori citizenship rights.<sup>116</sup> This obligation requires that the Crown ensure equality of treatment and the privileges of citizenship.

Consistent with the tenor of the Treaty text as a whole are the principle of equity, or the requirement to address disparities, and the principle of options, which ‘assures Māori of the right to choose their social and cultural path.’<sup>117</sup>

In the context of a state-sponsored ECE system, therefore – access to which is a citizenship right for all New Zealanders, regardless of the Treaty – the Crown’s Treaty obligations to Māori are twofold. First, it must ensure that Māori are fully informed about the advantages and disadvantages of the different ECE options. Secondly, for those who choose a te

114. Wharehuia Milroy, translation of evidence, first week of hearing, 13 March 2012 (transcript 4.2.1, p 14)

115. *Ngai Tahu Māori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553, 560

116. Waitangi Tribunal *Maori Electoral Option Report* (Wellington: Brooker’s, 1994), p 15

117. Waitangi Tribunal *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), pp 61–65

reo Māori immersion pathway, they must, at the least, receive the same level of support as other New Zealanders.

This means, in part, that the Crown must fund sufficient research on educational outcomes to be able to inform itself and Māori of the risks and benefits of going into full immersion (for example, initially trading off more conventional ECE for the deep gains in te reo me ngā tikanga and Māori identity that can lead later to potentially superior educational results).

Thus, if Māori parents choose to send their children to an ECE centre with less than 50 per cent te reo instruction, that is a choice they should be able to make, so long as they are fully informed as to what this means for their child. Simply put, they should be informed that these children will not become fluent speakers of te reo Māori through that form of education alone.

### 3.3 CONCLUSION

We find that the relevant principles, rights, duties, and obligations in the claim before us are the principles of partnership and reciprocity, or the essential exchange of kāwanatanga for rangatiratanga, requiring the development of effective and efficient policy based on a joint approach to policy development, informed research and adequate consultation. We have also determined that the principles of equity and options apply, as does the Crown's obligation to actively protect taonga, in this case te reo through kōhanga reo. The mutual duties and obligations of reasonableness, mutual cooperation and trust also apply. Māori must also exercise their obligation to protect the language by actively valuing and speaking te reo in ECE and all other Māori domains as much as possible.

In the chapters that follow we analyse in detail whether the claim before us is well founded and whether the Crown has met its Treaty obligations as detailed above. That is what we are required to do in terms of section 6 of the Treaty of Waitangi Act 1975.

Having set out the rights of the Crown and of kōhanga reo and the Trust under the Treaty, and the Treaty partners' consequent obligations, we turn to the Crown's actual performance in terms of kōhanga reo and the Trust.



CHAPTER 4

**KIA TĀWHARAUTIA TE REO  
PROTECTING TE REO MĀORI**



After considering briefly the Crown's overall Māori Language Strategy, this chapter will focus on how the Crown has developed its policies concerning te reo Māori in early childhood education so as to answer the question posed in the Tribunal's Statement of Issues, namely whether the Crown has actively protected te reo me ngā tikanga Māori, and by extension kōhanga reo. We focus in particular on:

- ▶ the role immersion education plays in language survival;
- ▶ the role and significance of kōhanga reo in preserving, protecting and enabling transmission of te reo me ngā tikanga;
- ▶ how, if at all, the Crown's policies have enabled te reo Māori immersion pathways in ECE; and
- ▶ whether the Crown has provided the necessary policy framework for the active protection of te reo Māori.

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4.1

**4.1 IMMERSION EDUCATION AND LANGUAGE SURVIVAL**

In this section we consider whether and in what manner childhood immersion education for children aged 0–5 years old is essential for language survival, protection, and revitalisation. We received a large body of academic literature and evidence from the expert witnesses called for the purpose of this inquiry. These people included Dr Timoti Kāretu, Professor Wharehuia Milroy, Dr Kathleen Irwin, Associate Professor Rawinia Higgins, Professor Tania Ka'ai, and Professor Stephen May. The latter was called by the Crown.

All these experts agreed that immersion education plays a pivotal role in enabling the intergenerational transmission of te reo and assists in the ongoing success of Māori tamarii in education.<sup>1</sup> We review and attempt to summarise this evidence before we analyse Crown policies for ECE, because the evidence clearly explains the reason why the Crown owes duties to protect te reo Māori and kōhanga reo.

**4.1.1 Growth in te reo Māori ECE Services**

The participation rate of Māori children in ECE has increased markedly since 2002.<sup>2</sup> However, the growth in Māori enrolments in ECE does not reflect what the experts would like to see for the transmission of te reo. Rather, the real growth in enrolments in ECE has favoured education and care services with a limited amount of te reo Māori content in their programmes.<sup>3</sup> Julian King, an independent public policy consultant commissioned by the Ministry of Education, advised that, of the total net growth in Māori ECE enrolments since 2002, 3,961 (44 per cent) enrolled in (non-kōhanga reo) services with a te reo Māori component and 56 per cent enrolled in ECE services using little or no te reo.<sup>4</sup>

Mr King provided an analysis of the different services offering a te reo component (presented in bands of te reo Māori being used: 12–30 per cent, 31–50 per cent, 51–80 per cent, and 81–100 per cent).<sup>5</sup> Among those services offering a te reo component, the growth in enrolments was predominantly in ECE education and care services offering between 12 and 30 per cent te reo Māori content in their programmes.<sup>6</sup> In fact we have established that only

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1. See for example, Professor Stephen May, under questioning by claimant counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, p 381); doc A42 (Tania Ka'ai, brief of evidence, 22 December 2011), pp 4, 6, 16; doc A47 (Rawinia Higgins, second brief of evidence, 22 December 2011); doc A77 (Rawinia Higgins, brief of evidence, 22 December 2011), pp 3, 36, 40–41.

2. Document A65 (Julian King, brief of evidence, 15 February 2012), p 11

3. Document A65 (Julian King, brief of evidence, 15 February 2012), p 5

4. Document A65 (Julian King, brief of evidence, 15 February 2012), p 5

5. Document A65 (Julian King, brief of evidence, 15 February 2012), p 21. For the school environment, the Ministry defines the bands as schools or classes in which Māori-medium learning takes place between 12 and 100 per cent of the time. There are four levels: level 1 (80 per cent and above), level 2 (51 to 80 per cent), level 3 (31 to 50 per cent), and level 4(a) (12 to 30 per cent). Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), p 480, footnote 71

6. Document A65 (Julian King, brief of evidence, 15 February 2012), pp 22–23

11 non-kōhanga reo licensed services offered immersion in te reo in 2011, with a combined roll of only 233 Māori students. This is no advance on a decade earlier, and the number of such services actually peaked in 2004 with 14 (13 education and care centres and one playcentre) and 580 Māori student enrolments.<sup>7</sup> This does not include unlicensed puna kōhungahunga, parent-led playgroups mostly speaking te reo, which by 2011 made up a total of 26 centres with a roll of 278.<sup>8</sup> Thus kōhanga reo remain the Māori immersion service with by far the highest number of enrolments (see table 4.1).

#### 4.1.2 Effective services for te reo transmission

The trend of overall ECE participation rates for Māori demonstrating a shift to education and care services offering 12–30 per cent te reo Māori content in their programmes runs counter to the research on arresting language decline by effective transmission. In this respect, Associate Professor Higgins' literature review demonstrated that kōhanga reo provide the 'very best climate' for arresting the decline of the Māori language. They do so, she explained, by 'aiming to re-instate inter-generational transmission through the revival not just of te reo, but te reo me ngā tikanga, that is the "intergenerational language-in-culture use"'.<sup>9</sup> Her review also indicates that where English-medium is the main language within an ECE service, the use of te reo Māori within the programmes of that service may often be characterised as both 'minimal' and 'tokenistic', providing a 'veneer of biculturalism'.<sup>10</sup>

The literature is also clear that, after preschool, language transmission is less efficient over time, especially if the target language is a minority language such as te reo Māori.<sup>11</sup> In other words, if a child does not learn te reo Māori during their preschool years, it becomes more difficult to do so as the years progress; school programmes may not produce quality speakers, with the children struggling to acquire academic proficiency in te reo.<sup>12</sup>

#### 4.1.3 Level of immersion required

Associate Professor Higgins contended that in order to achieve language acquisition, the Māori language needs to have the opportunity to develop in immersion contexts. She advised that research in this area indicates that true bilingualism in which te reo Māori

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7. These statistics sourced from 'Education Counts', Ministry of Education, <http://www.educationcounts.govt.nz>, accessed 7 September 2012

8. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), p 409

9. Document A47 (Rawinia Higgins, second brief of evidence, 22 December 2011), pp 4, 14, 15

10. Document A47 (Rawinia Higgins, second brief of evidence, 22 December 2011), p 2

11. Document A47 (Rawinia Higgins, second brief of evidence, 22 December 2011), p 3

12. Document A47 (Rawinia Higgins, second brief of evidence, 22 December 2011), p 9

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4.1.4

co-exists equally with English, 'is best achieved when te reo is acquired as the first language from infancy, and English is acquired later'.<sup>13</sup>

Professor May added that a key indicator of what actually constitutes an effective bilingual/immersion programme is one that offers, at a minimum, 50 per cent instruction in the target language.<sup>14</sup> But he also noted that 'the higher the level of immersion, generally speaking, the more likely wider language revitalisation aims and bilingualism and biliteracy are . . . to be achieved'.<sup>15</sup> He emphasised that strong 'heritage' immersion programmes such as that offered by kōhanga reo, which he described as an 'additive programme', produce the best educational results for bilingual students, over all other programmes.<sup>16</sup>

That particular emphasis is important when we consider the fact that the enrolment statistics for the last decade show clearly that only small numbers of children attend other ECE services providing immersion education in te reo Māori. By far the highest number of enrolments in this immersion area remains with kōhanga reo.<sup>17</sup>

**4.1.4 Length of time in bilingual/immersion programmes**

Professor May also stressed the need for students to stay in high-level bilingual/immersion programmes for at least six to eight years to achieve biliteracy.<sup>18</sup>

That is because once academic language proficiency in the target language (in this case te reo Māori) is reached, these skills readily transfer and facilitate the acquisition of English.<sup>19</sup> Claimant and Crown expert evidence both suggested that this uninterrupted progression from kōhanga reo to primary school is necessary for the successful transmission of te reo me ngā tikanga, bilingualism and biliteracy, and educational success.<sup>20</sup>

In Professor May's view, too many parents do not understand this need to stay the full course in Māori-medium education, with particular exit points being the transition from ECE to school and at the Year 3 or 4 level of schooling. As Professor May notes, the movement of children from kōhanga reo into English-medium education can have negative consequences.<sup>21</sup> In this respect Professor May told us that:

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13. Document A77 (Rawinia Higgins, brief of evidence, 22 December 2011), p10

14. Document A71 (Stephen May, brief of evidence, 20 February 2012), p13

15. Stephen May, under questioning by claimant counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, p379)

16. Document A71 (Stephen May, brief of evidence, 20 February 2012), pp 11–13

17. Document A65 (Julian King, brief of evidence, 15 February 2012), pp 21–23

18. Document A71 (Stephen May, brief of evidence, 20 February 2012), pp 15–16; Stephen May, under questioning by claimant counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, pp 380–381).

19. Document A71 (Stephen May, brief of evidence, 20 February 2012), pp 15–16

20. Document A71 (Stephen May, brief of evidence, 20 February 2012), p 9; doc A47 (Rawinia Higgins, second brief of evidence, 22 December 2011), pp 3–4

21. Document A71 (Stephen May, brief of evidence, 20 February 2012), p 16

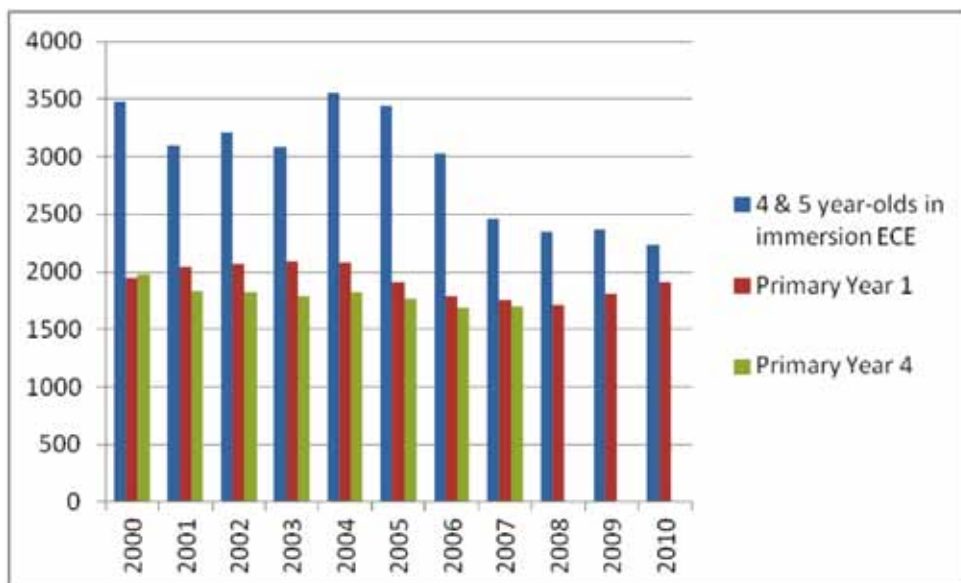


Figure 4.1: Number of children in te reo immersion ECE and in bilingual and immersion Māori-medium schooling, 2000–2011. The figure compares the number of children aged four and five in te reo immersion ECE in a given year with the following year’s intake into Year 1 Māori-medium schooling (levels 1 and 2) and with the number of children in Māori-medium schooling four years later in Year 4, thereby following roughly the same kōhanga reo cohort through the first four years of immersion and bilingual education at primary school. Continuity from year to year and between levels of immersion is complex and the depiction in this graph is therefore approximate.

Based on table 4.3.

Sources: See table 4.3

transferring from Māori immersion to an English-medium context too early can actively disadvantage students, who have not yet attained literacy in Māori and then also have to ‘catch up’ (with no recourse to what they already learnt in Māori) in a monolingual English-medium classroom.<sup>22</sup>

From our own assessment of the numbers we can see that the retention rate of kōhanga reo graduates in high-level immersion or bilingual programmes in school is improving steadily, but this is also occurring within the context of a much diminished cohort graduating each year from kōhanga reo.

In other words, once children are within levels 1 and 2 of Māori-medium education in school they tend to remain there (see table 4.3 and figure 4.1) – the problem is ensuring that a sufficient number are entering the school system from preschool in the first place.

The risk to the educational success of children who exit levels 1 and 2 of Māori-medium education too soon is clearly apparent. This is a critical issue, upon which Professor May gave compelling evidence. It is such an important issue that we would have expected to see the Crown putting a concerted effort into developing policy around what the implications

22. Document A71 (Stephen May, brief of evidence, 20 February 2012), p16

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of this might be for Māori educational success. We consider whether it has done so in our review of Crown policy in this chapter.

#### 4.1.5 Childhood bilingualism and educational gain

It is also clear that Professor May was of the view that the length of time that a child is in immersion is important for their educational success in compulsory schooling. On this issue he noted:

So the degree to which children at the preschool or preschool years are exposed to and immersed within a context in which te reo Māori is spoken, provides a pivotal basis for their ongoing success in compulsory schooling as they begin to learn the more academic aspects of te reo Māori, and then as I suggested earlier via the notion of linguistic interdependence, transferring that knowledge of te reo Māori to academic aspects of English.<sup>23</sup>

Further advantages that are relevant to general educational aims were described in the following ways by Professor May:

The cognitive benefits for bilingualism have been tested over the last 50 years, both in cognitive psychology and within bilingual education research, so bilinguals are advantaged over monolingual children in relation to their cognitive flexibility. They're more able to think creatively, which is divergent thinking, they're also more easily able to address a range of aspects to come to a conclusion, convergent thinking. The key advantage that bilinguals have over monolingual students is metalinguistic awareness . . . Metalinguistic awareness quite simply is just knowledge about how language works, and the reason bilinguals have more knowledge about how language works is because they are moving between languages constantly, and those languages often differ in the way they're constructed.<sup>24</sup>

And further:

It's evidentially clear that if students stay in Māori medium education for a sufficient period of time – that at least minimum of six years that we talked about earlier – then they will achieve, generally speaking, academically equivalently and they will be bilingual and biliterate as well. And all the international research supports that position.<sup>25</sup>

Thus it is clear that if kōhanga reo graduates are supported into primary school immersion or high-level bilingual education and stay there until they have been in this kind of education (preschool and at school) for the full six to eight years, the benefits will be that

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23. Stephen May, under questioning by claimant counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, p 381)

24. Stephen May, under questioning by claimant counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, pp 377–378)

25. Stephen May, under questioning by Tribunal, second week of hearing, 21 March 2012 (transcript 4.1.4, p 387)

the children will have acquired te reo, will be well on the way to being bilingual and biliterate, and will have developed certain cognitive advantages.

#### 4.1.6 Points of agreement and disagreement between the experts

Differences in opinion between the expert witnesses were largely resolved by the caucusing we encouraged during the course of the hearing. This was a process whereby the experts were asked to meet and discuss their points of agreement and difference. We are grateful to those experts for that effort and outcome.

The Crown and claimant witnesses agreed that full immersion, as in kōhanga reo, is the most effective method of transmission of te reo me ngā tikanga Māori during the preschool years.<sup>26</sup> The claimants' experts and Professor May, for example, were also largely agreed on the importance of immersion programmes, the age of acquisition of language, length of time in immersion, and the fact that kōhanga reo provide a crucial domain for fostering early bilingual acquisition of te reo Māori.<sup>27</sup> Thus these experts largely agreed on most points of substance.<sup>28</sup>

The claimants' experts, Dr Irwin, Professor Ka'ai, and Associate Professor Higgins, particularly supported Professor May's view that an emphasis on Māori language education in school and preschool has its limits, since:

the over-reliance on education has meant that ongoing Māori language use is increasingly limited to this domain. Intergenerational family transmission remains weak, while wider public policy in support of te reo Māori continues to be largely symbolic.<sup>29</sup>

Professor May later added that while education plays a crucial role it cannot on its own save or extend a language. Rather, revival almost always must be done in conjunction with other key language domains such as the whānau. A strength of kōhanga reo, he said, was 'the reciprocal relationship' between whānau and education and the wider engagement of kaumātua.<sup>30</sup> Where the language in the home is weak, we understand that kōhanga reo

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26. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 28

27. Submission 3.2.7 (claimant counsel, memorandum regarding expert evidence, 14 March 2012, attachment A, 'Points of agreement with the brief of evidence of Professor Stephen May'). See also Stephen May, under questioning by Crown counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, p 369)

28. See document c8 (Kathleen Irwin, Tania Ka'ai and Rawinia Higgins, response from claimant expert witnesses following meeting with Professor May, 21 March 2012). This supplemented their earlier views challenging aspects of Professor May's written brief and accepting others contained in memo 3.2.7 (claimant counsel, memorandum regarding expert evidence, 14 March 2012, attachment A, 'Points of agreement with the brief of evidence of Professor Stephen May'); Stephen May, under questioning by Crown counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, pp 369–372)

29. Document c3 (Crown counsel, further reference material (language rights) – Professor May, 20 March 2012, 'Indigenous Rights: Self Determination, Language and Education'), p 43

30. Stephen May, under questioning by claimant counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, p 383)



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complement that domain by encouraging and persuading parents to learn the language so as to nurture their children in te reo Māori. An active role in transmitting te reo is consistent with Māori obligations identified in chapter 3, to learn and speak their own language.

The experts were also agreed that kōhanga reo should enjoy a significant measure of autonomy.<sup>31</sup> Professor May agreed with the proposition that the ongoing structural, organisational, administrative, and pedagogical autonomy of kōhanga reo 'is demonstrably justified by Te Tiriti o Waitangi and clear precedents/principles of international law'.<sup>32</sup>

It is highly significant that all these experts should agree on the value of high-level immersion such as that provided by kōhanga reo, and its importance for intergenerational transmission and language revitalisation, and for Māori educational success as Māori. That leads us to the conclusion that, if te reo Māori is to survive and be revitalised, then immersion education as provided by kōhanga reo is critical to any strategy designed to give effect to that objective.

There remained some points of disagreement between these experts, however, and these were summarised in a document prepared by Dr Irwin, Professor Ka'ai, and Associate Professor Higgins, and in the oral testimony provided by Professor May.<sup>33</sup> The main points of disagreement were primarily concerned with:

- ▶ different pedagogical approaches (immersion versus bilingualism) to the teaching of te reo Māori;
- ▶ how bilingual second language acquisition principles may be utilised within a total immersion language learning context; and
- ▶ how other indigenous community approaches to learning native languages may be utilised to develop further the particular immersion pedagogy favoured by the kōhanga reo movement.<sup>34</sup>

Pre-caucusing, Dr Irwin, Professor Ka'ai, and Associate Professor Higgins were concerned about what they considered to be Professor May's framing of kōhanga reo within a bilingual paradigm.<sup>35</sup> Post-caucusing, they acknowledged that the issue was explained by the different definitions each of them used for the term 'bilingualism'. Professor May included immersion education in the term, while they were concerned that, in common usage, bilingualism/bilingual education was a reference to education in two languages.<sup>36</sup>

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31. Document c8 (Response from claimant expert witnesses, 21 March 2012). See also Stephen May, under questioning by Crown counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, p 369)

32. Document A71 (Stephen May, brief of evidence, 20 February 2012) p 31; and see Stephen May, under questioning by Crown counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, pp 369, 372).

33. Document c8 (response from claimant witnesses, 21 March 2012); Stephen May, under questioning by Crown counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, pp 372–374).

34. Document c8 (response from claimant witnesses, 21 March 2012); Stephen May, under questioning by Crown counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, pp 372–374).

35. Submission 3.2.7 (claimant counsel, memorandum regarding expert evidence, 14 March 2012, attachment A, 'Points of agreement with the brief of evidence of Professor Stephen May'), p 1

36. Document c8 (response from claimant expert witnesses, 21 March 2012), p 2

The claimants' experts also disagreed with what they considered to be Professor May's position – as expressed in his publication *Curriculum and the Education of Cultural and Linguistic Minorities* (2012) – that Māori immersion programmes in New Zealand are also bilingual programmes, since some curricular instruction occurs in English, even in those programmes with very high levels of immersion. They noted that English is not part of the kōhanga reo programme.<sup>37</sup>

In response, Professor May explained that he was not suggesting that total immersion in kōhanga reo is in any way problematic, but rather that his commentary addressed what occurs in Māori-medium primary school education.<sup>38</sup> In this respect he stated:

the claimants' expert witnesses suggest that I frame kōhanga reo as a bilingual paradigm, which it is not, it's full immersion, and the point that I wanted to make there, which I tried to allude to in my initial comments to you, is that immersion education is, in the international literature, a recognised form of bilingual education on the premise that even if it's 100% immersion, and even if it is a very high level of immersion for a period of time, generally speaking over a period of formal schooling there will be some introduction of another language.

That doesn't occur in kōhanga, kōhanga is 100% full immersion. It is completely appropriate. But generally speaking down the track in the compulsory schooling sector, English at least as a subject is generally introduced at kura kaupapa Māori level. Usually in New Zealand a little later than internationally, at years six and seven, rather than years three or four, which is generally when it is done elsewhere, but in both contexts immersion education can be seen as part of that wider bilingual education movement where bilingualism and biliteracy is the key aim at the end of schooling.<sup>39</sup>

Professor May advised that there was also disagreement between him and claimants' experts concerning whether kaiako should receive training in other pedagogies, and the relevance of the pedagogical approaches adopted in other indigenous language programmes worldwide.<sup>40</sup>

He was also very mindful of the practical reality that the dominant language of New Zealand society is English. Thus even where immersion domains (of 81 to 100 per cent curricular instruction in te reo) are provided, such as those in kōhanga reo, the English language will pervade almost all other domains surrounding that child.<sup>41</sup> The effective consequence of immersion in te reo or high-level bilingual learning for more than six years at

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37. Document C8 (response from claimant expert witnesses, 21 March 2012), p 2

38. Stephen May, under questioning by Tribunal, second week of hearing, 21 March 2012 (transcript 4.1.4, pp 374)

39. Stephen May, under questioning by Crown counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, p 372)

40. Stephen May, under questioning by Crown counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, pp 372–374)

41. Document A71 (Stephen May, brief of evidence, 20 February 2012), p 10

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kōhanga reo and primary school would thus be students ‘who were well on the road to full bilingualism and biliteracy, since some curricular instruction in English inevitably occurs before the end of primary schooling and the children are constantly exposed to English outside of kōhanga reo and te reo immersion schooling’.<sup>42</sup>

The experts for the claimants acknowledged the point by noting that the dominant language of society is English and ‘thus we cannot avoid English, but it is not part of kohanga reo’.<sup>43</sup>

In our view, any remaining points of disagreement between the experts are not important for our inquiry and we need not address them in any further detail.

#### 4.2 THE ROLE AND SIGNIFICANCE OF KŌHANGA REO IN ENABLING TRANSMISSION OF TE REO

The kōhanga reo kaupapa is about the Māori language and whānau development.<sup>44</sup> The claimants rely on the evidence on te reo me ngā tikanga that was given by witnesses such as Professor Wharehuia Milroy, Dr Timoti Kāretu, and Dame Iritana Tāwhiwhirangi. These people are considered to be some of the foremost authorities in te reo Māori education. A heavy emphasis was placed by all these witnesses on the importance of the learning process involved with the mokopuna being surrounded and nurtured in te reo me ngā tikanga.<sup>45</sup>

All that evidence was underpinned by the understanding of these witnesses, and articulated by Dr Kāretu, that te reo me ngā tikanga had been transmitted in a similar manner over many hundreds of years.<sup>46</sup> As a concept it drew upon values Māori understood so as to create a contemporary domain for inculcating children with te reo me ngā tikanga.<sup>47</sup>

We were told that ‘intergenerational learning lies at the heart of authentic Māori models of learning and teaching’ and that kōhanga reo provides such a model.<sup>48</sup> Kōhanga reo fills a vital role for the transmission of te reo me ngā tikanga, enabling Māori children to proceed

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42. Stephen May, under questioning by Tribunal, second week of hearing, 21 March 2012 (transcript 4.1.4, p 387).

43. Document c8 (response from expert claimant witnesses, 21 March 2012), p 2

44. Document A76 (Kathleen Irwin, brief of evidence, 21 December 2011), p 8

45. Document A2 (Dame Iritana Tāwhiwhirangi, brief of evidence in support of application for urgency, 25 July 2011), p 3; doc A7 (Timoti Kāretu, brief of evidence, 16 August 2011), pp 3–4; doc A34 (Wharehuia Milroy, brief of evidence, 22 December 2011), pp 6–8

46. Document A7 (Timoti Kāretu, brief of evidence, 16 August 2011), pp 3–4; Timoti Kāretu, introductory statement, first week of hearing, 13 March 2012 (transcript 4.1.3, p 158)

47. Document A7 (Timoti Kāretu, brief of evidence, 16 August 2011), p 5; doc A34 (Wharehuia Milroy, brief of evidence, 22 December 2011, pp 6–7, 10

48. Document A76 (Kathleen Irwin, brief of evidence, 21 December 2011), p 9

to Māori-medium school education.<sup>49</sup> We were told that kōhanga reo me ngā tikanga Māori are ‘inextricably intertwined.’<sup>50</sup>

The Crown agreed that kōhanga reo have been extremely effective at preserving and protecting te reo me ngā tikanga Māori.<sup>51</sup> In addition, all the experts agreed on how important the immersion education pedagogy offered by kōhanga reo is.<sup>52</sup> Professor May, for example, acknowledged the importance of kōhanga reo as a whānau development model with a pedagogy steeped in Māori culture and tikanga and with the language as the vehicle that drives it.<sup>53</sup> He also discussed the kōhanga reo model as enhancing the prospect of language revitalisation and whānau and wider community capacity building,<sup>54</sup> later describing kōhanga reo as a ‘core key pivotal place where language revitalisation of te reo Māori takes place.’<sup>55</sup> He went on to link family transmission with education, because:

neither in themselves is enough necessarily to ensure the revitalisation of an endangered language, but together in conjunction, they provide a very powerful tool, and again, kōhanga reo is crucial in that respect, because it allows for students who may be predominantly speakers of English in a context of immersion bilingualism in a whānau/family, kaiako, ākonga, and kaumātua/kuia context where language is spoken, that’s a very crucial language domain, and that distinguishes it from an early childhood context in my view.<sup>56</sup>

We take Professor May’s evidence above, along with the substantive points of agreement between him and the claimants’ experts, to mean that kōhanga reo are vitally important because they provide a domain whereby transmission of te reo Māori me ngā tikanga can occur. This is so even where English is the predominant language for a child outside the kōhanga reo domain. In other words, kōhanga reo strengthen the transmission of te reo because their whānau-based approach extends beyond a kōhanga reo into the home and to other whānau members. Kōhanga reo therefore directly, if sometimes diffusely, strengthen the family-based intergenerational transmission that Professor May and other experts regard as the essential partner of the education process.

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49. Submission 3.2.7 (claimant counsel, memorandum regarding expert witnesses, 21 March 2012), p 5; doc c8 (response from claimant expert witnesses, 21 March 2012), p 1; doc A81 (Arapera Royal-Tangaere, brief of evidence, 21 March 2012), p 8

50. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 32; submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012, p 28

51. Submission 3.3.2 (Crown counsel, opening submissions, 19 March 2012), p 3; submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 4

52. Submission 3.2.7 (claimant counsel, memorandum regarding expert witnesses, 21 March 2012), p 4

53. Stephen May, under questioning by Crown counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, p 371)

54. Document A71 (Stephen May, brief of evidence, 20 February 2012), p 27

55. Stephen May, under questioning by Crown counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, p 371)

56. Stephen May, under questioning by Crown counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, p 371)

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Despite different approaches to how bilingualism and immersion education are defined, the kōhanga reo pedagogy remains one that is nationally and internationally recognised and respected as a model of indigenous language revitalisation.<sup>57</sup> Kōhanga reo offer a total immersion programme over a sustained period of time.<sup>58</sup> Professor May stressed the importance of the immersion pedagogy utilised in kōhanga reo.<sup>59</sup> Professor May's evidence was that:

*The role of kōhanga reo thus provides a key/crucial domain in fostering early bilingual language acquisition of te reo Māori and is further strengthened when this is interlinked with family/whānau language practices that also foster te reo. [Emphasis in original.]<sup>60</sup>*

And he later stated:

. . . I think one of the great strengths of the whānau development model, and particularly access to kaumātua and kuia, is in the modelling of language. It provides a basis for what I described in my initial brief as emergent bilingualism, even in contexts where English might be the language that is spoken at home. And that is why kōhanga is so pivotal as a preparatory language education/whānau domain for compulsory schooling, and the flow on effect of that is also clearly apparent.<sup>61</sup>

**4.2.1 The transmission of te reo me ngā tikanga Māori through kōhanga reo**

Evidence for the claimants also included extensive briefs from academic witnesses.<sup>62</sup> These witnesses contended that kōhanga reo have a key role in fostering early acquisition of te reo Māori. They emphasised that kōhanga reo are not only focused on language acquisition but are also concerned with whānau development, reflecting pedagogies that are steeped in Māori culture and tikanga.<sup>63</sup> The 'objectives which underpin Kōhanga Reo' are not, in Professor Ka'ai's view, 'concerned with early childhood education . . . in the Western sense but about "enculturating" mokopuna and their whānau'.<sup>64</sup>

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57. Document A76 (Kathleen Irwin, brief of evidence, 22 December 2011), p 5; Stephen May, under questioning by Crown counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, p 373)

58. Document A42 (Tania Ka'ai, brief of evidence, 22 December 2011), p 4; doc A47 (Rawinia Higgins, second brief of evidence, 22 December 2011), p 4

59. Document A71 (Stephen May, brief of evidence, 20 February 2012), pp 2, 9

60. Document A71 (Stephen May, brief of evidence, 20 February 2012), p 8

61. Stephen May, under questioning by claimant counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, p 381)

62. Document A42 (Tania Ka'ai, brief of evidence, 22 December 2011); doc A129 (Tania Ka'ai, second brief of evidence, 9 March 2012); doc A76 (Rawinia Higgins, brief of evidence, 22 December 2011); doc A47 (Rawinia Higgins, second brief of evidence, 22 December 2011); doc A131 (Rawinia Higgins, third brief of evidence, 9 March 2012); doc A76 (Kathleen Irwin, brief of evidence, 22 December 2011); doc A125 (Kathleen Irwin, second brief of evidence, 8 March 2012)

63. Submission 3.2.7 (claimant counsel, memorandum regarding expert evidence, 14 March 2012), pp 3-4

64. Document A42 (Tania Ka'ai, brief of evidence, 22 December 2011), p 3

The Crown, for its part, acknowledges the importance of the work that kōhanga reo has done for te reo Māori since the 1980s.<sup>65</sup> We also note the range of witnesses for the Crown from the Ministry of Education, ERO, and the New Zealand Teachers Council who, both in their written briefs and in their oral evidence, extolled the value of kōhanga reo in the transmission of te reo me ngā tikanga.<sup>66</sup>

But the Crown stresses that its obligations regarding te reo are much wider and deeper than kōhanga reo alone, because, in its view, te reo Māori is not confined to particular organisations, places, ages, or purposes. Crown counsel Ben Keith submitted that, while te reo is a timeless taonga, embedded in and an essential part of Māori culture, ‘the particular ways or structures in which Māori nurture and make use of the language are time-specific, and may change over time’. As a result, the ways in which the Crown meets its obligations to the language are also subject to change, alongside the balancing of interests and practices between Māori and the Crown.<sup>67</sup> Counsel contended that the Crown’s actions should not be viewed in isolation, as ‘language, culture and community are inextricably linked and promotion of each involves promotion of the others’.<sup>68</sup> In the Crown’s view, the Māori exercise of rangatiratanga over te reo will engage Crown obligations, but in relation to the taonga of te reo, not necessarily always through or in relation to kōhanga reo.<sup>69</sup>

In this regard Apryll Parata for the Ministry argued that te reo Māori will not survive, nor have integrity or authenticity, if it is only spoken in education domains. Ms Parata contended that it is the language of the whānau, community, and iwi that is vital for language retention and revitalisation.<sup>70</sup> Iwi, she contended, are the owners and repositories of the knowledge and reo-a-iwi are required ‘to provide for Māori learners’ identity, language and culture in education and learning settings’.<sup>71</sup> She noted that iwi are focused on iwi-specific reo and its protection and revitalisation.<sup>72</sup> That, for her, was the reason why it was so important to have relationships with iwi.

But Tipene Chrisp from Te Puni Kōkiri acknowledged that, as intergenerational language transmission is limited among Māori whānau, this means that language acquisition through formal and informal education plays an important role.<sup>73</sup> He acknowledged, in other words, that the whānau domain will not be sufficient for language revitalisation.

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65. Submission 3.3.2 (Crown counsel, opening submissions, 19 March 2012), p 3; submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 4

66. See for example doc A71 (Stephen May, brief of evidence, 20 February 2012), pp 2–3; doc A61 (Karen Sewell, brief of evidence, 15 February 2012), para 56; Karen Sewell, introductory statement, second week of hearing, 19 March 2012 (transcript 4.1.4, p 73); Tipene Chrisp, under questioning by Crown counsel, second week of hearing, 22 March 2012 (transcript 4.1.4, p 455).

67. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 32

68. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 32

69. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 33

70. Document A58 (Apryll Parata, brief of evidence, 15 February 2012), p 14

71. Document A58 (Apryll Parata, brief of evidence, 15 February 2012), p 10

72. Document A58 (Apryll Parata, brief of evidence, 15 February 2012), p 14

73. Document A70 (Tipene Chrisp, brief of evidence, 15 February 2012), p 15

We agree that all these domains depend on each other and that one cannot revitalise the language without the others.

#### 4.2.2 Kōhanga reo and tracking Māori educational success

We were reminded by several witnesses that the general statistics held by the Crown show major Māori underachievement in English-medium education. Dr Irwin, for the claimants, noted that from 1960 to 1997 there had been limited improvement in those statistics.<sup>74</sup>

We further note that disparities for Māori generally remain, even in 2011. Ms Parata, for example, produced the following table demonstrating the seriousness of those disparities for Māori (see table 4.2).<sup>75</sup>

Dr Irwin, having noted the disparities for Māori in education, moved on to focus on Māori immersion education. Her research led her to conclude that there were a number of transformative programmes, including kōhanga reo and kura kaupapa Māori, that were taking Māori underachievement to success.<sup>76</sup> She pointed to a study of 2009 National Certificate of Educational Achievement (NCEA) results for school leavers. Completed by Mereana Selby, this showed that graduates of Māori immersion secondary school programmes were achieving academic outcomes at levels greater than their counterparts in mainstream schools.<sup>77</sup> Compared with national average pass rates of 72 per cent (NCEA level 1), 76 per cent (level 2), and 70 per cent (level 3), the nine Māori secondary schools studied reported averages of 97 per cent (level 1), 94 per cent (level 2), and 93 per cent (level 3).<sup>78</sup> In Dr Irwin's view, these figures showed that the students were achieving academic outcomes at levels greater than their counterparts in mainstream schools. Dr Irwin believed that most of these students in the schools studied, would have started in kōhanga reo, and it was her view that these statistics demonstrated the benefits of immersion education.<sup>79</sup>

There are other published indicators of achievement for immersion education generally.<sup>80</sup> One of these, based on Ministry statistics, was presented to us by Professor Ka'ai who reviewed the proportion of Māori school leavers qualifying for university entrance from

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74. Document A76 (Kathleen Irwin, brief of evidence, 22 December 2011), p 6

75. Document A58, (Apyll Parata, brief of evidence, 15 February 2012, attachment A, '100 Māori Learners: Table 1, Education pathways, per 100 Māori 5 year olds, Pasifika 5 year olds and other 5 year olds')

76. Document A76 (Kathleen Irwin, brief of evidence, 22 December 2011), p 7

77. Document A76 (Kathleen Irwin, brief of evidence, 22 December 2011), p 8

78. Document A76 (Mereana Selby, 'Keynote Address', NZQA Symposium honouring Dr Ranginui Walker, 30 June 2010, Te Papa, Wellington (as quoted in Kathie Irwin et al., *Whānau Yesterday, Today, Tomorrow: A Families Commission Research Report*, no 1/11, August 2011)), p 161

79. Document A76 (Kathleen Irwin, brief of evidence, 22 December 2011), p 8

80. Document A76 (Kathleen Irwin, brief of evidence, 22 December 2011), pp 7–8



Māori-medium schools.<sup>81</sup> The comparative results are indeed impressive: while 23.1 per cent of Māori school leavers were qualified in 2010, the figure for those leaving Māori-medium immersion and bilingual schools was 51.5 per cent, which was above the 50.1 per cent for non-Māori leaving English-medium schools. Professor Ka'ai's analysis was that Māori students in immersion schooling achieve academic success rates which are equal to those of Pākehā in mainstream schools.<sup>82</sup>

The Crown was not able to help us verify or disprove whether kōhanga reo have contributed to the success of school leavers. That is because it has not tracked those who leave kōhanga reo and move into compulsory schooling.<sup>83</sup> The Crown contended that there is a problem with planning around these statistics as the sample is so small.<sup>84</sup> The numbers reported showing that 154 students qualified to enter university out of 299 Māori school leavers from immersion backgrounds form the base prime data for the 51.5 per cent figure. Those 299 were a fraction of the total number of 10,620 Māori school leavers that year.<sup>85</sup> We take this point, but consider that, in an otherwise bleak picture, the statistics offer a ray of hope that te reo Māori immersion pathways can lead to higher educational outcomes for Māori than mainstream pathways. As Karen Sewell, the former Secretary for Education, acknowledged to the Wai 262 Tribunal, the Māori-medium results show that te reo-based pathways through the school system can in some instances lead to better learning outcomes, even if the small numbers meant the figures had to be treated with caution.<sup>86</sup>

In addition to the analysis provided by Professor Ka'ai, the Ministry's *Ngā Haeata Mātauranga Reports* consider Māori progress in education. The report for 2008–09 notes that, in 2008, 84 per cent (actual numbers were not provided) of Māori-medium school candidates met both the literacy and numeracy requirements for NCEA level 1 compared to 68.4 per cent of Māori students at English-medium schools. This result was consistent with that of 2007.<sup>87</sup> In addition, the report notes that Māori-medium school students in Years

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81. Document A42 (Tania Ka'ai, brief of evidence, 22 December 2011, exhibit TK 11, 'Progress against Maori Education Plan Targets: Ka Hikita – Managing for success', 2011, table 2: 'School leavers qualified to leave university', pp 2–3, and table 11: 'Percentage of school leavers from Maori immersion and bilingual schools qualified to attend university'), pp 217–218, 223–224

82. Document A42 (Tania Ka'ai, brief of evidence, 22 December 2011), p 16

83. Rawiri Brell, under questioning by the Tribunal, second week of hearing, 20 March 2012 (transcript 4.1.4, pp 295–296, 215–216); Karl Le Quesne, under questioning by the Tribunal, second week of hearing, 22 March 2012 (transcript 4.1.4, pp 580–581)

84. Apryll Parata, under questioning by claimant counsel, second week of hearing, 22 March 2012 (transcript 4.1.4, pp 495–496)

85. Document A42 (Ministry of Education, 'Progress against Maori Education Plan Targets: Ka Hikitia – Managing for Success', 2011 table 2: 'School leavers qualified to leave university', pp 2–3, table 11: 'Percentage of school leavers from Maori immersion and bilingual schools qualified to attend university'), pp 217–218, 223–224

86. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), p 443

87. Document A76 (Ministry of Education, *Ngā Haeata Mātauranga Report 2008–09* (Wellington: Ministry of Education, 2010)), pp 438–439

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11–13 were more likely to gain a typical level or higher NCEA qualification than Māori students at English-medium schools.<sup>88</sup> The report then goes on to state:

The number [*sic* – proportion] of school leavers from Māori medium schools qualified to attend university is much higher than that of Māori students in English-medium schools.<sup>89</sup>

We note that no *Ngā Haeata Mātauranga* reports were presented to us for the years 2009–10 and 2010–11. Rather, the Ministry has produced the *Education Counts, Progress Against Maori Education Plan Targets: Ka Hikitia – Managing for Success* report referred to by Professor Ka'ai, which we understand to be available on its website.<sup>90</sup> A further source referred to us was the Ministry's Māori education strategy *Ka Hikitia – Managing for Success* (2008) which notes that:

Māori students in Māori immersion and bilingual schools have a lower rate of stand-downs, unjustified absences and truancy than Māori in English-medium schools. This suggests these learning environments are particularly conducive to ensuring Māori educational success. The latest achievement data on Māori immersion education also show some promising pockets of success, with some students achieving NCEA qualifications at rates that surpass their English-medium education peers.<sup>91</sup>

The results available to date should be celebrated and ECE providers and schools involved in Māori-medium immersion programmes encouraged through supportive policies and funding. That is because these figures are at least indicative of Māori potential for success in education as Māori. The Crown should be investing in, and working towards, the development of frameworks that support such success.

Also apparent is that the cognitive, bilingual and biliteracy advantages of immersion education and the key role such education plays in language revitalisation are well researched and are known to the Ministry.<sup>92</sup> It is also well known that such research is consistent with the Ministry's existing indicators of Māori educational success and with the census data on

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88. Document A76 (Ministry of Education, *Ngā Haeata Mātauranga Report 2008–09* (Wellington: Ministry of Education, 2010)), p 439

89. Document A76 (Ministry of Education, *Ngā Haeata Mātauranga Report 2008–09* (Wellington: Ministry of Education, 2010)), p 439

90. Ministry of Education, 'Māori Education', Ministry of Education, <http://www.educationcounts.govt.nz/topics/31351/36805>, accessed 13 August 2012

91. Document A64 (Ministry of Education, *Ka Hikitia – Managing for Success: The Māori Education Strategy, 2008–2012* (Wellington: Ministry of Education, 2009)), pp 78–79

92. In particular through the major study completed by Professor May and colleagues in 2004, which was commissioned by the Ministry. Document E55 (Stephen May, Richard Hill and Sarah Tiakiwai, *Bilingual/Immersion Education: Indicators of Good Practice*, final report to the Ministry of Education, (Wellington: Ministry of Education, 2004)).

trends in te reo competence amongst Māori children.<sup>93</sup> We are, therefore, bemused by the fact that the full nature and extent of Māori-medium success in education is still not fully quantified as no study analysing sufficient data concerning Māori immersion school leavers has been completed.

Furthermore, the link with kōhanga reo in terms of this success in education is not yet statistically proven, as we discussed earlier. The lack of statistical data on what has happened to children who have attended kōhanga reo was frankly acknowledged by Karl Le Quesne from the Ministry.<sup>94</sup> He did, however, provide more detail as to what was proposed in future to cover this serious omission in research and information gathering. He advised us that the Ministry of Education is:

just finalising a business case to develop a system that will extend that [national student] number into early childhood, and what that would enable us to then do is to follow every mokopuna who enrolls in kōhanga for the rest of their education. So the first bit of value that's going to give us is where are they going after kōhanga? Okay. Are they going into the Māori immersion network, how long are they staying there? What are the qualifications? Then we'll be able to do the analysis that shows that engagement in kōhanga, what value is it delivering in terms of educational language outcomes later on.<sup>95</sup>

Clearly, Māori success in education through Māori-medium pathways due to kōhanga reo, cannot be fully proven without some investment in research. Nonetheless, the results so far are positive and should be encouraged by enabling policy.

There is a clear implication for the Crown arising both from the expert evidence on the cognitive benefits of bilingualism and the current indicators of Māori scholastic success in Māori-medium education – as well, for that matter, as from the Crown's Treaty obligation to protect te reo Māori. This is that it must ensure te reo Māori immersion or high-level bilingual programmes are provided with adequately supported and resourced policy frameworks. We need to assess, therefore, how well the Crown has recognised the importance of immersion education during its planning and policy development for ECE.

We turn now to consider what the Crown has done to support and encourage the learning and teaching in Māori immersion and bilingual programmes, both generally and more specifically in ECE.

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93. The Wai 262 report, in particular, noted that the decline between 1996 and 2006 in the proportion of Māori children aged 0–9 able to speak te reo corresponded with the marked decline in the total kōhanga reo enrolment after its 1993 peak: Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), p 398. Key data were also cited in the Ministry's presentation to its incoming Minister on Māori language in education: Document A91 (Ministry of Education, *Briefing to the Incoming Minister*, December 2011), p 49.

94. Karl Le Quesne, under questioning by the Tribunal, second week of hearing, 22 March 2012, (transcript 4.1.4, p581)

95. Karl Le Quesne, under questioning by the Tribunal, second week of hearing, 22 March 2012 (transcript 4.1.4, p581)

**4.3 MĀORI LANGUAGE STRATEGY**

In terms of policy, the Crown has published the *Māori Language Strategy – Te Rautaki Māori* (2003).<sup>96</sup> It was initially developed in 1998 and then revised and updated in 2003.<sup>97</sup> It was reviewed in 2008–09 by officials and again in 2010–11 by an independent panel led by Sir Tāmami Reedy.<sup>98</sup>

The Waitangi Tribunal has previously noted that the key tool in the Crown’s process of setting a Māori language agenda is this te reo Māori strategy. Under the strategy, Te Puni Kōkiri is the overall lead agency with responsibility for policy development, sector coordination, and monitoring of both the health of the Māori language and the effectiveness of agency activities.<sup>99</sup> However, the Ministry of Education has lead responsibility for Māori language education extending across the ECE sector, primary and secondary schools, the tertiary sector, and community education.<sup>100</sup> Te Puni Kōkiri has, however, provided advice to the Ministry on:

- ▶ the development and implementation of *Ka Hikitia* (2008) and the *Māori Language in Education Strategy – Tau Mai e* (currently under development);
- ▶ initiatives to increase Māori language teacher supply in the compulsory sector; and
- ▶ the Tripartite Agreement with the Trust.<sup>101</sup>

In the *Māori Language Strategy*, the Crown acknowledged it was the role of Māori to lead language revitalisation for their whānau, hapū, iwi, and communities.<sup>102</sup> It declared that its role in Māori language revitalisation was to support Māori endeavours by:

- ▶ supporting Māori to develop their Māori language skills (in particular through the provision of Māori language education in ECE, compulsory schooling, and tertiary education);
- ▶ supporting the availability of the Māori language in a range of settings;
- ▶ supporting the development of a positive linguistic environment; and
- ▶ providing support for whānau and community language development.<sup>103</sup>

96. Document A26(j) (Te Puni Kōkiri, *Te Rautaki Reo Māori: The Māori Language Strategy* (Wellington: Te Puni Kōkiri, 2003)); Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington, Legislation Direct, 2011), p 404

97. Document A70 (Tipene Chrisp, brief of evidence, 15 February 2012), p 2

98. Document A70 (Tipene Chrisp, brief of evidence, 15 February 2012), p 2; doc A73 (Te Paepae Motuhake, *Te Reo Mauriora: Review of the Māori Language Sector and the Māori Language Strategy*, April 2011), p 342

99. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington, Legislation Direct, 2011), pp 404–405

100. Document A58 (Apyrll Parata, brief of evidence, 15 February 2012), pp 11–12; Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington, Legislation Direct, 2011), p 405

101. Document A70 (Tipene Chrisp, brief of evidence, 15 February 2012), p 8

102. Document A26(yyyy) (Controller and Auditor-General, *Implementing the Māori Language Strategy: Performance Audit Report* (Wellington: Office of the Auditor-General, 2007)), p 35

103. Document A70 (Tipene Chrisp, brief of evidence, 15 February 2012), p 5

It described its function as being to provide Māori language education to help increase the number of Māori able to speak Māori and ‘[enhance] access to high quality Māori language education.’<sup>104</sup>

The Wai 262 Tribunal considered that the term ‘enhanced access’ needed proper definition. It considered that there should be specific targets for participation by Māori and non-Māori in preschool and schooling and in tertiary and community Māori language learning. It also said there should be targets for retaining students in the Māori-medium learning environment in the transition from preschool to primary and on to secondary school.<sup>105</sup> The Wai 262 Tribunal was particularly concerned to see specific targets for increasing the teaching of Māori to all children in mainstream schools. Importantly for chapter 7, it also suggested that there should be some clear aims around the quality of Māori-medium education, perhaps measured by ERO reviews.<sup>106</sup>

The Wai 262 Tribunal recommended that a revamped Te Taura Whiri i te Reo Māori (Māori Language Commission), operating as a Crown–Māori partnership body, should have responsibility for approving all central agency Māori language plans, including any produced by the Ministry of Education. It should also have responsibility for approving ECE, primary, secondary, and tertiary (level 1–3) curricula involving te reo.<sup>107</sup>

Overall, the Tribunal was highly critical of the strategy for its lack of detailed targets. It concluded that the *Māori Language Strategy* was:

intentionally high level and abstract, and has been constructed within the parameters of a bureaucratic comfort zone. It is, as we have said, less a Māori language strategy than a Crown Māori language strategy.<sup>108</sup>

After reviewing this strategy as it concerns ECE, we have to agree with the Wai 262 Tribunal – in our view the *Māori Language Strategy* is neither effective nor efficient. In terms of ECE under goal 3, all that it does is note the number of kōhanga reo services and enrolments.<sup>109</sup> Under the declaration of its role in terms of the strategy, all the Crown indicates it will do is focus on planning and implementation to support the increase in numbers of Māori able to speak Māori and ‘[enhance] access to high-quality Māori language

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104. Document A26(yyyy) (Controller and Auditor-General, *Implementing the Māori Language Strategy: Performance Audit Report* (Wellington: Office of the Auditor-General, 2007)), p 33

105. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington, Legislation Direct, 2011), p 460

106. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington, Legislation Direct, 2011), pp 460–461

107. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington, Legislation Direct, 2011), p 477

108. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington, Legislation Direct, 2011), p 462

109. Document A26(j) (Te Puni Kōkiri, *Te Rautaki Reo Māori: The Māori Language Strategy* (Wellington: Te Puni Kōkiri, 2003)), p 23

education.<sup>110</sup> We are not told whether this means across the education sector including ECE, so there is nothing in the strategy that indicates where priorities should be focused and what targets per level of education should be achieved. In the absence of clear targets within the strategy, agencies have floundered.

Mr Chrisp acknowledged that one of the main reasons for this was that it was initially envisaged that each agency would develop a stand-alone Māori language plan for their sectors.<sup>111</sup> Presumably that meant that the lead agencies would have an opportunity to provide more details as to priorities and targets. However, by 2005, 'agencies were struggling to understand and undertake what was required of them.'<sup>112</sup> Mr Chrisp noted that it was then agreed that Māori Language Strategy planning and reporting for smaller agencies should be incorporated into existing Ministry or agency statements of intent and annual reports, while for larger agencies Māori development plans would be used. The Ministry referred to the *Māori Language Strategy* in its development plan – *Ka Hikitia*.<sup>113</sup>

In 2007, the Auditor-General picked up this point after conducting a performance audit of Te Puni Kōkiri and other lead agencies, including the Ministry of Education.<sup>114</sup> The Auditor-General reported that Te Puni Kōkiri's performance in terms of coordinating the strategy was variable and that none of the other sector lead agencies had completed implementation plans that fully met Cabinet requirements by 30 June 2004.<sup>115</sup> A draft Ministry of Education plan for Māori Language Education dated 2004 was available to us, but as far as we can tell it was never signed off by the Minister or Cabinet.<sup>116</sup>

In his 2007 report the Auditor-General recommended that each lead agency come to an agreement with Te Puni Kōkiri about the best way to implement the Māori Language Strategy's planning requirements and that they work together to create five-year Māori language strategy targets and outcomes to provide focus for their sector.<sup>117</sup> He also recommended that agencies assess the work needed to effectively implement the strategy, identify the resources needed to carry it out, and explain how they would make those available. Alternatively, he said, they should advise their Minister if current resources were insufficient.<sup>118</sup> The Auditor-General further recommended that as part of the planned review of

110. Document A26(j) (Te Puni Kōkiri, *Te Rautaki Reo Māori: The Māori Language Strategy* (Wellington: Te Puni Kōkiri, 2003)), p 31

111. Document A70 (Tipene Chrisp, brief of evidence, 15 February 2012), pp 6–7

112. Document A70 (Tipene Chrisp, brief of evidence, 15 February 2012), pp 6–7

113. Document A70 (Tipene Chrisp, brief of evidence, 15 February 2012), p 6

114. Document A26(yyyy) (Controller and Auditor-General, *Implementing the Māori Language Strategy: Performance Audit Report* (Wellington: Office of the Auditor-General, 2007)), pp 20–21

115. Document A26(yyyy) (Controller and Auditor-General, *Implementing the Māori Language Strategy: Performance Audit Report* (Wellington: Office of the Auditor-General, 2007)), pp 20–21

116. Document A26(x) (Ministry of Education, 'Māori Language Education: Sector Language Plan', unpublished draft, Ministry of Education, 2004)

117. Document A26(yyyy) (Controller and Auditor-General, *Implementing the Māori Language Strategy: Performance Audit Report* (Wellington: Office of the Auditor-General, 2007)), pp 22, 27–28

118. Document A26(yyyy) (Controller and Auditor-General, *Implementing the Māori Language Strategy: Performance Audit Report* (Wellington: Office of the Auditor-General, 2007)), p 29



the strategy in 2008–09, the areas of government responsibility for language revitalisation should be prioritised for action.<sup>119</sup>

We were advised that a full review has taken place, evaluations of particular language programmes and services have been conducted, self-evaluations by participating agencies have been completed, and a review of language planning in other countries has been finalised. This information was all made available to the independent panel commissioned by the Minister of Māori Affairs in 2010.<sup>120</sup> Mr Chrisp went on to acknowledge before this Tribunal that ‘the implementation of the Māori Language Strategy has not been perfect’ and that there had been ‘strengths and weaknesses in implementation.’<sup>121</sup>

We turn now to consider in detail what this means for ECE and whether the Ministry of Education has nonetheless recognised the importance of immersion education in its planning and policy development and framework.

#### 4.4 MĀORI LANGUAGE IN EDUCATION STRATEGY

In 1999, the Ministry of Education developed the current *Māori Education Strategy*.<sup>122</sup> This document originated from consultation with Māori in 1997 and 1998. At that time three core goals were developed. Further goals were added in 2000.<sup>123</sup> Of relevance are goals to:

- ▶ raise the quality of mainstream (English-medium) education;
- ▶ support the growth of high-quality kaupapa Māori education;
- ▶ support greater involvement and authority of Māori in education; and
- ▶ increase participation in early childhood education to at least 65 per cent by 2006 as measured by enrolments of 0–4 year olds.<sup>124</sup>

The programmes developed around these goals included:

- ▶ promoting participation in ECE;
- ▶ increasing investment in Māori teacher supply;
- ▶ increasing investment in the development of iwi education partnerships; and
- ▶ supporting the Hui Taumata Mātauranga – a hui initiated from Ngāti Tūwharetoa to discuss Māori education issues.<sup>125</sup>

119. Document A26(yyyy) (Controller and Auditor-General, *Implementing the Māori Language Strategy: Performance Audit Report* (Wellington: Office of the Auditor-General, 2007)), p 29

120. Document A70 (Tipene Chrisp, brief of evidence, 15 February 2012), pp 8–9

121. Document A70 (Tipene Chrisp, brief of evidence, 15 February 2012), p 6

122. Document A58 (Ministry of Education, *Whakapūmautia, Papakōwhaitia, Tau Ana: Grasp, Embrace and Realise* (Wellington: Ministry of Education, 2011), p 33

123. Document E69 (Ministry of Education, *Māori Education Strategy* (Wellington: Ministry of Education, 1999, reprinted 2005), pp 3–4

124. Document E69 (Ministry of Education, *Māori Education Strategy* (Wellington: Ministry of Education, 1999, reprinted 2005), p 3

125. Document E69 (Ministry of Education, *Māori Education Strategy* (Wellington: Ministry of Education, 1999, reprinted 2005), p 4



This strategy was to sit within the Crown's main goals for education.<sup>126</sup> This strategy remained in place until the new *Ka Hikitia* strategy was adopted in 2008. No priority was accorded to immersion or bilingual education in ECE, either in the original Māori Education Strategy or in *Ka Hikitia*.

As a result of the broader *Te Rautaki Māori – The Māori Language Strategy*, the Ministry of Education submitted an implementation plan in line with the aims of the strategy by 30 June 2004. However, that plan outlined how the Ministry intended to complete a 'Bilingual Education Outcomes Framework', rather than how it would lead the area of Māori language education. The framework was refocused, and work was continued under the rubric identified by the Auditor-General as the 'Māori Language Education Outcomes Framework'.<sup>127</sup> This work has transitioned into work on an overarching Māori language education strategy. The ongoing work for this strategy, we were told by Ms Parata, involves:

- ▶ a stocktake of all current Ministry Māori language in education programmes and initiatives;
- ▶ an investment framework or principles that could guide the Ministry to review, evaluate and prioritise what it does; and
- ▶ the effective provision of te reo Māori in, and through, an education rubric that will define the outcomes sought from Māori language in education, with a focus on the results that Ministry seeks for and with learners, strengthening performance and value for money.<sup>128</sup>

The Ministry is still providing leadership across the education sector for the *Māori Language Strategy – Te Rautaki Māori* and it is working with other Government agencies on Māori language initiatives and activities.<sup>129</sup> But in a frank *Briefing to the Incoming Minister* (2011) prepared by Karen Sewell, the Secretary for Education, the Ministry's policy on te reo protection was summarised in the following manner:

The Ministry has never had a strategy to guide the way in which it thinks about Māori language. Consequently our investment in this area can be characterised as somewhat reactive and ad-hoc.<sup>130</sup>

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126. Document E69 (Ministry of Education, *Māori Education Strategy* (Wellington: Ministry of Education, 1999, reprinted 2005), p 3

127. Document A26(yyyy) (Controller and Auditor-General, *Implementing the Māori Language Strategy: Performance Audit Report* (Wellington: Office of the Auditor-General, 2007)), p 22

128. Document A58 (Apyll Parata, brief of evidence, 15 February 2012), p 12

129. Document A58 (Apyll Parata, brief of evidence, 15 February 2012), pp 11–12

130. Document A91 (Ministry of Education, *Briefing to the Incoming Minister*, December 2011 ), p 50

**4.5 CROWN POLICIES CONCERNING MĀORI IN ECE**

A general history of ECE and its growth in New Zealand was provided for the benefit of the Tribunal by Dr Anne Meade and Dr Kathleen Irwin.<sup>131</sup> Many people will be surprised to hear that the kōhanga reo movement was not the first modern Māori preschool movement in New Zealand. In the 1960s there was an initiative, led by the Māori Education Foundation, to encourage Māori whānau to establish preschools based on a playcentre model. The movement floundered as it was not well supported by either the Government or Māori.<sup>132</sup> As we know, the kōhanga reo movement, with its emphasis on te reo Māori, emerged in the 1980s. Its history has been documented in chapter 2, including the overwhelming support that it received from the Crown, iwi, and Māori leaders and their communities.

Of particular importance to all ECE, including kōhanga reo, were the dramatic shifts in policy during the 1980s towards developing a coherent policy framework for ECE services, which resulted in the integration of these services within the Department of Education and the leaving behind of the previous 'split system' whereby administration of kindergartens came under the Department of Education; childcare centres and care components of other centres came under the Department of Social Welfare; and kōhanga reo were under the Departments of Māori Affairs and Social Welfare.<sup>133</sup>

State sector restructuring between 1987 and 1996 led to the transition of early childhood education from the Department of Education to the Ministry of Education, and to a number of reviews. In 1996, for example, the New Zealand Educational Institute Te Riu Roa published its report *Future Directions, Early Childhood Education in New Zealand*, which recommended that the Government develop a strategic plan for the ECE sector.<sup>134</sup>

In 2000, the Government made the decision to develop a national plan for all ECE and Dr Meade became the convenor of the ECE Strategic Plan Working Group charged with that responsibility.<sup>135</sup> The working group was made up of 31 members from the ECE sector. They engaged in a wide-ranging consultation process with the sector. Two members of the Māori caucus for that working group were nominated by the Trust, namely Dame Iritana Tāwhirirangi and John Apatu.<sup>136</sup> The Māori caucus was very active in the development of the plan, particularly emphasising integrated strategies for language policies for ECE education and programmes, and developing or strengthening collaborative relationships.<sup>137</sup>

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131. Document A66 (Anne Meade, brief of evidence, 15 February 2012); doc A76 (Kathleen Irwin, brief of evidence, 22 December 2011)

132. Document A76 (Kathleen Irwin, brief of evidence, 22 December 2011), p 10

133. Document A66 (Anne Meade, brief of evidence, 15 February 2012), pp 4–7

134. Document A66 (Anne Meade, brief of evidence, 15 February 2012), p 11

135. Document A66 (Anne Meade, brief of evidence, 15 February 2012), p 11; doc A63 (Rawiri Brell, brief of evidence, 15 February 2012), p 15

136. Document A66 (Anne Meade, brief of evidence, 15 February 2012), p 11

137. Document A66 (Anne Meade, brief of evidence, 15 February 2012), pp 11–13

4.5.1

**4.5.1 Ngā Huarahi Arataki – the Crown’s 10-year plan**

The Crown’s current policy framework for ECE can be sourced to the 10-year strategic plan adopted in 2002, entitled *Pathways to the Future: Ngā Huarahi Arataki*. Most of the working group’s recommendations, with the exception of its language policy recommendations, were accepted and integrated into the plan.<sup>138</sup> This led to major sectoral changes, including those relating to funding (in 2005) and to the ECE regulations (in 2008).<sup>139</sup> At the plan’s core were three goals:

- ▶ increasing participation in quality ECE services and associated strategies, with a particular focus on communities where participation is low, namely Māori, Pasifika, lower socio-economic, and rural communities;
- ▶ improving quality in ECE services; and
- ▶ promoting collaborative relationships.<sup>140</sup>

**4.5.2 ECE provision for Māori in the 10-year strategic plan**

In the 10-year plan and under ‘Māori Involvement and Partnership’ the Crown expressed a desire to:

- ▶ enhance the relationship between the Crown and Māori,
- ▶ improve the appropriateness and effectiveness of ECE services for Māori, and
- ▶ increase the participation of Māori children and their whānau.<sup>141</sup>

Other processes identified as providing potential to involve Māori in designing and implementing ECE policy included reference to the Crown–Trust working group that produced the Gallen Report. The plan indicated that *Ngā Huarahi Arataki* and the Gallen Report would provide opportunities for the Government to work more collaboratively with the Trust, whānau, and iwi. This, according to the authors of the plan, would ‘support quality and participation in kōhanga reo in a way that supports the kaupapa of the kōhanga reo movement.’<sup>142</sup>

In addition, under each of the three core goals of the plan is a subsection focused on Māori. The plan sought to increase participation of Māori through:

- ▶ the involvement of whānau, hapū, and iwi in identifying barriers to participation;
- ▶ research focused on what factors in ECE make the most difference for the development and success of Māori children;

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138. Document A66 (Anne Meade, brief of evidence, 15 February 2012), p 13

139. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), p 15

140. Document A66 (Anne Meade, brief of evidence, 15 February 2012, p 13; doc A73 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki – A Ten Year Strategic Plan for Early Childhood Education 2001–2012* (Wellington: Ministry of Education, 2002)), p 443

141. Document A73 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki – A Ten Year Strategic Plan for Early Childhood Education 2001–2012* (Wellington: Ministry of Education, 2002)), p 447

142. Document A73 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki – A Ten Year Strategic Plan for Early Childhood Education 2001–2012*, (Wellington: Ministry of Education, 2002)), p 447

- ▶ providing access to quality ECE services by providing more choice so as to best meet their needs;
- ▶ establishing and supporting community-based services run by Māori for Māori; and
- ▶ ensuring that, for those Māori children attending mainstream ECE centres, those services were responsive to their needs.<sup>143</sup>

In terms of the last-mentioned, the focus was to be on working with ECE services and teacher education providers to improve ECE teachers' understanding of the Treaty of Waitangi, biculturalism, and te reo me ngā tikanga so that they could support and encourage the learning of Māori children and the involvement of Māori parents.<sup>144</sup> There were a number of action points including:

- ▶ raising parents' awareness of the benefits of participation in quality ECE for children's educational and social success; and
- ▶ giving parents and whānau information about what quality ECE is like.

As regards 'improving quality' for Māori, the plan emphasises the 1996 early childhood curriculum *Te Whāriki: He Whāriki Mātauranga mō ngā Mokopuna o Aotearoa*. It then states that the key to improving quality sector-wide is to increase the numbers of professionally trained teachers.<sup>145</sup> Partnerships were to form an important element in determining how quality is achieved in parent or whānau-provided ECE services such as kōhanga reo. The partnership work was to include working with the Trust to identify and support quality in those services.<sup>146</sup> In terms of developing centres for innovation it was to focus on developing quality practices in Māori immersion services, including kōhanga reo.<sup>147</sup>

Under the goal concerning relationships, the Government was to seek to create an environment where the wider needs of Māori children and their parents and whānau are recognised and acknowledged through supporting ECE services with strong links to whānau, hapū, and iwi.<sup>148</sup>

We note that *Ngā Huarahi Arataki* identified the two categories of ECE as either teacher-led or parent/whānau-led models. Kōhanga reo, along with other immersion centres, were categorised as whānau-led.

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143. Document A73 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki – A Ten Year Strategic Plan for Early Childhood Education 2001–2012* (Wellington: Ministry of Education, 2002)), pp 444–448

144. Document A73 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki – A Ten Year Strategic Plan for Early Childhood Education 2001–2012* (Wellington: Ministry of Education, 2002)), pp 444–445

145. Document A73 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki – A Ten Year Strategic Plan for Early Childhood Education 2002–2012* (Wellington: Ministry of Education, 2002)), p 448

146. Document A73 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki – A Ten Year Strategic Plan for Early Childhood Education 2001–2012* (Wellington: Ministry of Education, 2002)), pp 448–449

147. Document A73 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki – A Ten Year Strategic Plan for Early Childhood Education 2001–2012* (Wellington: Ministry of Education, 2002)), p 451

148. Document A73 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki – A Ten Year Strategic Plan for Early Childhood Education 2001–2012* (Wellington: Ministry of Education, 2002)), p 454

4.5.3

The plan indicated that there would be a review the ECE regulations and its funding system for parent or whānau-led services, and conduct research to support and enhance quality in the provision of these services, in particular immersion services.<sup>149</sup>

The adoption of the plan set the Ministry on the path towards pursuing policies and programmes in favour of:

- ▶ increasing participation in general ECE;
- ▶ incentivising attendance at teacher-led centres;
- ▶ adopting quality standards measured against teaching qualifications for all ECE centres (including immersion centres);
- ▶ promoting a partnership preference in favour of ECE centres with links to whānau, hapū, and iwi; and
- ▶ easing the transition for children from Māori immersion ECE to English-medium school education.

As we discuss in chapter 8, the Crown has not incentivised attendance at kōhanga reo to the same degree as at teacher-led centres. It has not prioritised partnership arrangements with kōhanga reo in its ECE policies concerning immersion or bilingual education.

Furthermore, the last bullet point above is a policy that supports an inferior pathway for children emerging from immersion, given the cognitive disadvantages that the expert witnesses suggested would follow such a direction. It seems to us that the policy needed is one that eases the transition from Māori immersion ECE to Māori immersion primary school education, The Crown should be ensuring that children who have commenced immersion or bilingual education can continue that pathway for at least another three years.

**4.5.3 Māori and educational success 2008–12**

Since the 1990s, the Ministry of Education has shifted its focus from improving educational outcomes for Māori to a vision of ‘Māori enjoying and achieving education success as Māori’.<sup>150</sup> This vision has been elaborated upon in the publication *Ka Hikitia – Managing for Success: The Māori Education Strategy* and in the Ministry’s *Statement of Intent* for 2011–12 to 2016–17.<sup>151</sup>

*Ka Hikitia*’s strategic intent is to give effect to this vision. For the Ministry, ‘Māori enjoying education success as Māori’ means:

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149. Document A73 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki – A Ten Year Strategic Plan for Early Childhood Education 2001–2012* (Wellington: Ministry of Education, 2002)), p 451

150. Document A58 (Apyll Parata, brief of evidence, 15 February 2012), p 2

151. Document A58 (Apyll Parata, brief of evidence, 15 February 2012), p 2

having an education system that provides all Māori learners with the opportunity to get what they require to realise their own unique potential and succeed in their lives as Māori.<sup>152</sup>

It seeks four broad learner outcomes:

- ▶ Māori learners working with others to determine successful learning and education pathways;
- ▶ Māori learners excel and successfully realise their cultural distinctiveness and potential;
- ▶ Māori learners successfully participating in and contributing to te Ao Māori;
- ▶ Māori learners gaining the universal skills and knowledge needed to successfully participate in and contribute to Aotearoa New Zealand and the world.<sup>153</sup>

In *Ka Hikitia* the importance of language, identity, and culture are acknowledged, as are productive relationships with students, their whānau, hapū, iwi, and educators.<sup>154</sup> The goals set in *Ka Hikitia* for ECE are to increase participation rates, provide for the effective transition to schools, strong literacy and numeracy foundations, and effective home-school partnerships.<sup>155</sup> For strengthening the quality of provision by Māori language ECE services, the Ministry was to develop an agreed set of outcomes that would define its support for the Trust to provide national leadership to kōhanga reo.<sup>156</sup>

Thus the focus in *Ka Hikitia* is clearly on increasing the participation of Māori in ECE via a number of pathways. We note, as did the Wai 262 Tribunal, that whilst there are ‘some general goals aimed at strengthening Māori language in early childhood education (chiefly around improving quality), there is no specific target for increased participation in kōhanga reo.’<sup>157</sup> The Ministry has not focused specifically on promoting te reo Māori immersion or bilingual pathways. Rather, it has seen these pathways as amongst many that should be made available for Māori children so as to increase participation in ECE.<sup>158</sup> Mr Chrisp told us that, while the Government recognises that kōhanga reo are important for Māori language acquisition by mokopuna and their whānau, it is also committed to maintaining a number of different language pathways across all levels of the education system.<sup>159</sup>

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152. Document A64 (Ministry of Education, *Ka Hikitia – Managing for Success: The Māori Education Strategy 2008–2012* (Wellington: Ministry of Education, 2009)), p 71

153. Document A64 (Ministry of Education, *Ka Hikitia – Managing for Success: The Māori Education Strategy 2008–2012* (Wellington: Ministry of Education, 2009)), p 71

154. Document A64 (Ministry of Education, *Ka Hikitia – Managing for Success: The Māori Education Strategy 2008–2012* (Wellington: Ministry of Education, 2009)), p 73

155. Document A64 (Ministry of Education, *Ka Hikitia – Managing for Success: The Māori Education Strategy 2008–2012* (Wellington: Ministry of Education, 2009)), p 74

156. Document A64 (Ministry of Education, *Ka Hikitia – Managing for Success: The Māori Education Strategy 2008–2012* (Wellington: Ministry of Education, 2009)), p 83

157. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), p 417

158. Document A61 (Karen Sewell, brief of evidence, 22 December 2011), pp 11–12

159. Document A70 (Tipene Chrisp, brief of evidence, 15 February 2012), pp 15–16



We note that, despite the finding of the Wai 262 Tribunal, the Ministry's current *Statement of Intent* indicates that its focus on multiple ECE pathways for Māori children has not changed. That document lists a number of priorities that it will seek to achieve during the period 2011–12 to 2016–17.<sup>160</sup> As required by section 40 of the Public Finance Act 1989, the *Statement of Intent* lists the nature and scope of the Ministry's functions and intended operations, and provides information about how it will perform these.<sup>161</sup>

The Ministry's priority areas for ECE are also listed under 'Priority Area 1' of the *Statement of Intent*. Under this section the Ministry has continued policies designed to increase participation of targeted communities, including Māori. It intends to provide for more Māori and Pasifika ECE teachers, improve quality in all ECE services, and make provision that caters for the 'identity, language and culture' of Māori and Pasifika children.<sup>162</sup>

We note further that, under the *Statement of Intent*, the Ministry intends to work with the Teachers Council to 'promote the . . . Teacher Competencies for Māori Learners Framework to support and strengthen ongoing workforce initiatives so that the profession is more culturally responsive.'<sup>163</sup> It makes no mention of the importance of ensuring the survival of te reo Māori or kōhanga reo, although it does refer to *Ka Hikitia*.<sup>164</sup>

In its priority area 5, dealing with Māori achieving educational success as Māori, the *Statement of Intent* refers again to its goal of increasing the participation of Māori children in ECE through the Ministry-wide implementation of *Ka Hikitia*. In terms of community and whānau programmes this is to be achieved by those services aligning their goals with *Ka Hikitia*.<sup>165</sup>

The Ministry of Education will also seek to establish effective relationships with iwi and Māori education organisations through the implementation of *Ka Hikitia* and its more recent policy document *Whakapūmautia, Papakōwhaitia, Tau Ana – Grasp, Embrace and Realise* of 2011, and it will develop a framework to guide and enhance relationships with Māori organisations.<sup>166</sup>

*Whakapūmautia, Papakōwhaitia, Tau Ana* was published in 2011 as part of the *Ka Hitikia* framework for conducting relationships between the Ministry of Education and iwi. The

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160. Document A64 (Ministry of Education, *Ministry of Education Statement of Intent: 2011/12–2016/17* (Wellington: Ministry of Education, 2011)), pp 7–8, 15–50

161. Document A64 (Ministry of Education, *Ministry of Education Statement of Intent: 2011/12–2016/17* (Wellington: Ministry of Education, 2011)), pp 1–50

162. Document A64 (Ministry of Education, *Ministry of Education Statement of Intent: 2011/12–2016/17* (Wellington: Ministry of Education, 2011)), pp 10–13

163. Document A64 (Ministry of Education, *Ministry of Education Statement of Intent: 2011/12–2016/17* (Wellington: Ministry of Education, 2011)), p 19

164. Document A64 (Ministry of Education, *Ministry of Education Statement of Intent: 2011/12–2016/17* (Wellington: Ministry of Education, 2011)), pp 11, 14, 16

165. Document A64 (Ministry of Education, *Ministry of Education Statement of Intent: 2011/12–2016/17* (Wellington: Ministry of Education, 2011)), pp 36–37

166. Document A64 (Ministry of Education, *Ministry of Education Statement of Intent: 2011/12–2016/17* (Wellington: Ministry of Education, 2011)), p 32



authors of the document state that it is premised on iwi values and principles such as those embodied within and envisaged by the Treaty of Waitangi, inclusive of its spirit and intent.<sup>167</sup> The document also aims to guide and establish how iwi can be active in designing and implementing programmes with whānau, and how they can invest, and contribute their skills, expertise and community knowledge.<sup>168</sup> As at February 2012, the Ministry had 54 relationships with iwi.<sup>169</sup>

#### 4.5.4 General Ministry of Education Māori language provision

Over and above the planning documents, we were told that the Ministry of Education seeks to achieve effective teaching and learning of, and through, te reo Māori in a manner which supports the health and growth of the language. It offers Māori-medium pathways across the education system and, we were told, its commitment to such pathways stems from its ‘fundamental belief’ that every Māori learner should have access to high quality education ‘that attends to their identity, language and culture.’<sup>170</sup>

It was Ms Parata’s view that children can currently access Māori language in ECE either through Māori-medium education (kōhanga reo, puna reo, and other services offering different levels of Māori immersion) or in general ECE services where Māori language is woven into daily activities.<sup>171</sup> According to Ministry estimates, of slightly more than 40,000 Māori learners in ECE, approximately a quarter are enrolled in Māori-medium settings, with most of that provision occurring in kōhanga reo.<sup>172</sup>

We note that, despite most of the children in Māori-medium ECE attending kōhanga reo, the Crown’s ECE polices do not prioritise the role that kōhanga reo, and the Trust to whom they affiliate, fill in terms of te reo Māori protection and revitalisation.

The current Ministry of Education *Statement of Intent* also records that the Ministry is in the process of responding to the 2011 report of the ECE Taskforce. That work is well under way, as the claimants have demonstrated through the documents they have filed since the hearing.<sup>173</sup>

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167. Document A58 (Ministry of Education, *Whakapūmautia, Papakōwhaitia, Tau ana – Grasp, Embrace and Realise* (Wellington: Ministry of Education, 2011)), annexure APH1, pp 6–7

168. Document A58 (Ministry of Education, *Whakapūmautia, Papakōwhaitia, Tau ana – Grasp, Embrace and Realise* (Wellington: Ministry of Education, 2011)), annexure APH1, p 20

169. Document A58 (Apyll Parata, brief of evidence, 15 February 2012), p 9

170. Document A58 (Apyll Parata, brief of evidence), 15 February 2012), p 11

171. Document A58 (Apyll Parata, brief of evidence, 15 February 2012), p 12

172. Document A58 (Apyll Parata, brief of evidence, 15 February 2012, pp 12–13

173. Document A64 (Ministry of Education, *Ministry of Education Statement of Intent: 2011/12–2016/17* (Wellington: Ministry of Education, 2011), p 14; submission 3.3.1 (claimant counsel, opening submissions, 12 March 2011), pp 161–163

**4.6 TRIBUNAL ANALYSIS AND FINDINGS**

Claimant counsel Mai Chen rightly referred us to *Ko Aotearoa Tēnei*, which records that the future survival of te reo depends on children and that there is a correlation between the decline in enrolments in kōhanga reo and the number of children recorded as able to speak te reo in the census.<sup>174</sup> Thus, she contended the obligations of the Crown towards children are particularly strong – even more because of the perilous state of the language which, she submitted, can be attributed to past and continuing failures of Crown policy.<sup>175</sup>

The claimants were adamant that the Crown’s language and ECE policies promote neither kōhanga reo nor full immersion,<sup>176</sup> and that the Crown’s claim that it is acting neutrally in offering a choice of pathways is directly in conflict with its goal of promoting Māori success as Māori.<sup>177</sup> They contended that, as the Crown has no specific goals for promoting or increasing participation in kōhanga reo or ECE immersion education, it is acting inconsistently with its Treaty obligation to ‘formulate good, wise and efficient policy’.<sup>178</sup>

Crown counsel noted the criticisms by Trust witnesses of its policies and their suggestion that the Crown’s policy efforts were not framed to meet kōhanga reo concerns or needs.<sup>179</sup> However, counsel contended that this was more a case of the Crown trying to work with the Trust to develop policy, but that progress had been slow due to misunderstandings, the sheer size of the task and factors beyond the Crown’s control, for example the delays concerning the work of the Quality, Sustainability and Funding Working Group.<sup>180</sup> In addition, its wider policy context did provide support for kōhanga reo.<sup>181</sup> In offering a range of pathways for ECE, the Crown contended, it was offering a range of options for Māori parents in accordance with the principle of options.<sup>182</sup>

After analysing the Crown’s broader policies, we see the 1999 *Māori Education Strategy*, *Ngā Huarahi Arataki* in 2002, *Ka Hikitia* in 2008 and 2012, and the latest *Statement of Intent* for 2011–12 to 2016–17 as missed opportunities for the Ministry to outline what the Privy Council called ‘especially vigorous action’ to protect this vulnerable taonga te reo Māori, by ensuring that participation in immersion programmes, including kōhanga reo, was promoted, incentivised, and supported as a priority for Māori education. This could have been done through the development of goals, strategies, targets and action points focused on the active protection and transmission of te reo Māori. Kōhanga reo ought to have been central

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174. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi* (Wellington : Legislation Direct, 2011), p 157

175. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 32; submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 28

176. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 57

177. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 57

178. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), pp 63, 67

179. Submission 3.3.4 (Crown counsel, closing submissions, 26 April 2012), p 35

180. Submission 3.3.4 (Crown counsel, closing submissions, 26 April 2012), pp 24, 35–43

181. Submission 3.3.4 (Crown counsel, closing submissions, 26 April 2012), p 22

182. Submission 3.3.4 (Crown counsel, closing submissions, 26 April 2012), pp 25–26

to these policies. Instead the policies merely emphasise increasing Māori participation in ECE in general and kōhanga reo were categorised as undifferentiated ECE ‘immersion centres.’ Other centres are marginal in number compared to the kōhanga reo movement, thus immersion centres are essentially kōhanga reo.

We find that the Crown has not prioritised te reo Māori or kōhanga reo in *Ngā Huarahi Arataki*, its *Statement of Intent*, or *Ka Hikitia*. The Crown’s policy framework does not reflect the principles of partnership, the full extent of its kāwanatanga duties or the protection of rangatiratanga because it has not specifically addressed how kōhanga reo should be supported. What was required in Treaty terms, as noted in chapter 3, was that the Crown should make effective policy on immersion education in the ECE sector. It has not done so and its broader ECE policies do not support kōhanga reo at all adequately, as we discuss in the chapters that follow. We also consider that it is not sufficient for the Crown to respond by arguing that delays have been an issue beyond the Crown’s control. Its obligation is to take especially vigorous action and the reasons for the delays in this case cannot justify the policy failures we have identified.

We also note that the current policy framework stands in stark contrast to the 1992 policies of an earlier National Government, which developed a ‘Ten Point Plan for Māori Education – 1992.’ That plan described the then Government’s main objectives as being to:

- ▶ ensure the retention of te reo Maori; and
- ▶ ensure that the achievement rates of Maori students increase through positive achievement initiatives, as the present gaps between Maori and non-Maori are too substantial to tolerate.<sup>183</sup>

The 10 points for achieving these objectives included providing support and resourcing for Māori language initiatives at ECE and other levels. The plan referred to the need to provide resources to support research into ‘the needs of children graduating from Te Kohanga Reo.’<sup>184</sup> The plan also expressed a desire to explore the implications of separate educational structures for Māori from the mainstream.<sup>185</sup> The Crown accepted that the strategy to put the plan into effect was not unlike ‘requirements expressed in the Treaty of Waitangi, where in a partnership arrangement, all key partners will be responsible for implementing the details of the plan.’<sup>186</sup> Under each point were listed objectives, actions, responsibilities, progress targets and what ‘achieved’ results would be. Under point three – to foster increased

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183. Document A76 (Ministry of Education, ‘Ten Point Plan for Māori Education – 1992’, (Wellington: Ministry of Education, 1992)), p 391

184. Document A76 (Ministry of Education, ‘Ten Point Plan for Māori Education – 1992’, (Wellington: Ministry of Education, 1992)), p 391

185. Document A76 (Ministry of Education, ‘Ten Point Plan for Māori Education – 1992’, (Wellington: Ministry of Education, 1992)), p 391

186. Document A76 (Ministry of Education, ‘Ten Point Plan for Māori Education – 1992’, (Wellington: Ministry of Education, 1992)), p 392

4.6

participation rates of Māori in ECE – was an objective to support the performance of the Trust.<sup>187</sup>

The Crown must now move to remedy present deficiencies, and situate Māori immersion education offered by kōhanga reo at the centre of its ECE policies for Māori. This would be the most effective way to actively protect the language. An emphasis on kōhanga reo should lead to effective transmission of te reo Māori, and it should result in high levels of bilingualism and biliteracy. It is also likely to lead to Māori enjoying educational success as Māori.

We note the Crown also argued that its Treaty obligation to actively protect te reo Māori in ECE may change and be engaged by others.<sup>188</sup> We reject this argument as unrealistic at this time given the small number of te reo immersion providers and enrolments in other services. That is because in practice it is the kōhanga reo movement that at present, and for the foreseeable future, provides the principal network of immersion services needed for widespread language transmission and revitalisation. Thus, in Treaty terms, it should assume some prominence for policy focus over mainstream or English-medium services. All parties agree that immersion programmes such as that offered by kōhanga reo are a proven vehicle for language transmission and the first step on the pathway to biliteracy and bilingualism.

The kōhanga reo movement remains reasonably large and its coverage extends across the national landscape with the highest number of enrolments. By comparison, other te reo immersion-level ECE centres, be they licensed or unlicensed, are limited in number and enrolments. This has been highlighted already in our discussion in chapter 2.

The evidence is that the successful kaupapa pursued by the kōhanga reo movement, offered for over 30 years, is fulfilled in both the education and whānau domains. Given that language learning is occurring in more than one domain for students of kōhanga reo and their whānau, this means kōhanga reo play a pivotal role in the intergenerational transmission of te reo. It is also this movement that provides the cohort of children needed for entry into Māori-medium primary education where they can finish the six to eight years necessary for full bilingualism and biliteracy to occur. Conversely, any gains made during the ECE years by attendance in immersion or bilingual education such as kōhanga reo will be lost if not followed by Māori-medium programmes once at school.

We also note that the success of kōhanga reo has been recognised by the Crown. Furthermore, it is clear that kōhanga reo have achieved some degree of international recognition for their work.<sup>189</sup> Professor May in his evidence on that issue emphasised:

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187. Document A76 (Ministry of Education, ‘Ten Point Plan for Māori Education – 1992’, (Wellington: Ministry of Education, 1992)), pp 402–403

188. Submission 3.3.2 (Crown counsel, opening submissions, 19 March 2012), p7; submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 30–31

189. Document A42 (Tania Ka'ai, brief of evidence, 22 December 2011), pp 4, 7, 12–13; doc A76 (Kathleen Irwin, brief of evidence, 22 December 2011), pp 21–22

. . . I agree completely that kōhanga has been a model that has been adopted internationally and was the harbinger and is often cited in both national and particularly international literature as an exemplar of indigenous language revitalisation, and other programmes have adopted it.<sup>190</sup>

#### 4.7 CONCLUSION

We conclude that the ‘reactive and ad hoc’ approach to te reo Māori in education, as described by Ms Sewell, is in our view the reason why the Crown has not made effective and efficient policy. It is the reason why there has not been adequate prioritisation of kōhanga reo as the current pre-eminent ECE immersion programme for te reo Māori protection and revitalisation. We understand from Ms Parata that the Ministry’s *Māori Language in Education Strategy – Tau Mai e* is not expected to be finalised until the latter part of 2012.<sup>191</sup> This policy must address these shortcomings, a matter we address in our recommendations in chapter 11. At the same time we acknowledge the Treaty principle of options and that Māori parents and whānau have the right to choose the form of ECE best suited to their needs and aspirations. Nothing that we have said should be taken as meaning that Māori children in other forms of ECE should receive anything less than they do at present. In our view, that would not be a necessary or desirable consequence of an appropriate priority being accorded to total immersion and kōhanga reo in ECE.

We turn now in the chapters that follow to consider whether the Ministry’s ECE policy framework has resulted in prejudice to the claimants and the kōhanga reo movement.

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190. Stephen May, under questioning by Crown counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, p373)

191. Document A58 (Apryll Parata, brief of evidence, 15 February 2012), p13

MATUA RAUTIA : REPORT ON THE KŌHANGA REO CLAIM

4.7

Year (July)	Number of services				
	Kōhanga reo	Puna		Total	Kōhanga reo %
		kōhungahunga	Other ECE 80%+		
2002	559	24	11	594	94.1%
2003	538	32	11	581	92.6%
2004	526	43	15	584	90.1%
2005	512	49	11	572	89.5%
2006	494	41	11	546	90.5%
2007	477	30	10	517	92.3%
2008	470	32	13	515	91.3%
2009	464	27	11	502	92.4%
2010	463	29	9	501	92.4%
2011	463	26	11	500	92.6%
Change 2002–2011	-96	2	0	-94	

Year (July)	Enrolment				
	Kōhanga reo	Puna		Total	Kōhanga reo %
		kōhungahunga	Other ECE 80%+		
2002	10,527	351	243	11,121	94.7%
2003	10,449	408	249	11,106	94.1%
2004	10,609	580	362	11,551	91.8%
2005	10,216	519	261	10,996	92.9%
2006	9,582	289	233	10,104	94.8%
2007	9,305	343	272	9,920	93.8%
2008	9,208	454	345	10,007	92.0%
2009	9,288	277	266	9,831	94.5%
2010	9,370	283	236	9,889	94.8%
2011	9,631	278	233	10,142	95.0%
Change 2002–2011	-896	-73	-10	-979	

Table 4.1: Number of te reo immersion ECE services and total enrolment, 2001–2011. Note: ‘Other ECE 80%+’ comprises Māori children in licensed services with te reo used in more than 80 per cent of contact time. Kōhanga reo and puna kōhungahunga include Māori and non-Māori children and kōhanga reo include licence-exempt centres.

Sources: Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 409, tbl 5.3; Education Counts, ‘Māori in ECE’, ‘ECE services’, and ‘ECE enrolments’ (Excel spreadsheets, Wellington: Ministry of Education), <http://www.educationcounts.govt.nz/statistics>, accessed 11 September 2012

	Māori	Pasifika	Non-Māori and non-Pasifika
Will attend a decile 1–4 school	57	70	17
Will not have achieved basic literacy and numeracy skills by age 10	18	16	4
Will be frequent truants by Years 9 and 10	2.3	1.3	0.6
Will be stood down from school	5	3	2
Will leave secondary school without a qualification	34	24	13
Will become disengaged from education, employment or training by age 17	16	10	5
Will leave school with NCEA level 2 or better	48	59	75
Will leave school with a university entrance standard	20	26	50

**Table 4.2: Education pathways, per 100 Māori, Pasifika, and other five-year-olds**

Source: Document A58, (Apyll Parata, brief of evidence, 15 February 2012, attachment A, '100 Māori Learners: Table 1, Education pathways, per 100 Māori 5 year olds, Pasifika 5 year olds and other 5 year olds')



MATUA RAUTIA : REPORT ON THE KŌHANGA REO CLAIM

4.7

Education	level	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Kōhanga reo	4+5	3292	2884	2993	2872	3208	3148	2841	2292	2149	2238	2122	2264
Licence-exempt kōhanga reo	4+5 *	113	64	40	36	59	46	27	17	11	0	0	0
E&C, playcentres	4+5 *	70*	70*	70	69	111	82	70	67	81	64	53	55
Puna kōhunga-hunga	4+5 *	0	63	101	113	179	162	86	85	106	67	64	65
Total ECE supply	total	3471	3095	3204	3090	3557	3438	3024	2461	2347	2369	2239	2384
Māori-medium schooling, year 1	81-100	1709	1531	1725	1734	1750	1730	1572	1476	1440	1364	1468	1517
	51-80	466	414	319	338	345	354	339	313	310	342	344	393
	total	2175	1945	2044	2072	2095	2084	1911	1789	1750	1706	1812	1910
Māori-medium schooling, year 2	81-100	1511	1487	1519	1583	1601	1520	1461	1407	1380	1318	1308	1373
	51-80	505	438	380	299	384	372	401	427	347	354	331	404
	total	2016	1925	1899	1882	1985	1892	1862	1834	1727	1672	1639	1777
Māori-medium schooling, year 3	81-100	1455	1431	1423	1503	1538	1476	1384	1374	1309	1291	1236	1246
	51-80	483	472	444	358	440	420	410	510	454	379	382	400
	total	1938	1903	1867	1861	1978	1896	1794	1884	1763	1670	1618	1646
Māori-medium schooling, year 4	81-100	1417	1353	1395	1426	1449	1410	1379	1277	1272	1270	1259	1201
	51-80	563	494	493	461	524	436	443	508	551	493	432	494
	total	1980	1847	1888	1887	1973	1837	1822	1785	1823	1763	1691	1695
Māori-medium schooling, year 5	81-100	1332	1294	1320	1345	1357	1275	1306	1263	1174	1171	1183	1184
	51-80	678	628	553	540	599	569	540	560	541	575	578	522
	total	2010	1922	1873	1885	1956	1844	1846	1823	1715	1746	1761	1706
Māori-medium schooling, year 6	81-100	1135	1167	1195	1239	1231	1211	1133	1173	1167	1115	1091	1094
	51-80	644	603	595	535	685	609	581	568	566	554	659	545
	total	1779	1770	1790	1774	1916	1820	1714	1741	1733	1669	1750	1639
Māori-medium schooling, year 7	81-100	978	1089	1226	1253	1323	1318	1220	1182	1209	1206	1191	1100
	51-80	663	687	664	646	646	579	699	680	691	778	717	791
	total	1641	1776	1890	1899	1969	1897	1919	1862	1900	1984	1908	1891
Māori-medium schooling, year 8	81-100	834	910	984	1091	1147	1229	1111	1108	1047	1102	1121	1060
	51-80	517	651	660	470	571	601	635	645	700	645	539	655
	total	1351	1561	1644	1561	1718	1830	1746	1753	1747	1747	1660	1715

Table 4.3: Te reo immersion ECE enrolment and students in bilingual and immersion Māori-medium schooling, 2000–2011. Numbers are for all students, not Māori only, except for the education and care and playcentre numbers, for which only Māori enrolment numbers were available. ‘Level’ indicates children aged 4 and 5 for ECE services and the percentage of instruction in te reo Māori for schools. To track approximate student cohorts through the school system, the table should be read diagonally, with one year’s total constituting the main part of the potential intake for the year following. This continuity is necessarily an approximate assumption; amongst other factors, children may also move up from lower levels of te reo instruction.

\* The number of non-kōhanga reo 4 and 5 year-olds has been estimated using the annual percentage of total kōhanga reo students who were 4 or 5 years old. The 2002 estimate for education and care centres and playcentres has been replicated for 2000 and 2001, for which data are not available.

Sources: Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 409, tbl 5.3; Education Counts, ‘Statistics’, Ministry of Education, <http://www.educationcounts.govt.nz/statistics>, accessed 11 September 2012

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Total ECE supply	3471	3095	3204	3090	3557	3438	3024	2461	2347	2369	2239	2384
Māori-medium schooling, Year 1		1945	2044	2072	2095	2084	1911	1789	1750	1706	1812	1910
Implied retention rate %		56.0	66.0	64.7	67.8	58.6	55.6	59.2	71.1	72.7	76.5	85.3

Table 4.4: Entry and retention rate on transition from immersion forms of ECE to levels 1 and 2 of Māori-medium schooling, 2000–2011

Sources: See table 4.3



CHAPTER 5

NGĀ HONONGA KI TE TAHA AURAKI  
MĀORI PARTICIPATION IN ECE



In the Statement of Issues, we asked the parties to address whether the Crown has adopted policies, regulations, or practices, or acted or omitted to act in a manner which has:

- ▶ Failed to protect te reo Māori through kōhanga reo? And if it has failed, what has been the impact on:
  - the transmission of te reo Māori me ngā tikanga or traditional knowledge and beliefs?
  - the enrolment rates of children in kōhanga reo?
- ▶ Impacted negatively on the number of fluent speakers of te reo Māori, and also the number of whānau, kaimahi and kaumātua wanting to pass on te reo Māori by participating in kōhanga reo?<sup>1</sup>

In this chapter, we consider these issues by focusing on whether the Ministry of Education's policy goal of increasing Māori 'participation' in ECE – while a worthy objective in its own right – has in fact resulted in prejudice to the claimants and the kōhanga reo movement.

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1. Claim 1.4.1 (Waitangi Tribunal, statement of issues for the Kōhanga Reo Trust (Wai 2336) urgent inquiry, 25 November 2011), p 3

Painting by Robyn Kahukiwa reproduced by permission of Te Kōhanga Reo National Trust Board

### 5.1 THE CLAIMANTS' POSITION

The Wai 262 Tribunal pointed out that the 2006 census statistics indicated that Māori speakers of te reo aged 0 to 14 years declined from 38,595 in 1996 to 35,151 in 2006.<sup>2</sup> The claimants noted that a similar decline in kōhanga reo services and enrolments has also occurred.<sup>3</sup> They alleged that the Crown has assimilated kōhanga reo within its mainstream ECE policies and that this has, amongst other things, also led to a decline in the participation of whānau, mokopuna, and kaumātua in kōhanga reo, thereby contributing to the perilous state of te reo Māori.<sup>4</sup> Arapera Royal-Tangaere argued further that the Crown was creating incentives for parents to choose education and care services over kōhanga reo.<sup>5</sup> In summary, it was their view that the Crown fails to understand that the simple goal of increasing Māori participation in general ECE 'does nothing to revitalise te reo me ngā tikanga Māori'.<sup>6</sup>

### 5.2 THE CROWN'S POSITION

Crown counsel submitted that, while there may be a decline in participation in kōhanga reo, there are a range of complex factors responsible.<sup>7</sup> The Crown pointed to the fact that, after a 'rapid decline' in enrolments following the peak in 1993, there had been a 'slowing rate of decline from around 2002 and particularly in the last five years'.<sup>8</sup>

However, Crown counsel acknowledged that kōhanga reo had not retained its share of the Māori preschool market, which had expanded 25 per cent from 2000 to 2010. Instead, the new influx of enrolments has been drawn 'almost entirely' into education and care services.<sup>9</sup>

The Crown identified a number of quantifiable factors that have probably had a 'significant and predominant impact' on enrolments, including:

- ▶ ECE sector-wide shifts that were not specific to kōhanga reo or Māori;
- ▶ the isolation of small kōhanga reo leading to closure;
- ▶ the boom and bust process of rapid growth and then decline to a steady state; the increase in ECE services other than kōhanga reo offering a component of their programme in te reo Māori; and
- ▶ increased participation in paid work and in study over the last twenty years, particularly amongst Māori women, and the resulting need for longer hours of access to

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2. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), p 438

3. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), pp 32–34

4. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 7

5. Document A85 (Arapera Royal-Tangaere, third brief of evidence, 7 March 2012), p 3

6. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 6

7. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 48–54

8. Document A65 (Julian King, brief of evidence, 15 February 2012), p 8

9. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 48

ECE services than offered by many kōhanga reo, as well as a growing preference for placement of children in services with less expectation of parental involvement in daily activities.<sup>10</sup>

### 5.3 THE CROWN'S ECE MĀORI PARTICIPATION POLICIES

In the 2003 Tripartite Agreement, part of the Crown and the Trust's shared vision was to: 'Foster the participation of Māori children and adults in quality early learning within a whānau and Māori cultural environment'. To achieve this vision, one of the shared goals of the parties was to: 'Promote participation and quality learning in te reo Māori within kōhanga reo for kōhanga whānau'.<sup>11</sup>

There are no specific targets in the Crown's 2003 *Te Rautaki Reo Māori – The Māori Language Strategy* for increasing participation in ECE te reo immersion education, particularly in kōhanga reo (and we are aware that the document's general lack of specific targets was a cause of some criticism by the Wai 262 Tribunal). Similarly, there are none in the *Māori Education Strategy* (1999–2008), *Ngā Huarahi Arataki* (2002), *Ka Hikitia* (2008–12), or the Ministry of Education's *Statement of Intent* (2011–12 to 2016–17).<sup>12</sup> We struggle to understand how policies can be effective without targets. Without such targets, it is difficult to assess the performance of the Crown.

Rather, the policies seek to accelerate the participation for targeted communities, including Māori, in ECE generally. To achieve the aims of this participation policy, the Crown has implemented two major programmes that have not prioritised the importance of participation in kōhanga reo.

The first programme, which commenced in 2000, was the Promoting ECE Participation Project (PPP) aimed specifically at Māori and Pasifika children and designed to complement the Discretionary Grants Scheme. We were told that the Trust was contracted as a provider of PPP in 2001–02, but that the contract was cancelled because the Trust was unable to meet the goals of the contract. A subsequent application in 2005 to become a provider was

10. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 49–54. We assume that the changes in work and study patterns were in fact examples of the sector-wide shifts, although they were not set out this way in counsel's submission.

11. Document A64 ('Tripartite Relationship Agreement between Te Kohanga Reo National Trust and the Ministers of Education and Maori Affairs', 2003), p 386

12. Document A26(j) (Te Puni Kōkiri, *Te Rautaki Reo Māori: The Māori Language Strategy* (Wellington: Te Puni Kōkiri and Te Taura Whiri i Te Reo Māori, 2003)); doc E69 (Ministry of Education, *Māori Education Strategy* (Wellington: Ministry of Education, 1999, reprinted 2005)); doc A64 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki – A 10-Year Strategic Plan for Early Childhood Education 2012–2012* (Wellington: Ministry of Education, 2002)), pp 99–131; doc A64 (Ministry of Education, *Ka Hikitia – Managing for Success: The Maori Education Strategy, 2008–2012* (Wellington: Ministry of Education, 2009)), pp 52–98; doc A64 (Ministry of Education, *Ministry of Education Statement of Intent, 2011/12–2016/17* (Wellington: Ministry of Education, 2011)), pp 1–50

turned down.<sup>13</sup> The PPP finished in mid-2010. Though it was judged to have been effective at identifying non-participating children, it was less effective at enrolling them and maintaining their attendance.<sup>14</sup>

A second programme, the ECE Participation Package, was announced in the 2010 Budget and funded to the tune of \$91.8 million over four years, again with the aim of raising participation of Māori and Pasifika children, as well as children from lower socio-economic groups.<sup>15</sup> The Targeted Assistance for Participation Scheme (TAPS) forms a part of this programme. The Trust is eligible to apply to deliver any of the components of the programme, but to date it has only applied for TAPS funding.<sup>16</sup>

#### 5.4 TRIBUNAL ANALYSIS AND FINDINGS

As we discussed in chapter 4 and also in the preceding section of this chapter, we consider there to be a key gap in the Crown's policies concerning ECE participation which is that there have been no specific incentives and targets for increasing the participation of Māori in Māori-language immersion ECE education, whether through kōhanga reo or otherwise.

We turn now to consider what this lack of policy incentive and targeting for increasing the participation of Māori in kōhanga reo has meant for enrolments in kōhanga reo.

##### 5.4.1 Participation and kōhanga reo enrolments

Karl Le Quesne for the Ministry of Education told us that, of the 3,622 children placed in ECE through the PPP programme over the period between July 2008 and September 2010, 490 mokopuna were placed in kōhanga reo.<sup>17</sup>

While that seems on its own a significant gain to kōhanga reo, Julian King presented to us a graph that shows that the rise in Māori participation in education and care services has far outstripped the growth in kōhanga reo.<sup>18</sup>

Mr King's evidence, commissioned by the Ministry, shows that the total number of Māori children participating in ECE has increased dramatically over the last 20 years while the numbers in kōhanga reo have declined.<sup>19</sup> In this regard, Crown counsel noted that the number of kōhanga reo enrolments and the number of kōhanga reo increased sharply from

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13. Document A60 (Karl Le Quesne, brief of evidence, 15 February 2012), p7. Mr Le Quesne did not explain to us what the goals of the contract were and why the Trust could not meet them.

14. Document A60 (Karl Le Quesne, brief of evidence, 15 February 2012), p7

15. Document A60 (Karl Le Quesne, brief of evidence, 15 February 2012), p8

16. Document A60 (Karl Le Quesne, brief of evidence, 15 February 2012), p8

17. Document A60 (Karl Le Quesne, brief of evidence, 15 February 2012), p7; Karl Le Quesne, under questioning by claimant counsel, second week of hearing, 22 March 2012 (transcript 4.1.4, p571)

18. Document A65 (Julian King, brief of evidence, 15 February 2012), p21

19. Document A65 (Julian King, brief of evidence, 15 February 2012), pp5, 8–9, 11



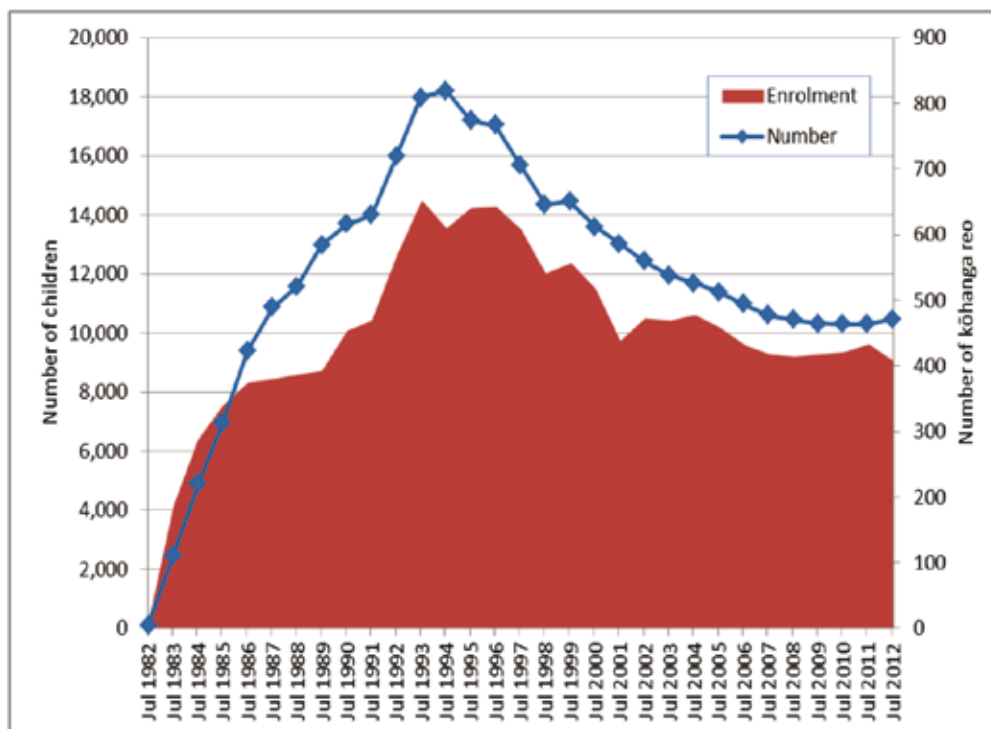


Figure 5.1: Number of enrolled children and kōhanga reo, 1982–2012. Note: Because the sources vary on the numbers of kōhanga reo and enrolled children in the 1980s, the pre-1991 statistics should be treated as approximate.

Sources: Document A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), p 495, tbl 1; doc A81, (Araperā Royal-Tangaere, 'Te Kōhanga Reo Aspirations and Struggles', 2011), p 797; doc E51 (Lisa Davies and Kirsten Nicholl, *Te Mana i Roto i nga Mahi Whakaakoranga – Maori in Education* (Wellington: Ministry of Education, 1993), pp 27–29, 105, tbl A1); Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), p 409, tbl 5.3; Education Counts, 'Māori in ECE' (Excell spreadsheet, Wellington: Ministry of Education), <http://www.educationcounts.govt.nz/statistics/ece2/mori-in-ece>, accessed 11 September 2012; memo 3.4.13 (claimant counsel, memorandum providing additional information, 1 August 2012); doc E15 (table attached to memo 3.4.13)

approximately 8,000 children at 500 services in 1989 to a peak of 14,514 children in 1993 and 819 kōhanga reo in 1994 (comprising 773 licensed and 46 licence-exempt services), with the numbers then declining sharply until 2000 and more gradually from that point (see figure 5.1).<sup>20</sup>

We were surprised that the Crown pointed to the fact that the average enrolment in each kōhanga reo has picked up slightly, as well as its position that the previous rapid decline in enrolments has stabilised since approximately 2005 and that enrolments are now actually increasing.<sup>21</sup> The Crown considers these positive signs, and it noted that kōhanga reo

20. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 47–48. Counsel actually said there were 814 services in 1994 and 1993–1994 to 2002, but this is incorrect.

21. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 47–48

5.4.1

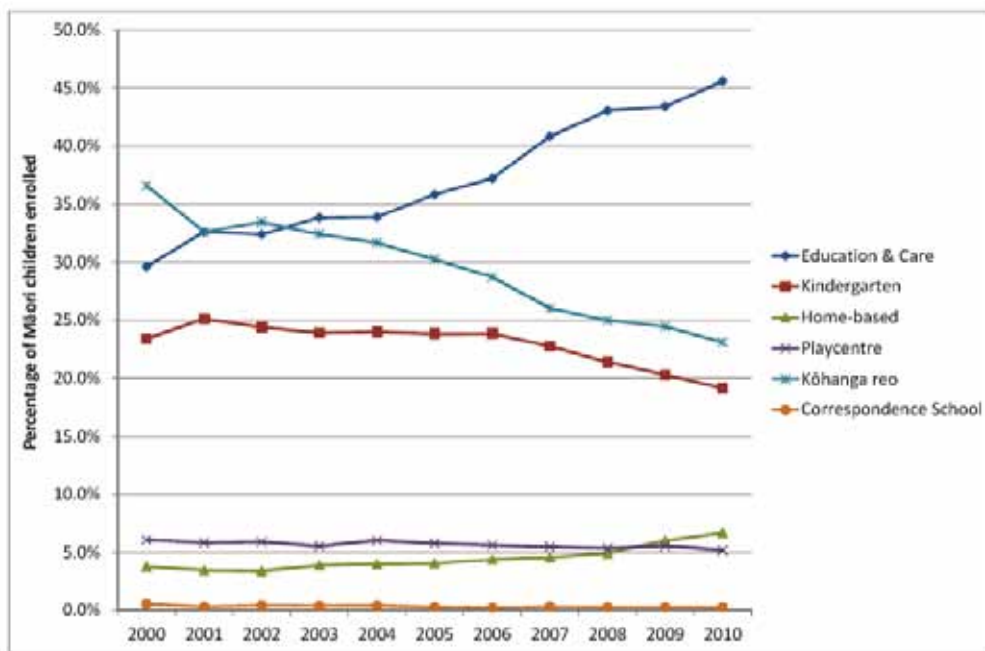


Figure 5.2: Percentage of Māori children enrolled in kōhanga reo and other licensed ECE services, 2000–2010

Source: Document A65 (Julian King, brief of evidence, 15 February 2012), p 21

capacity has also increased slightly and that enrolments as a percentage of capacity have also increased (from 62 per cent in 2009 to 68 per cent in 2010).<sup>22</sup>

For the Tribunal, however, the most revealing evidence on the kōhanga reo decline was that presented by Mr King. His graph showed a significant drop in the percentage of Māori children enrolled at kōhanga reo as compared to those enrolled in ‘education and care centres’ from 2000 to 2010. There was, respectively, a drop from 37 per cent to 23 per cent for kōhanga reo enrolments of Māori children, and a rise from just under 30 per cent in 2000, to just over 45 per cent in 2010 for education and care centres.<sup>23</sup> We could of course go back further still and note that the kōhanga reo share had stood at 49.2 per cent in 1993.<sup>24</sup> Moreover, the small gains in enrolment numbers in recent years have still seen the kōhanga reo share of Māori enrolments drop from 26.0 per cent in 2007 to 22.3 per cent in 2011 (see figure 5.2).

We acknowledge that the Crown has had considerable success in working with Māori to help increase Māori participation in ECE, and that this should make some contribution to Māori educational success. The Crown must be commended for that. Accelerated

22. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 47–48; doc B3 (Te Kōhanga Reo National Trust Board, *Provision of Services in Support of Te Kōhanga Reo: Annual Report – 1 January to 31 December 2010*, report to the Ministry of Education (Wellington: Te Kōhanga Reo National Trust Board, April 2011)), p 62

23. Document A65 (Julian King, brief of evidence, 15 February 2012), p 21

24. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), p 410, tbl 5.4

investment in kōhanga reo would also make an important contribution. However, the diminishing kōhanga reo share of the Māori ECE market means that there is a smaller percentage of Māori children acquiring the required degree of te reo Māori instruction necessary for language transmission and revitalisation, which must be a matter for concern. We now consider some of the reasons why there has been this relative shift away from kōhanga reo.

#### 5.4.2 Reasons for the changes in enrolment rates in kōhanga reo

The claimants blame the Crown's ECE policies, particularly its regulatory policies, for the change in enrolment patterns. The Crown regarded the claimant evidence on this as anecdotal only and impossible to quantify. It did not discount the possibility of regulatory policies adversely affecting enrolments, but through its analysis of statistically quantifiable factors it concluded that the impact of regulatory policies could have been residual only.<sup>25</sup>

Essentially, Mr King thought that sector-wide shifts that were not specific to kōhanga reo or Māori went 'some way towards providing a large chunk of the explanation'. By this he meant increased participation of parents in employment and study, which he considered was driving the growth in education and care services and also – for the same reasons – causing the decline in playcentre and kindergarten enrolments. He noted that the changes in this regard had been particularly pronounced for Māori women. He also stressed the vulnerability of rural and isolated kōhanga reo to falling enrolments and closure, as well as the growing responsiveness of the education and care sector to the desire of Māori parents for their children's preschool education to cater to their Māori cultural identity. He partly relied upon Ministry of Education data collected when kōhanga reo have closed to identify the reasons for their closure. On the basis of these figures both Mr King and Crown counsel contended that falling enrolments were primarily responsible for the closures, rather than regulatory non-compliance, policy impacts or financial problems.<sup>26</sup>

We address the impact on kōhanga reo of Crown funding, regulation and reviewing policies in chapters 8, 9, and 10. Suffice to say here that we agree with Mr King that the 'reason for closure' data must be treated with caution, since the reason categories are 'not mutually exclusive and are subject to the judgement of the individual entering the data'.<sup>27</sup> Moreover, no analysis was undertaken by the parties on the influence of matters such as degrees of deprivation or a community's knowledge of te reo Māori (as revealed by the census) on kōhanga reo closures. We also note that kōhanga reo rolls have declined and centres have closed in urban as well as rural locations, and that a few centres have even closed with rolls

25. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 49

26. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 49–54; Julian King, under questioning by claimant counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, pp 355–357); doc A65 (Julian King, brief of evidence, 15 February 2012), pp 26–30.

27. Document A65 (Julian King, brief of evidence, 15 February 2012), p 27.

of more than 20 students.<sup>28</sup> The picture is complex and there can be no doubt that a broad array of factors play a part in declining enrolments and closures, usually in each case in combination. The Wai 262 Tribunal canvassed a list of factors in its own report and could not pinpoint any one cause as standing out either.<sup>29</sup>

What we are sure about is that, despite the Crown's successes both in encouraging more Māori into ECE and encouraging more ECE services to include some Māori language instruction, the Crown has done little to grow the number of services that would help to preserve te reo Māori. Both parties agreed that services offering only an eighth to a third of their programme time in te reo – which is where the bulk of this increase has occurred – will not ensure effective Māori language transmission.<sup>30</sup> It is in keeping with the principle of options that the Crown should ensure that Māori parents have choice over the nature of preschool education for their children, and it is the right of those parents to select non-immersion services. But allowing such a drift away from kōhanga reo is not a neutral position for the Crown to take, given its obligation of active protection over te reo Māori.

We note that there were, in 2011, only 11 licensed immersion centres offering 81 to 100 per cent instruction that were not kōhanga reo.<sup>31</sup> That small additional capacity does very little to offset the decline in the number of kōhanga reo and the number of kōhanga reo enrolments. In fact there has been no growth in the number of such services within the last decade.

In our view, the Crown's approach is practically leaving the future survival of te reo Māori to chance. Its policy of increasing participation in ECE and its Treaty duty to protect te reo through support for kōhanga reo are not mutually exclusive, but the Crown has been behaving as though that were the case. The Crown should prioritise research into what numbers of kōhanga reo graduates are needed per annum to ensure that there are enough children entering and graduating from Māori medium primary school with sufficient competency (ie. bilingualism and biliteracy) so that te reo remains a living language. And it needs to consider whether its own lack of priority for increasing participation in te reo immersion ECE education, and particularly in kōhanga reo, has contributed to the relative shift from kōhanga reo to education and care centres. In our view, that must be considered as a potential reason alongside the quantifiable matters raised in evidence by the Crown.

In short, as part of its duty to protect te reo the Crown should have found some way to counter the trend away from te reo immersion preschool and incentivise a recovery in the kōhanga reo movement's market share. It should also have done so because of the likely

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28. Document A65 (Julian King, brief of evidence, 15 February 2012), pp 28, 47.

29. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), pp 408–409, 417.

30. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 51.

31. Education Counts, 'Annual ECE Census Summary Report 2011', Ministry of Education, <http://www.educationcounts.govt.nz/statistics/ece2/annual-ece-summary-reports>, accessed 10 September 2012, para 9.

greater cognitive advantages and educational success of school leavers who have attended Māori-medium education (see chapter 4). Simply, there is no adequate policy framework and support for the immersion alternative, particularly the kōhanga reo alternative. Good information could actually lead to a swing back to kōhanga reo and other immersion programmes. We return to this point below, as it should be a key plank in the Ministry's upcoming *Māori Language in Education Strategy – Tau Mai E*.

As we discussed in chapter 4, the Crown should also be concerned about the impact on those kōhanga reo graduates who do not spend the requisite length of time in immersion or high levels of bilingual Māori-medium primary school education. That continuity is essential for them to become fully bilingual and biliterate, and its absence may impact on their educational success. And if one of the reasons for the shift of enrolments into education and care institutions is to access a service that can accommodate work and study commitments and meet changing participation rates in the labour force, then Crown policy can be adapted to ensure that this demand from Māori is addressed. This could be through resourcing for kōhanga reo either to open longer hours or to employ assistants who can alleviate the need for busy whānau to be directly involved in daily activities.

We conclude that the general ECE policy of increasing participation – that the Crown has followed since at least 2002 – has not been appropriately targeted or sufficiently prioritised at the te reo Māori immersion end of the ECE spectrum. This can be directly attributed to the lack of a te reo Māori education policy framework for ECE, coupled with the general failure to specifically address participation rates in immersion education, particularly in kōhanga reo. The Crown's focus has resulted in a general failure to provide for and support the rangatiratanga of kōhanga reo whānau to the degree required by the Treaty, and it has placed the survival of te reo Māori at further risk, given that there has been a concurrent decline in the proportion of Māori who have acquired the language, as detailed by the Wai 262 Tribunal.

#### 5.4.3 Information on the benefits of te reo immersion education in ECE

In *Ka Hikitia*, the Ministry recorded that the evidence shows that an early start in high-quality immersion education is important for bilingual outcomes and that sustained participation in quality immersion for at least six years is also important for those bilingual outcomes.<sup>32</sup> The Ministry also acknowledged in *Ka Hikitia* that parents and whānau require good information about successful Māori language learning to inform their decision-making about education options.<sup>33</sup>

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32. Document A64 (Ministry of Education: *Ka Hikitia – Managing for Success: The Maori Education Strategy, 2008–2012* (Wellington: Ministry of Education, 2009)), p 81

33. Document A64 (Ministry of Education: *Ka Hikitia – Managing for Success: The Maori Education Strategy, 2008–2012* (Wellington: Ministry of Education, 2009)), p 81

As far as we can tell, information concerning the benefits that flow from immersion education and the pivotal role kōhanga reo play in language transmission has not been widely disseminated to Māori parents or to the general population. The Tribunal and claimant counsel sought information from a number of Crown witnesses, including Mr Le Quesne, Professor Stephen May, Rawiri Brell, and Tipene Chrisp, as to what materials were disseminated or were available.<sup>34</sup>

Professor May referred to his own 2004 paper on those issues, which he had provided to the Ministry of Education.<sup>35</sup> In 2004, three researchers from the University of Waikato, led by Professor May, looked at the national and international research on bilingual and immersion education to ascertain what models of bilingualism should be supported in New Zealand. Their report, *Bilingual/Immersion Education: Indicators of Good Practice – Final Report to the Ministry of Education*, found that multiple factors contributed to successful bilingual education, including support from the school community and wider whānau.<sup>36</sup> The report also found that biliteracy was associated with wider academic success, and that teaching in Māori for at least 50 per cent of the time was the minimum required for an effective bilingual or immersion programme.<sup>37</sup> A very useful and reader-friendly summary of the report was produced in 2006 and submitted in evidence to us.<sup>38</sup> However, this document has not been widely circulated and was not referred to in any substantive way in the hearing before us.<sup>39</sup>

The only other document produced that refers to kōhanga reo and which the Crown disseminates to the public is produced by Te Puni Kōkiri, entitled *Kei Roto i te Whare: Māori Language in the Home*. It is specifically designed to be read and understood readily by whānau. As the title suggests, the booklet encourages the speaking of te reo in the home, in the whānau, and within the community. It commences by stressing the importance of intergenerational transmission of te reo and the risk of language loss if that does not occur. The booklet uses a series of colours to categorise what actions are appropriate for different types of people or the importance of the issue being discussed: red for language revitalisation and the importance and benefits of speaking te reo in the home; orange for people just

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34. Rawiri Brell, Karl Le Quesne and Tipene Chrisp, under questioning by claimant counsel and the Tribunal, second week of hearing, 20–22 March 2012 (transcript 4.1.4, pp 225, 376–377, 455–456, 582)

35. Document E55 (Stephen May, Richard Hill, Sarah Tiakiwai, *Bilingual/Immersion Education: Indicators of Good Practice – Final Report to the Ministry of Education* (Wellington: Ministry of Education, 2004))

36. Document E55 (Stephen May, Richard Hill, Sarah Tiakiwai, *Bilingual/Immersion Education: Indicators of Good Practice – Final Report to the Ministry of Education* (Wellington: Ministry of Education, 2004)), pp 132–135. The report runs to 148 pages in length and primarily focuses on the compulsory education sector. Only three of its pages relate specifically to the non-compulsory sector of kōhanga reo and puna reo.

37. Document A73 (Ministry of Education, ‘Bilingual Education in Aotearoa/New Zealand: Key Findings in Bilingual/Immersion Education: Indicators of Good Practice’, 2006), p 96

38. Document A73 (Ministry of Education, ‘Bilingual Education in Aotearoa/New Zealand: Key Findings in Bilingual/Immersion Education: Indicators of Good Practice’, 2006), pp 91–96.

39. Stephen May and Tipene Chrisp, under questioning by claimant counsel and the Tribunal, second week of hearing, 21–22 March 2012 (transcript 4.1.4, pp 376, 379, 458–459, 471)



starting with te reo; yellow for those with some language skills; green for strategies to avoid pitfalls; blue for fluent speakers of te reo; and purple for lists of resources and commonly used words.<sup>40</sup>

The foreword does refer to the fact that the future lies with the children coming through kōhanga reo and encourages support for the children. However, kōhanga reo are only referred to in the red areas, where language revitalisation and benefits of speaking te reo are identified as important issues. In the orange section, the following statement appears in a question and answer form:

*Won't the kōhanga and kura teach my child(ren) to speak Māori? Isn't that the best place for them to learn?*

While your children will learn Māori at kōhanga and kura, there are limits to what these places of learning can do for your children because of the nature of the environment (focused on school work rather than family life) and the limited amount of time children spend there. Children spend approximately 25% of their waking time at kōhanga and kura; for the rest of the time they are with whānau and friends. If you rely on kōhanga and kura to teach your children to speak Māori, you are only using one quarter of the potential opportunities available to raise your children to speak Māori and English.<sup>41</sup>

As will be obvious from the discussion of the expert evidence in chapter 4, this statement may have some application to kura but definitely mischaracterises kōhanga reo as being focused on 'school work rather than family life'. The text is a useful reminder of the obligation for Māori parents to take responsibility for te reo transmission in the home, but this should ideally be couched alongside positive messages of the benefits bilingualism can bring. We might add that parents' ability to transmit te reo naturally depends on their own level of proficiency in the language. The evidence before us was that, for many parents, particularly in an urban setting, it is their kōhanga reo that has become the main domain for te reo Māori transmission.<sup>42</sup>

There are only three more passing references to kōhanga reo in the booklet, none of which advances the benefits of immersion in an active manner.<sup>43</sup> Nor do any of these pages include any reference to engaging mokopuna consecutively with kōhanga reo and levels 1 and 2 of Māori-medium schooling as part of the six-to-eight-year cycle needed to ensure te reo Māori transmission and successful bilingualism and biliteracy outcomes.

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40. Document C10 (Te Puni Kōkiri, *Kei Roto i te Whare: Māori Language in the Home* (Wellington: Te Puni Kōkiri, 2008)), unpaginated

41. Document C10 (Te Puni Kōkiri, *Kei Roto i te Whare: Maori Language in the Home* (Wellington: Te Puni Kōkiri, 2008)), p13

42. Document A1 (Tina Olsen-Ratana, brief of evidence in support of urgency, 25 July 2011), pp 2–3

43. Document C10 (Te Puni Kōkiri, *Kei Roto i te Whare: Maori Language in the Home* (Wellington: Te Puni Kōkiri, 2008)), pp15, 25, 28



5.4.4

Parents are certainly not advised in Te Puni Kōkiri's booklet that participation by their children in programmes of less than 50 per cent Māori medium will not on its own produce fluency in te reo. Nor are they advised that, if they start their children in kōhanga reo and then transfer them at the compulsory school age into predominantly English-medium primary school programmes, this may affect their children's educational success.<sup>44</sup>

Thus, what is missing is the circulation of a publication that provides a description of the sorts of benefits that flow from immersion in kōhanga reo and Māori-medium schooling. That publication should also advise parents of the benefits to their children of transitioning from kōhanga reo to kura kaupapa Māori or other immersion/bilingual pathways. Such materials should accurately inform the parents of the benefits of total immersion as compared to those programmes comprising less than 50 per cent Māori-medium instruction.

Informed decision-making about where to send children aged 0–8 can only be in the best interests of these mokopuna. As Professor May pointed out, if children who attend kōhanga reo go into English mainstream primary schooling they will not 'build on what they have learnt and what they have been exposed to'.<sup>45</sup>

**5.4.4 Conclusion**

In our view, a properly informed te reo Māori immersion ECE policy framework is immediately required to elevate the participation rate of Māori children, their whānau, and kaumātua in immersion education, particularly kōhanga reo. The framework should address, among other things, increasing participation in immersion centres, particularly kōhanga reo, and informing parents, whānau, and Māori communities of the benefits of immersion education. Such policies would potentially increase the number of children acquiring te reo and the likelihood of the survival and revitalisation of the language.

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44. Stephen May, under questioning by claimant counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, p377)

45. Stephen May, under questioning by claimant counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, p381)

**Participation and kōhanga reo in South Auckland**

In a series of documents prepared by the Ministry of Education's Demographic and Statistical Analysis Unit in 2009 the reasons for the low participation rates in ECE of Maori and Pasifika children living in the Counties-Manukau area were analysed and discussed. The unit found that there were indicators that point to ethnicity and socio-economic reasons as factors likely to inhibit participation. For example, many of the affected families do not own cars in this region.

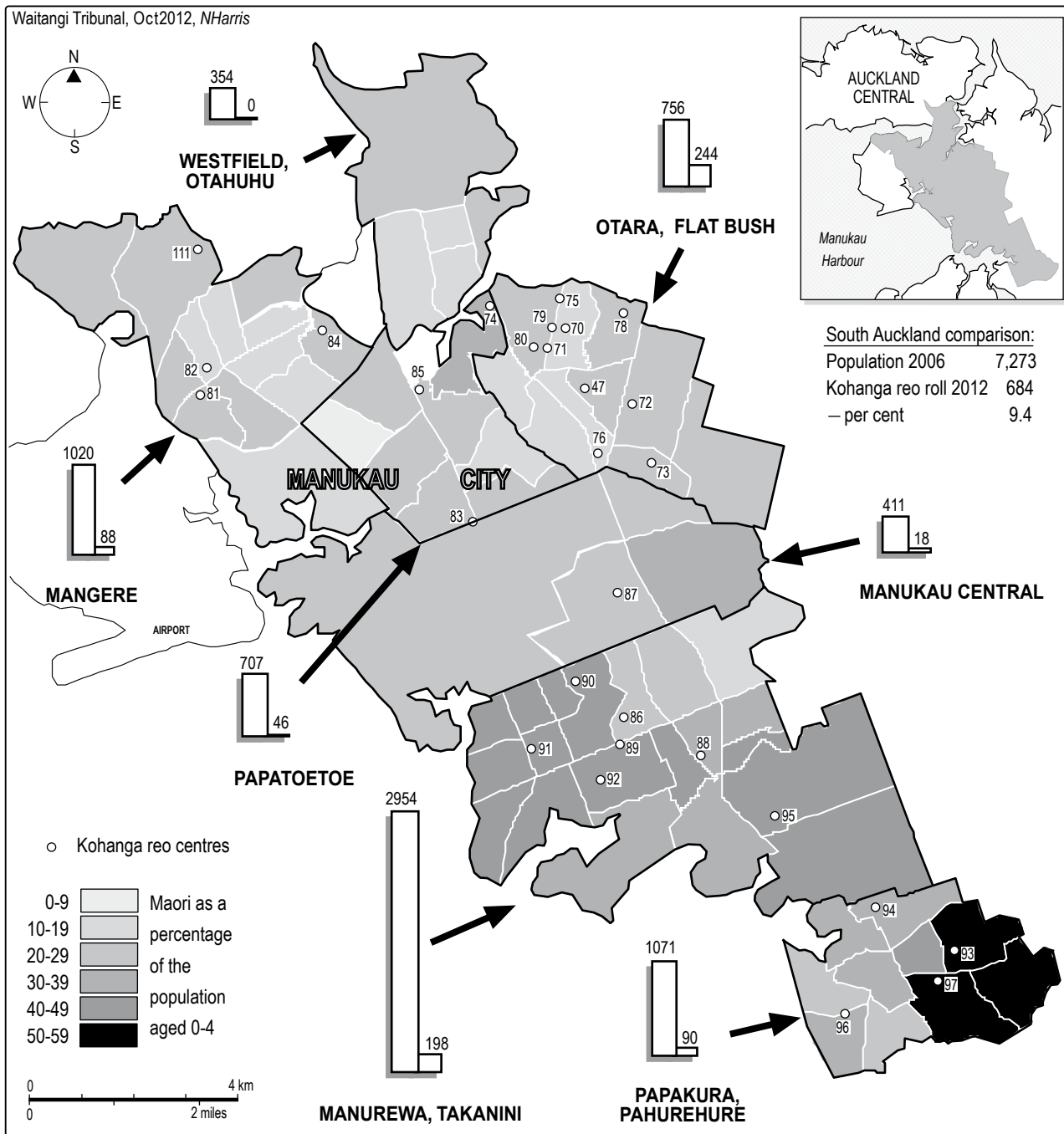
The majority of kōhanga reo in the region captured by the study had some capacity and could accommodate new students if encouraged by a 'participation' policy that incentivises participation in these kōhanga reo. In other parts of the region, the development of new kōhanga reo may be required to better meet the needs of those for whom transport and other socio-economic matters are an issue.

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5.4.4

Key to Map 5.1

Urban area and kōhanga reo		Roll at June 2012
<i>Westfield – Otahuhu</i>		
—		0
<i>Mangere</i>		
81	Te Kōhanga Reo o Mataatua ki Mangere	36
82	Kōhanga Reo ki Pikitia	30
84	Whaia Te Mātauranga Te Kōhanga Reo	22
111	Te Paa Harakeke Reo	
<i>Otara – Flat Bush</i>		
47	Ki Tamaki Rāwhiti Kōhanga Reo	8
70	Te Rahuitanga Kōhanga Reo	20
71	Te Reo Rangatira ki Whaiora Te Kōhanga Reo	36
72	Rongomai Te Kōhanga Reo	25
73	Te Kupenga Te Kōhanga Reo	30
74	Te Otinga ki Tamaki Kōhanga Reo	25
75	Te Kōhanga Reo o Te Ngati Otara Marae	29
76	Whakatapuranga ki Otara Te Kōhanga Reo	12
78	Te Piringa ki Otara Kōhanga Reo	17
79	Te Huinga Reo Kōhanga Reo	29
80	Te Manawa Tapu o Te Kupu	15
<i>Papatoetoe</i>		
83	Te Kōhanga Reo o Te Rangimarie o Otahuhu	29
85	Te Kōhanga Reo ki Papatoetoe	17
<i>Manukau Central</i>		
87	Te Wiri Kōhanga Reo	18
<i>Manurewa – Takanini</i>		
88	Te Puawaitanga ki Manurewa	22
89	Te Kamaka Matauranga Kōhanga Reo	13
90	Te Timitanga Kōhanga Reo	40
91	Te Atawhai Kōhanga Reo	22
92	Tahuri Mai Kōhanga Reo	38
95	Humarie Kōhanga Reo	30
<i>Papakura – Pahurehure</i>		
93	Kiwitoa Te Kōhanga Reo	26
94	Nga Puawai o Wikitoria Te Kōhanga Reo	24
96	Pukehori Te Kōhanga Reo	26
97	Te Maunga Kohungahunga Kōhanga Reo	14



**Map 5.1: The Māori population aged 0-4 in South Auckland and enrolment in kōhanga reo.** The shading represents the percentage of Māori in the total population aged 0-4 years at the 2006 census in each census area unit. The columns compare the total Māori population aged 0-4 years in 2006 for each of seven urban areas (the left-hand column) with enrolments in kōhanga reo within each urban area in June 2012 (the right-hand column).

The numbered dots give the location of each kōhanga reo are referenced to the accompanying table.

Sources: Memorandum 3.4.13 (claimant counsel, memorandum providing additional information, 1 August 2012); doc E15 (table attached to memo 3.4.13); Statistics New Zealand, Census 2006, Ethnic Group (Grouped Total Responses) and Maori Descent by Sex, for the Census Usually Resident Population Count, 2006



CHAPTER 6

**TE WHANAUNGATANGA O TE KARAUNA ME TE KŌHANGA REO  
THE RELATIONSHIP BETWEEN THE CROWN AND  
THE KŌHANGA REO MOVEMENT**



As outlined in chapter 2, relations between the claimants and the Crown (who jointly are responsible for sustaining the kōhanga reo movement) have been strained. In this chapter we review how the relationship has worked in practice. We consider in particular:

- ▶ the history of the relationship between the Crown and kōhanga reo;
- ▶ the formation, terms, expectations, and conduct of the parties pursuant to the Tripartite Agreement;
- ▶ the funding and service agreements between the Ministry of Education and the Trust;
- ▶ the Funding, Quality and Sustainability Working Group; and
- ▶ Government reviews of the Trust, in particular the ECE Taskforce.

Painting by Robyn Kahukiwa reproduced by permission of Te Kōhanga Reo National Trust Board

**6.1 THE CLAIMANTS' POSITION**

The Crown's commitment to sustaining the partnership articulated through the Tripartite Agreement formed in 2003 between the Trust and the Ministers of Education and Māori Affairs was queried by the claimants, who alleged that the Crown had demonstrated a lack of good faith in its dealings with the Trust. Rather, it was their view that the Ministry and Te Puni Kōkiri had devalued the relationship by failing to act in accordance with the agreement and by failing to send senior representatives to meetings so as to properly engage with the Trust.<sup>1</sup>

The claimants were also critical of the number of Government reviews to which the kōhanga reo sector or the Trust had been subjected over the last decade, and of the Government's response to the conclusions and recommendations provided by the various review reports.<sup>2</sup> They focused principally on the recent ECE Taskforce Report, but also referred to the Gallen, PricewaterhouseCoopers, and Māori Affairs Select Committee reports, and to the Funding, Quality and Sustainability Working Group, as well as several recent ministerial proposals for other reviews.<sup>3</sup> The claimants accused the Crown of failing to implement key recommendations favourable to kōhanga reo, while progressing recommended ECE changes that risked having a negative effect on kōhanga reo and the Trust.<sup>4</sup> They portrayed the Crown's resort to reviews as a failure to exercise good, well-informed kāwanatanga and as a withdrawal from good faith partnership, undermining the Trust's status as an equal partner under the Tripartite Agreement and damaging relations between the partners.<sup>5</sup>

Claimant counsel Mai Chen asked the Tribunal to take into account 10 points in her opening submissions. We consider eight of these go to the essence of how the claimants perceived their relationship with the Crown, through the Ministry and Te Puni Kōkiri, at the commencement of the hearing.<sup>6</sup> These points in summary were as follows:

- ▶ the Crown *does not understand* the kaupapa of kōhanga reo and wrongly treats them as ECE services;
- ▶ the Crown *has not protected* kōhanga reo as taonga in their own right;
- ▶ the Crown *has incentivised*, through regulations, licensing, and funding policies, a departure from the kōhanga reo kaupapa by mainstreaming kōhanga reo into ECE;

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1. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), pp 108–109

2. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), pp 104–112

3. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), pp 104–112

4. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 106–127

5. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 108, 110

6. The other two points address the results of these Crown actions and inactions namely a 'significantly declining participation in kōhanga reo by mokopuna, whānau, extended whānau and kaumātua contributing to the perilous state of te reo Māori', and the Trust's proposition for kōhanga reo-specific legislation. See submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), pp 7–8



- ▶ the Crown *has discriminated* against kōhanga reo through its funding policy (especially through its emphasis on ECE qualifications and its untargeted focus on increasing participation of mokopuna in ECE);
- ▶ the Crown *has assimilated* kōhanga reo by mainstreaming them into ECE;
- ▶ the Crown's Education Review Office *has unfairly and inconsistently* reviewed kōhanga reo;
- ▶ the Crown *has not acted in good faith* towards the Trust – and often excluded or undermined it – by failing to adequately consult on issues affecting kōhanga reo;
- ▶ the Crown *has commissioned reviews* of the kōhanga reo movement but has not implemented results, findings, and recommendations favourable to kōhanga reo.<sup>7</sup>

In closing submissions, Ms Chen further developed her points and again some of these demonstrate the claimant's view of their relationship with the Ministry and Te Puni Kōkiri. They alleged that:

- ▶ the Crown *mainstreamed* kōhanga reo within ECE and fundamentally *undermined* its kaupapa;
- ▶ the Crown *fails to understand* that simply increasing participation in ECE does nothing to revitalise te reo me ngā tikanga Māori;
- ▶ the practical effect of its regulations, licensing, and funding policies has been that the Crown has *assimilated* kōhanga reo within ECE;
- ▶ the Crown has *incentivised* a departure from the kōhanga reo kaupapa and declining Māori participation in kōhanga reo; and
- ▶ the Crown has *not acted in good faith* towards the Trust as the kaitiaki of kōhanga reo; rather, the Crown has *acted to exclude and undermine* the Trust and has not consulted adequately with it on matters of importance.<sup>8</sup>

Ms Chen advised that, as a result of the actions of the Crown, the claimants want separate legislation 'to get kōhanga reo out of the MOE [Ministry of Education] and the ECE framework.'<sup>9</sup> That was because, we were told, the relationship between the Trust, the Ministry of Education and Te Puni Kōkiri had 'fundamentally broken down.'<sup>10</sup>

At the end of the first week of hearing, the detail of how the kōhanga reo movement should transition out of the Ministry was presented to the Tribunal by Toni Waho from the Trust. He advised that, in order to re-establish the relationship with the Crown, the Trust wants the Crown to recognise its Treaty rights. These rights, he considered, include: 'the right to be Māori'; the 'right to speak Māori from birth and grow using te reo all the

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7. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), pp 6–8. Emphasis added to quoted text.

8. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 6–7. Other points added by claimant counsel included a discussion of the right of mokopuna to develop as Māori, and immersion in 'authentically Māori environments' in order to realise this right, as well as the Trust Board's status as kaitiaki for kōhanga reo.

9. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 8

10. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 159

time, wherever, whenever, they choose; the ‘right for Māori to create’ their ‘own space and implement’ their ‘own knowledge systems’; and the ‘right for children to be developed and nurtured in a Māori world view.’<sup>11</sup>

Mr Waho advised that the Trust was seeking an ‘immediate transitional relationship at Ministerial level (with operational support from the Department of Prime Minister and Cabinet [DPMC])’.<sup>12</sup> Ms Chen explained that the claimants’ principal reason for seeking to have interim control vested in the DPMC was that the activities and benefits flowing from kōhanga reo spanned a number of departmental portfolios, which the DPMC was best placed to coordinate.<sup>13</sup>

### 6.2 THE CROWN’S POSITION

The Crown, we were told, ‘acknowledges’ and ‘values’ the relationship with the Trust and the strong contribution that kōhanga reo makes to achieving te reo Māori, whānau development and education goals.<sup>14</sup> For the Ministry of Education, Rawiri Brell told us that the relationship with the Trust has been ‘significant and often productive.’<sup>15</sup>

Crown counsel pointed to the Tripartite Agreement of 2003 as unique and as recognising te reo and Māori developmental as well as educational objectives. Counsel argued that the amount and configuration of the Ministry’s policy response to kōhanga reo, including funding, reflected objectives that it shared with the Trust.<sup>16</sup>

The funding included a regular direct payment to the Trust that no other ECE service received and that was regulated by a service agreement that clearly recognised shared objectives.<sup>17</sup>

Both the joint work between 2006 and 2008 on shared outcomes and the Funding, Quality and Sustainability Working Group between 2008 and 2010 reflected sustained Ministry of Education engagement with the Trust before being overtaken by other developments.<sup>18</sup> The Ministry, Crown counsel said, had also put effort towards assisting the Trust to engage effectively with the complexities of government processes and structures. This included an offer to second policy staff to the Trust, and attempts to resolve problems and adjust systems and information to address kōhanga reo concerns.<sup>19</sup>

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11. Document B9 (closing comments of the claimants (Tony Waho), undated)

12. Document B9 (closing comments of the claimants (Tony Waho), undated)

13. Claimant counsel, under questioning by the Tribunal, third week of hearings, 23 April 2012 (transcript 4.1.5, pp 28–32)

14. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), p 22

15. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), p 3

16. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 37

17. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 36

18. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 37–38

19. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 42–45

The relationship between the Ministry and the Trust was, Crown counsel argued, multi-layered and conducted by staff at all levels up to the chief executive.<sup>20</sup> Responsibility was appropriately delegated to the level best equipped to make progress on particular issues and to work effectively with their Trust counterparts, and involved senior staff with relevant expertise, including staff from Te Puni Kōkiri.<sup>21</sup> Within the framework of existing systems, the Ministry of Education had also been responsive to Trust concerns in trying to adapt procedures, modify regulatory instruments, channel resources, trial possible solutions, and enable kōhanga reo to gain full access to available funding.<sup>22</sup>

Crown counsel acknowledged that there was room for improvement in the Crown's relations with the Trust and kōhanga reo.<sup>23</sup> The Crown was conscious that some areas of joint work by the tripartite members had proceeded more slowly than either side would have preferred. One was the delays to the Funding, Quality and Sustainability Working Group process, and its eventual lapse in late 2010 when key Ministry staff were diverted to serve on the secretariat of the ECE Taskforce and to assist the earthquake disaster recovery in Christchurch.<sup>24</sup>

Crown counsel submitted there had been positive outcomes from the Crown's relationship with the Trust and kōhanga reo and that the Ministry had shown appropriate commitment.<sup>25</sup> That faster and more substantial progress had not eventuated was in part, counsel contended, due to the difficulty and complexity of the issues to be resolved.<sup>26</sup> He maintained that the Funding, Quality and Sustainability Working Group's efforts had made significant progress which could readily be picked up and completed.<sup>27</sup> This included options for: statutory recognition of the Trust; a new funding model for kōhanga reo, in particular for recognition of whānau development and te reo components; and ensuring the sustainability of kōhanga reo property.<sup>28</sup> The Ministry of Education had also funded the Trust to undertake or participate in relevant research.<sup>29</sup> Finally, the Ministry issued an apology for the lack of consultation with the Trust on the ECE Taskforce process.<sup>30</sup>

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20. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 34–36

21. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 41–42

22. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 43–45

23. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 34

24. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 38, 40, 44–45, 69, 71–72

25. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 34

26. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 39–40

27. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 38–40. Those efforts were recorded in what has been described in the hearings as the 'Hodges draft report': doc A4, vol 2 (Pania Tahau-Hodges, 'Draft report on the outcomes of Te Kōhanga Reo Working Group', report prepared for Ministry of Education, October 2012), pp 228–261

28. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 38–39

29. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 37

30. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 46; doc D2 (Karen Sewell, Secretary of Education and Leith Comer, Chief Executive, Te Puni Kōkiri to Timoti Kāretu and Tina Olsen-Ratana, co-chairpersons, Te Kōhanga Reo National Trust, letter, 23 September 2011); doc A62 (Richard Walley, brief of evidence, 15 February 2012), p 59

On the claimants' criticism of the Crown's resort to reviews of the Trust and kōhanga reo, Crown counsel had little to say other than to note the Crown's apology for the Ministry of Education's failures in respect of the ECE Taskforce process and the eventual publication of the Trust's response.<sup>31</sup> For the Ministry, Mr Brell saw the reviews as positive because they resulted in many positive outcomes and the removal of barriers.<sup>32</sup>

### 6.3 TRIBUNAL ANALYSIS AND FINDINGS

We have discussed the development of the Crown's relationship with the Trust in the 1980s and 1990s, in chapter 2. We have seen that partnership was central to the rapid building of the kōhanga reo movement. The Department of Māori Affairs was intimately involved in assisting kōhanga reo locally, in providing administrative support to the Trust nationally, and in participating directly in the Trust together with other senior Government officials.

#### 6.3.1 Partnership in action before 2003

In 1990, the Crown transferred responsibility for kōhanga reo to the Ministry of Education, following the disestablishment of the Department of Māori Affairs in 1989.<sup>33</sup> Initially the Trust put all its efforts into trying to work with the Ministry to 'get them to try and understand its kaupapa'.<sup>34</sup> The 1995 *Te Korowai* appears to have been a product of those times. It cemented the role of the Trust as representing kōhanga reo.<sup>35</sup> *Te Korowai* was a response to the Ministry of Education's scheme for funding and regulating kōhanga reo as an integral part of ECE sector.

Another initiative during this period was the development of the national curriculum *Te Whāriki* (1996), which includes specific content for kōhanga reo and other Māori immersion ECE services. The curriculum was developed through an extensive consultation process that commenced in 1991 and in which Trust experts were closely involved.<sup>36</sup>

There were other examples from the evidence which indicate that during this period several outcomes negotiated by the Crown and the claimants were successfully concluded.

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31. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 46–47

32. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), p 23

33. Document A63 (Rawiri Brell brief of evidence, 15 February 2012), p 4

34. Document A2 (Dame Iritana Tāwhiwhirangi, brief of evidence in support of application for urgency, 25 July 2011), p 6

35. Document A84 (Te Kōhanga Reo National Trust, *Te Korowai* (Wellington: Te Kōhanga Reo National Trust, 1995)), pp 323–541

36. Document A66 (Anne Meade, brief of evidence, 15 February 2012), pp 14–17

The Trust, despite its description of the process as ‘onerous’, successfully negotiated several annual funding agreements.<sup>37</sup> The first memorandum of agreement was signed by the Ministry and the Trust in 1992. We were told that the Crown has no similar agreement with any other service provider.<sup>38</sup> In 2005, these annual funding agreements were replaced by Master Agreements with contract schedules that were initially annual and then, from 2008 onwards, for a three-year period.<sup>39</sup> It has been this arrangement that has enabled the Trust to fund its regional network of staff.<sup>40</sup>

By the early 2000s, the annual agreements, under which the Ministry funded the Trust, explicitly recognised the ‘autonomy and independence’ of the kōhanga reo movement as ‘a Māori Whānau development kaupapa’ and routinely appended a ‘partnering agreement’.<sup>41</sup> This bound both parties to gain top management’s commitment and endorsement of the principles of partnering, and to ‘acknowledge each other’s agendas, focussing on common goals, clarifying expectations and establishing ground rules for the contract relationship’.<sup>42</sup> Amongst the principles were to:

- ▶ Respect each other’s reputation and perspective and reflect this in dealing with third parties;
- ▶ Provide feedback in a measured and constructive way, as well as address and respond to issues raised by the other party;
- ▶ Provide early warning of proposed or possible future changes;
- ▶ Use the nominated channels to work through issues.<sup>43</sup>

The parties were to engage in ‘roundtable meetings’ at management level, ‘consultation prior to change’ and informing staff of the partnering agreement.<sup>44</sup>

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37. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p13; doc A63 (Rawiri Brell, brief of evidence, 15 February 2012), p9

38. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), p9

39. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), p9; doc A22 (‘Master Agreement to Provide Services for Nga Kōhanga Reo Between Ministry of Education and Te Kōhanga Reo National Trust’, 8 March 2005), pp 1183–1193; doc A64 (‘Master Agreement to Provide Services for Nga Kōhanga Reo Between Ministry of Education and Te Kōhanga Reo National Trust’ (to June 2011), 2008), pp 392–445

40. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), pp 7–8

41. Document A22 (‘Agreement for Provision of Services between the Secretary of Education and Te Kōhanga Reo National Trust Board for the period 1 January 2002 to 31 December 2002’, 2002), pp 1056, 1086–1087

42. Document A22 (‘Agreement for Provision of Services between the Secretary of Education and Te Kōhanga Reo National Trust Board for the period 1 January 2002 to 31 December 2002’, 2002), p 1086

43. Document A22 (‘Agreement for Provision of Services between the Secretary of Education and Te Kōhanga Reo National Trust Board for the period 1 January 2002 to 31 December 2002’, 2002), pp 1086–1087

44. Document A22 (‘Agreement for Provision of Services between the Secretary of Education and Te Kōhanga Reo National Trust Board for the period 1 January 2002 to 31 December 2002’, 2002), p 1087. See also the 2003 and 2004 Partnering Agreements in document A23(f) (‘Agreement for Provision of Services between the Secretary of Education and Te Kōhanga Reo National Trust Board for the period 1 January 2003 to 31 December 2003’, 25 June 2003), pp 85–86; and doc A23(f) (‘Agreement for Provision of Services between the Secretary of Education and Te Kōhanga Reo National Trust Board for the period 1 January 2004 to 31 December 2004’, 9 August 2004), pp 144–145

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6.3.1

Thus, by the early 2000s, if not earlier, some of the basic principles, practices and understandings of partnership were written into the top-level operational agreement between the Ministry and the Trust. The partnering agreement's recognition that its scope was limited to an ECE dimension implicitly acknowledged that it did not cover all aspects of the kōhanga reo movement's whānau development kaupapa.<sup>45</sup> This educational focus and the impact of government regulation and reviewing led to a renewed effort to construct a more broadly-based relationship with the Crown.<sup>46</sup>

- ▶ Another gain for the Trust was representation on the working group established to review the ECE sector in 2000. As we noted in chapter 4, Dr Anne Meade became the convenor of the ECE Strategic Plan Working Group charged with that responsibility.<sup>47</sup> The working group was made up of 31 members from the ECE sector. They engaged in a wide-ranging consultation process with the sector. Two members of the Māori caucus for that working group, Dame Iritana Tāwhirangi and John Apatu, were nominated by Trust.<sup>48</sup> Mr Brell, for the Ministry, believed that this gave the Trust the opportunity to influence the ECE sector's understanding of the unique contribution and kaupapa of kōhanga reo. He advised that it was because of the Trust's input that the Crown did not place teacher qualification targets on kōhanga reo.<sup>49</sup>
- ▶ The tangible results of the participation of Trust representatives appears to have been limited to the preservation of the position of kōhanga reo in relation to the teacher qualification targets that were eventually adopted from the Crown's 10-year plan. We note, for example, that the Crown did not take up the working group's recommendations on language policy, which included support for te reo immersion learning in ECE.<sup>50</sup>

Other outcomes around this time were also less satisfactory to the Trust. They included the cessation of the property pūtea scheme and the Government's failure to fulfil the Gallen Report's recommendations on funding for the Trust's programmes, as we discussed in chapter 2.

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45. Document A22 ('Agreement for Provision of Services between the Secretary of Education and Te Kōhanga Reo National Trust Board for the period 1 January 2002 to 31 December 2002', 2002), p1056

46. Document A24(h) (Crown and Kōhanga Reo National Trust Joint Working Group, *Report to the Ministers of Education and Maori Affairs: Review of the Relationship Between the Crown and Te Kohanga Reo National Trust* (Wellington: Crown and Kōhanga Reo National Trust Joint Working Group, 2001)), pp 32, 40

47. Document A66 (Anne Meade, brief of evidence, 15 February 2012), p11; doc A63 (Rawiri Brell, brief of evidence, 15 February 2012), p15

48. Document A66 (Anne Meade, brief of evidence, 15 February 2012), p11

49. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), p17

50. Document A66 (Anne Meade, brief of evidence, 15 February 2012), pp11–13

### 6.3.2 Partnership after 2003

Dame Iritana described how, in 2000, the Trust approached the Ministers of Education and Māori Affairs, seeking a more direct relationship with the Crown.<sup>51</sup> The Labour Party, which led the coalition Government formed after the November 1999 election, had signalled a review of the Trust in its pre-election manifesto.<sup>52</sup> A meeting in November 2000 between the Trust and the Minister of Education led to the formation of a joint working group on the relationship between the Trust and the Crown under the chairmanship of a retired High Court judge, Sir Rodney Gallen, with equal representation of the Trust and the Crown. In 2001, its deliberations resulted in what Sir Rodney described as a ‘consensus report’ to the two Ministers.<sup>53</sup>

The Gallen Report concluded that ‘the broad Māori development and education aims and objectives of the Trust and kōhanga reo can be better facilitated through a tripartite relationship agreement between the Trust, the Ministry of Education and Te Puni Kōkiri’.<sup>54</sup> Agreement on this initiative led to the conclusion in March 2003 of a Tripartite Relationship Agreement that closely reflected the recommendations of the Gallen Report.<sup>55</sup>

The Tripartite Agreement is, we think, a landmark document that expressed what the Tribunal understands to be a rendering in English of the kaupapa of the kōhanga reo movement, and that provided a sound foundation for a partnership-based relationship between the Trust and the two principal state agencies acting on behalf of the Crown. The fact that it was signed by the Chairperson of the Trust and the Ministers of Education and Māori Affairs confirms the weight the parties attached to it.

The agreement directly addressed the Trust’s concerns about a lack of recognition of the Trust’s te reo, tikanga, and whānau development objectives in articulating a shared vision of the future where:

- ▶ mokopuna are provided the early foundations necessary to grow into successful and contributing adults of the future in both Māori and Pakeha worlds;
- ▶ mokopuna grow within a supportive and flourishing community (whānau, hapū and iwi); and

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51. Document A2 (Dame Iritana Tāwhiwhirangi, brief of evidence in support of application for urgency, 25 July 2011), p 7

52. Document A25(g) (Ross Boyd, senior manager, Ministry of Education to Minister of Education and Associate Minister of Education, ‘Short and Long Term Issues around the Property Putea of Te Kohanga Reo National Trust’, memorandum, 1 November 2001), p 27

53. Document A24(h) (Crown and Kohanga Reo National Trust Joint Working Group, *Report to the Ministers of Education and Maori Affairs: Review of the Relationship Between the Crown and Te Kohanga Reo National Trust* (Wellington: Crown and Kohanga Reo National Trust Joint Working Group, 2001)), pp 30, 32

54. Document A24(h) (Crown and Kohanga Reo National Trust Joint Working Group, *Report to the Ministers of Education and Maori Affairs: Review of the Relationship Between the Crown and Te Kohanga Reo National Trust* (Wellington: Crown and Kohanga Reo National Trust Joint Working Group, 2001)), p 32

55. Document A64 (‘Tripartite Relationship Agreement between Te Kōhanga Reo National Trust and the Ministers of Education and Māori Affairs’, 2003), pp 383–390. The agreement came to be known as the Tripartite Agreement.



- ▶ te reo me ngā tikanga Māori is vibrant and celebrated within New Zealand.<sup>56</sup>

The vision statement identified whānau as ‘the starting point for the future survival of Māori culture’, kōhanga reo as integral to its achievement, and the autonomous governance of each party, as the combined efforts needed to give effect to the agreement. The parties agreed that ‘giving effect to this vision reflects the principles inherent in the Treaty of Waitangi.’<sup>57</sup>

The agreement committed the parties to collaborating in pursuit of three broadly-defined shared outcomes:

**Māori Language Development** – Ensure the survival of te reo Māori and its use within the whānau and early childhood domains.

**Māori development** – Recognise and support the holistic development of kōhanga reo whānau as integral to the development of the child and as a fundamental aspect of Māori development.

**Education** – Foster the participation of Māori children and adults in quality early learning within a whānau and Māori cultural environment.<sup>58</sup>

To achieve these outcomes the parties agreed on five shared overarching goals as a basis for their business planning. They comprised whānau development; strengthening whānau capacity to deliver quality services through kōhanga reo; collaboration with other sectors to ensure mokopuna health and wellbeing; strengthening relationships with iwi, hapū, and kaupapa Māori-based educational organisations; and promoting ‘participation and quality learning in te reo Māori for kōhanga whānau.’<sup>59</sup>

Underpinning the relationship were sets of related principles, values, and understandings. These centred on early learning and development ‘within a kaupapa Māori/whānau development model’. The focus was to be on nurturing and care by whānau. The parties also agreed that ‘the needs of kōhanga whānau include but go beyond education.’<sup>60</sup> Setting outcomes and strategies for sustainable improvement, they agreed, would require support from ‘sound research, accurate and informative data . . . and robust monitoring and evaluation information.’<sup>61</sup> The parties undertook to respect the agreement ‘in utmost good faith’, keep

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56. Document A64 (‘Tripartite Relationship Agreement Between Te Kōhanga Reo National Trust and the Ministers of Education and Māori Affairs’, 2003), p 384

57. Document A64 (‘Tripartite Relationship Agreement Between Te Kōhanga Reo National Trust and the Ministers of Education and Māori Affairs’, 2003), pp 384–385

58. Document A64 (‘Tripartite Relationship Agreement Between Te Kōhanga Reo National Trust and the Ministers of Education and Māori Affairs’, 2003), p 386

59. Document A64 (‘Tripartite Relationship Agreement Between Te Kōhanga Reo National Trust and the Ministers of Education and Māori Affairs’, 2003), pp 386–387

60. Document A64 (‘Tripartite Relationship Agreement Between Te Kōhanga Reo National Trust and the Ministers of Education and Māori Affairs’, 2003), pp 387–389

61. Document A64 (‘Tripartite Relationship Agreement Between Te Kōhanga Reo National Trust and the Ministers of Education and Māori Affairs’, 2003), p 388

each other well informed, accommodate differences in views and priorities, develop good mutual understanding, share responsibility, value each other's role and contribution, and meet annually to review progress.<sup>62</sup>

We consider the Tripartite Agreement to encompass both recognition of the kaupapa of the kōhanga reo movement and an understanding of the partnership obligations of the Treaty required to fulfil it. We note the acceptance by the parties that the kaupapa included education and whānau development. They accepted that both of these should be situated within a Māori cultural setting dedicated to the transmission of te reo me ngā tikanga Māori. Furthermore, they both expressed a commitment to participation in quality early learning.

We note the significance which the three parties accorded to the agreement. Karen Sewell, who was Secretary for Education between November 2006 and November 2011, acknowledged the importance of the relationship it established 'because it makes a commitment for us to work together, and because in it we agree about the kaupapa that's particular to kōhanga reo . . .'<sup>63</sup> In this she was supported by Apryll Parata, who was Deputy Secretary Māori Education from 2007 until early 2012.<sup>64</sup> Moreover, in our view the requirements placed on the parties in the agreement reflected, in part, the rights and obligations each owed under the Treaty, a matter we referred to in chapter 3.

### 6.3.3 Partnership in practice

#### (1) *Relationship with the Crown – shared outcomes*

The Tripartite Agreement declared it was the parties' shared understanding that the Crown and the Trust acknowledge and respect their 'arrangement in utmost good faith and will endeavour to keep each other informed about important education and Māori development policies and issues, particularly those that might impact on each other's core business'.<sup>65</sup>

For the Ministry, Mr Brell, who was the group manager Māori from 1995 until 2005 and deputy secretary early childhood and regional education from 2006, discussed the nature of this tripartite relationship with the Trust.<sup>66</sup> He is now responsible for the Early Years and Learning Support group in the Ministry.<sup>67</sup>

Prior to 2005, annual memoranda of agreement were used to achieve the shared vision and outcomes in the Tripartite Agreement. These were replaced by Master Agreements at

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62. Document A64 ('Tripartite Relationship Agreement Between Te Kōhanga Reo National Trust and the Ministers of Education and Māori Affairs', 2003), pp 388–389

63. Karen Sewell, under questioning by claimant counsel, second week of hearing, 19 March 2012 (transcript 4.1.4, pp 87–88)

64. Apryll Parata, under questioning by Tribunal, second week of hearing, 22 March 2012 (transcript 4.1.4, p 515)

65. Document A64 ('Tripartite Relationship Agreement Between Te Kōhanga Reo National Trust and the Ministers of Education and Māori Affairs', 2003), p 389

66. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), pp 3, 11–13

67. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), p 3

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the request of the Ministry in 2004–05. The first Master Agreement was signed on 8 March 2005 and the current Agreement was entered into in 2008.<sup>68</sup>

Mr Brell pointed to the renegotiated Master Agreement as a shared outcome of the tripartite relationship. It was, he said, one of the products of a series of shared outcome workshops held between 2006 and 2008 between the Trust, the Ministry and Te Puni Kōkiri with the aim of improving mutual understandings and developing common ground.<sup>69</sup> The agreement specifically uses partnership terminology in committing to a formal set of ‘Partnering Principles’ as being the method ‘of operating a relationship to promote prompt, constructive communication and a problem solving approach between the parties.’<sup>70</sup> Among the provisions of the current agreement is a requirement to apply a range of detailed partnering principles to ‘guide any dealings’ between the parties. One of those is to ‘provide early warning’ of any proposed changes and consultation prior to any change.<sup>71</sup>

In the Tribunal’s view the Master Agreement expresses good faith principles that should apply between the Crown and Māori under the Treaty and the Tripartite Agreement. These documents, on paper, make it seem that the parties were clearly engaged in a Treaty partnership relationship.

Mr Brell also told us he believed that the Crown and the Trust ‘share a vision of a strong, sustainable kōhanga [reo] movement that provides quality education, fosters te reo Māori, and promotes whānau development’. His view was that progress towards completing a number of over-arching outcomes has repeatedly been impeded by some ‘fundamental points of difference’.<sup>72</sup>

Despite the progress on the Master Agreement, he acknowledged that the Trust’s relationship with the Ministry has been ‘patchy at best’. Sometimes, it had been positive and effective, but more often it had been ‘spasmodic and reactive’. He suggested that the relationship has largely been focused on ‘quick fixes for immediate problems’, and has ‘failed to tackle the really fundamental issues’ that challenge the parties.<sup>73</sup>

This evidence is consistent with the evidence of the claimants regarding what was essentially a failure on the part of the parties to continue to work towards meeting the goals and outcomes of the Tripartite Agreement. Tina Olsen-Ratana told us that by the time she

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68. Document A22 (‘Master Agreement to Provide Services for Nga Kōhanga Reo Between Ministry of Education and Te Kōhanga Reo National Trust’, 8 March 2005), pp 1183–1193; doc A64 (‘Master Agreement to Provide Services for Nga Kōhanga Reo Between Ministry of Education and Te Kōhanga Reo National Trust’ (to June 2011), 2008), pp 392–405

69. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), pp 14–15

70. Document A22 (‘Master Agreement to Provide Services for Nga Kōhanga Reo Between Ministry of Education and Te Kōhanga Reo National Trust’, 8 March 2005), p 1185; doc A64 (‘Master Agreement to Provide Services for Nga Kōhanga Reo Between Ministry of Education and Te Kōhanga Reo National Trust’ (to June 2011), 2008), p 394

71. The numbering quoted is taken from the 2008 version. The 2005 Master Agreement had identical wording but was not numbered in this way – clauses 2–3, 7. Document A64 (‘Master Agreement to Provide Services for Nga Kōhanga Reo Between Ministry of Education and Te Kōhanga Reo National Trust’ (to June 2011), 2008), p 395

72. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), p 4

73. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), p 23

became a trustee in 2007 the tripartite relationship had ‘failed’. She stated that ‘meetings were infrequent and unproductive and the Crown appeared to lack any real commitment’.<sup>74</sup>

Mr Brell noted that the Ministry became frustrated on occasion with the Trust given the length of time, he claimed, it took to consider proposals relating to the funding agreements and its failure sometimes to meet its milestone reports. He cited 2011 as an example.<sup>75</sup>

As Mr Brell himself noted, the shared outcomes work was overtaken by several developments, such as the Trust’s own strategic review over the period 2005–2007 and the 2008 restructuring of the ECE Group in the Ministry into the Ministry’s Early Childhood and Regional Education Group. The work was also superseded by the establishment in 2008 of the Funding, Quality and Sustainability Working Group.<sup>76</sup>

### (2) Relationship with the Crown, 2002–12

As we discussed in chapter 4, in the year before the Tripartite Agreement was signed *Pathways to the Future: Ngā Huarahi Arataki* – the Crown’s 10-year strategic plan for ECE – was adopted.

The plan sought to improve relationships with Māori by seeking to create an environment where the wider needs of Māori children and their parents and whānau were recognised and acknowledged through supporting ECE services with strong links to whānau, hapū and iwi. The aim was to smooth the transition to primary education which ‘may require more effort for Māori children transitioning from Māori immersion ECE to English-medium schooling’. The Ministry, the plan said, ‘may need to develop specific policies and programmes to smooth their progress’.<sup>77</sup>

Action points in the plan merely referred to providing support for ECE services to strengthen links with whānau, hapū, and iwi, and support parents and whānau in the teaching, learning, and assessment process.<sup>78</sup> There was nothing in *Pathways to the Future: Ngā Huarahi Arataki* that emphasised creating, forging, or improving relationships with te reo Māori ECE immersion services, let alone prioritising relationships around kōhanga reo with the intent of assisting the survival of te reo.

The same could be said for the Crown’s general te reo Māori strategy and its policies concerning Māori education as outlined in *Ka Hikitia*. While *Te Whāriki* does provide for an alternative curriculum for kōhanga reo, other than this, nothing but the agreements formed with the Trust such as the Tripartite and Master Agreements gives us any indication that kōhanga reo and the Trust are key relationships for the Ministry in ECE.

74. Document A1 (Tina Olsen-Ratana, brief of evidence in support of application for urgency, 25 July 2011), p 5

75. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), p 10

76. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), pp 14–15

77. Document A64 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki – A 10 Year Strategic Plan For Early Childhood Education* (Wellington: Ministry of Education, 2002)), p 126

78. Document A64 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki – A 10 year Strategic Plan For Early Childhood Education* (Wellington: Ministry of Education, 2002)), p 126

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As a result, there is no formal recognition of the shared vision and shared outcomes agreed to by the Crown and the Trust in the Tripartite Agreement, nor any other coherent statement concerning the importance of the work of the Trust in the ECE policy framework in relation to the vital role of kōhanga reo in protecting the transmission of te reo. The only references to kōhanga reo and the Trust that are to be found in the ECE policy framework concern work that was to be done around ‘quality’.<sup>79</sup>

We consider this lack of direct formal recognition of the kōhanga reo movement in the official policy framework to be problematic and it leads to a number of possible interpretations.

The first is that the Ministry of Education recognises that kōhanga reo are not a standard ECE service because they offer a more diffuse service – whānau development being one aspect. The second is that the Ministry considers kōhanga reo to be an ECE service but has omitted to include them, or due to agreements that the Crown has with the Trust, overt inclusion of the kōhanga reo movement in the policy framework has been avoided. We note that all the indicators in terms of the Education Act 1989, including the curriculum, funding, regulatory, and licensing aspects, give weight to this second interpretation, as this and other chapters in this report identify.

**(3) Crown and Trust relationships with iwi and hapū**

Another issue that has impacted upon the relationship between the Trust and the Crown has been work around iwi relationships. As we noted above, one of the key relationship goals of *Pathways to the Future: Ngā Huarahi Arataki* was to support ECE services with strong links to whānau, hapū, and iwi.

We note the obligations entered into through the Tripartite Agreement form part of a wider network of relationships between Māori and the Crown. The agreement acknowledged a general responsibility towards whānau, hapū, and iwi, their development, and to language revitalisation. It aimed to strengthen relationships with iwi and hapū, recognising them as ‘fundamental to the cultural integrity and kaupapa of the kōhanga movement’ and as ‘part of the community in which kōhanga reo exist’.<sup>80</sup>

Iwi and hapū were, however, not directly involved in the terms of the agreement. In the late 1980s, the Government had envisaged iwi taking responsibility for kōhanga reo as part of a limited devolution of governmental functions to iwi over a period of five years. The Gallen Report revived this proposal but did not fully explain its reasons for doing so, recording only that the Trust had ‘always’ supported devolution but that kōhanga reo opinion

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79. Document A64 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki – A 10 year Strategic Plan For Early Childhood Education* (Wellington: Ministry of Education, 2002)), pp 109, 123–124

80. Document A64 (‘Tripartite Relationship Agreement Between Te Kōhanga Reo National Trust and the Ministers of Education and Māori Affairs’, 2003), p 385

opposed it, favouring instead the building of relationships with iwi.<sup>81</sup> Since that report was the product of a joint working party, we may presume that it accurately reflected the views of the Trust.<sup>82</sup> This proposal did not result in further action, and nor does it appear to have been revisited in the decade since the agreement was signed.

The agreement thus left open how the commitments it established were to be situated in the wider context of Crown–Māori relations. The trust deed itself establishes no formal ties with tribal entities at any level and configures the Trust’s board as a self-perpetuating body which itself elects new members to fill vacancies.<sup>83</sup> Nor are there formal links between the Trust and iwi or hapū. But as Professor Milroy made clear:

Although kōhanga reo whānau expect us to take the lead, we are ultimately bound by their wishes . . . Just as they place trust in you, they can take it away.

Our role is more than that of a legal trustee. Our people expect us to behave in a way that is culturally determined. Every part of what we do is monitored. Loyalty of the trustees to the people is essential.<sup>84</sup>

Notwithstanding the absence of formal accountabilities to iwi, a thick web of interdependent connections links the Trust with kōhanga reo whānau, who in turn affiliate with larger tribal structures. Professor Milroy affirmed that the Trust has not sought a monopoly over kōhanga reo, whose whānau are free to exercise their rangatiratanga in choosing the pathway they follow.<sup>85</sup> On occasion, small numbers of whānau have relinquished Trust oversight,<sup>86</sup> and, as we discussed in chapter 4, other immersion services, such as a small number of puna kōhungahunga, have started up under independent or tribal initiatives. We have seen, however, that the vast majority of whānau who wish their mokopuna to acquire te reo me ngā tikanga Māori at an early age choose to do so through immersion in Trust-chartered kōhanga reo. The Trust and its relationship with iwi and hapū is for Māori to determine.

What is needed from the Crown is an even-handed and responsive approach in exercising its partnership responsibilities. The Crown has entered into iwi partnerships through

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81. Document A24(h) (Crown and Kōhanga Reo National Trust Joint Working Group, *Report to the Ministers of Education and Maori Affairs: Review of the Relationship Between the Crown and Te Kohanga Reo National Trust* (Wellington: Crown and Kōhanga Reo National Trust Joint Working Group, 2001)), pp 50–51

82. The Trust’s representatives were Dame Iritana Tāwhiwhirangi, Andrew Hema and Ned Ihaka. Document A24(h) (Crown and Kōhanga Reo National Trust Joint Working Group, *Report to the Ministers of Education and Maori Affairs: Review of the Relationship Between the Crown and Te Kohanga Reo National Trust* (Wellington: Crown and Kōhanga Reo National Trust Joint Working Group, 2001)), p 52

83. Document A78 (Te Kohanga Reo National Trust Board, ‘Deed of Trust’, December 2002), pp 82–83

84. Document A34 (Wharehuia Milroy, brief of evidence, 22 December 2011), p 14

85. Document A34 (Wharehuia Milroy, brief of evidence, 22 December 2011), p 13

86. Document A69 (Rita Walker, brief of evidence, 15 February 2012), p 3; doc A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p 22



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the Ministry of Education, and Ms Parata told us that there were 54 such arrangements in place in early 2012.<sup>87</sup>

However, the Crown has consistently sought to increase Māori participation in ECE, in which iwi-sponsored initiatives have to date played a small part. Iwi, for their part, have mostly been content to back the Trust's coordination of and support for kōhanga reo as a whānau-based movement.<sup>88</sup>

We have received little direct evidence on the views of iwi on participating in kōhanga reo operations. But Jeremy McLeod, director of te reo, tikanga and mātauranga for Ngāti Kahungunu Iwi Inc, told us that his iwi has not yet considered taking over any responsibility for kōhanga reo in its rohe.<sup>89</sup> In fact, they supported kōhanga reo in their tribal area. We also received a statement of support for the claimants from Dr Apirana Mahuika, chairperson of Te Rūnanga o Ngāti Porou, who spoke of the quality of kōhanga reo graduates.<sup>90</sup>

We also have the views of some iwi from the presentation on education made by the Iwi Chairs Forum to the Prime Minister on 5 February 2012. Assisted in its preparation by the Ministry of Education, it concentrated primarily on the school sector and had little to say about ECE immersion or the role of the Trust, except to include kōhanga reo amongst candidates for accelerated investment.<sup>91</sup> The single example that the paper identified of possible iwi initiatives towards establishing their own services was not in immersion but in mainstream ECE capacity.<sup>92</sup> They also called for accelerated investment in kōhanga reo, kura kaupapa Māori and wānanga.<sup>93</sup> There was also the evidence of Associate Professor Rawinia Higgins, who stated that at the Iwi Leadership Forum meeting she attended in mid-2011, the leaders supported this claim to the Waitangi Tribunal filed by the Trust.<sup>94</sup>

Although in recent years iwi have become more involved in education and te reo revitalisation, this has not, to date, extended far into early childhood immersion. Iwi have been able to coordinate their respective partnership arrangements with the Ministry with continued support for the Trust and kōhanga reo. As matters stand, the evidence we have suggests little conflict between the Trust's role and iwi aspirations, that iwi are generally supportive of

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87. Document c2 (Selwyn Parata, chairman, Matauranga-A-Iwi, Iwi Chairs Forum/Iwi Education Partners, 'Presentation', p 4; doc A58 (Apryll Parata, brief of evidence, 15 February 2012), pp 7-9

88. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 62; doc A6 (Dame Iritana Tāwhiwhirangi, second brief of evidence, 16 August 2011), p 4

89. Document A39 (Jeremy Macleod, brief of evidence, 22 December 2011), pp 3-4

90. Document D17 (Apirana Mahuika, chairman, Te Runanganui o Ngati Porou to Iritana Tāwhiwhirangi, National Kohanga Reo Trust, 'Ngati Porou Support', memorandum, 24 April 2012)

91. Document c2 (Selwyn Parata, chairman, Matauranga-A-Iwi, Iwi Chairs Forum/Iwi Education Partners, 'Presentation', 5 February 2012); Apryll Parata, under questioning by the Tribunal, second week of hearing, 22 March 2012 (transcript 4.1.4, pp 534-535)

92. Document c2 (Selwyn Parata, chairman, Matauranga-A-Iwi, Iwi Chairs Forum/Iwi Education Partners, 'Presentation', 5 February 2012), p 4

93. Document c2 (Selwyn Parata, chairman, Matauranga-A-Iwi, Iwi Chairs Forum/Iwi Education Partners, 'Presentation', 5 February 2012)

94. Rawinia Higgins, under questioning by claimant counsel, first week of hearing, 15 March 2012 (transcript 4.1.3, pp 372-373); submission 3.2.2(a) (Rawinia Higgins, 'Iwi Leaders Forum', 18 August 2011)



the kōhanga reo movement, and that the partnerships some iwi have with the Ministry of Education are well capable of operating in parallel and in harmony with that support.

**(4) Funding of kōhanga reo as an ECE service**

With the adoption of *Pathways to the Future: Ngā Huarahi Arataki*, the Crown announced that it would be reviewing the funding mechanism and regulatory framework for ECE to support this 10-year plan's goals and actions.<sup>95</sup>

A new Technical Advisory Group 'was set up to give expert advice to the Ministry on the development of a new funding mechanism and regulatory framework'. The Technical Advisory Group included representatives of the Trust, and a number of meetings were held during between 2004 and 2005.<sup>96</sup>

The funding regime and the Education (Early Childhood Centre) Regulations were eventually amended to provide that the minimum required staff for the number of children in an ECE teacher-led centre was to be at least 50 per cent with a recognised qualification.<sup>97</sup> The new regime was introduced in June 2005 and was notified through a funding handbook.<sup>98</sup>

The Ministry of Education divided the sector into teacher-led services (with a four band-scale of higher levels of funding), and whānau/parent-led services. Kōhanga reo were placed in the whānau/parent led services on a lower-level, two band scale. This differential in base funding is discussed further in chapter 8.

Given the Crown's agreements with the Trust, we expected to see that the Trust had been consulted on the alignment of the ECE funding and regulatory regime with the 10-year strategic plan, should there be an impact on kōhanga reo business. The claimants asserted that they were not consulted and consider this funding regime to be in breach of article 3 of the Treaty of Waitangi. The Crown disputed this. We consider this issue in more detail in chapter 8, but what the parties' view of the situation does indicate is that the introduction of this new funding regime has further strained the relationship between the Crown and the claimants.

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95. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p10

96. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p12

97. Education (Early Childhood Centres) Regulations 1998, reg 36A; Education (Early Childhood Centres) Amendment Regulations 2007, reg 36A

98. Document E10 (Ministry of Education, *Early Childhood Education Funding Handbook* (Wellington: Ministry of Education, 2005))

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**(5) *Translating the kaupapa of kōhanga reo for the Crown***

At a meeting between the Trust and the Minister of Māori Affairs on 21 May 2008, the Trust raised the issues it was having with the ECE framework being applied to kōhanga reo.<sup>99</sup> Work appears to have begun internally within the Crown to respond to this, but the first effort to recommence the tripartite relationship did not take place until 26 August 2008. Unfortunately the meeting did not go well, and views differ as to why.<sup>100</sup> This meeting became the subject of some debate before us.<sup>101</sup>

The Trust representatives were told that before progressing their desire for legislative recognition and separate funding lines it would be necessary for them to ‘unpack’ their kaupapa in a way that would make it explicable to Ministers and enable them to be persuaded of the business case. Ms Parata described the substance of the discussion in the following way:

I did make reference in a discussion around the need to unpack the kaupapa in a way that those who weren’t immersed in it could access it, which wasn’t received very well by either of the representatives of the Kōhanga Trust who insisted that the kaupapa deserved higher funding, and I asked them ‘what do you mean by kaupapa?’ because when we go to the Minister of Finance we can’t say the kaupapa.

They both said that’s okay for you, Apryll, because you can do that stuff, that government speak. So I suggested that we second an analyst to the Trust to assist with it, they declined that. We carried on talking about a range of things. There were times in that meeting that were very, very uplifting, there were times in it that were very, very depressing.<sup>102</sup>

Ms Parata’s view was that she could not go to Ministers to talk about the kaupapa of kōhanga reo and ask them to find millions of dollars to invest in a new education model for kōhanga reo unless they could understand that kaupapa. Therefore, her focus was on trying to identify the additional value, beyond what the Crown was already funding, that kōhanga reo could point to in order to justify making the Trust’s business case.<sup>103</sup>

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99. Document A1 (Tina Olsen-Ratana, brief of evidence in support of application for urgency, 25 July 2011), p 5; doc A5 (Tina Olsen-Ratana, second brief of evidence, 16 August 2011), pp 2–3. This may have been the meeting mentioned in a ministerial briefing as scheduled for 21 May 2012. Document A22 (Karl Le Quesne, senior manager, early childhood and regional education, Ministry of Education to Minister of Education and Associate Minister of Education, ‘Education Report: Meeting with Board of Te Kōhanga Reo National Trust’, 20 May 2012), pp 309–313; see also doc A1(a) (Tina Olsen-Ratana, ‘Tripartite Meetings’ summary, (2008–2010), 2011), app 2, p 1

100. Document A5 (Tina Olsen-Ratana, second brief of evidence, 16 August 2011), p 6; Titoki Black, under questioning by Crown counsel, first week of hearing, 15 March 2012 (transcript 4.1.3, pp 435–537); Apryll Parata, under questioning by Crown counsel and the Tribunal, second week of hearing, 22 March 2012 (transcript 4.1.4, pp 486–487, 515–517)

101. Document A1 (Tina Olsen-Ratana, brief of evidence in support of application for urgency, 25 July 2011), pp 5–6; doc A5 (Tina Olsen-Ratana, second brief of evidence, 16 August 2011), pp 2, 6

102. Apryll Parata, under questioning by Crown counsel, second week of hearing, 22 March 2012 (transcript 4.1.4, pp 486–487)

103. Apryll Parata, under questioning by Tribunal, second week of hearing, 22 March 2012 (transcript 4.1.4, p 517)

On the other hand, Trust representatives Titoki Black and Tina Olsen-Ratana could not understand why they needed to ‘unpack the kaupapa’ at all.<sup>104</sup> Ms Parata herself agreed that the Tripartite Agreement encapsulated most of the aims for the kaupapa of kōhanga reo. The need to ‘unpack’ the kaupapa for the benefit of making a business case to ministers was not adequately understood and, as a result, was bound to frustrate, a matter Ms Parata could appreciate.<sup>105</sup> Likewise, the exchange that she recalls raises questions about whether the Trust representatives realised the importance of what she was trying to ask of them, and that too was bound to frustrate.

Thus, requests from Crown officials to define the kaupapa of kōhanga reo continued, and one particular example was referred to as underscoring the point. It concerns the ECE Taskforce report released in 2011. After an initial exchange of correspondence with the Ministry, the Trust complained bitterly in a letter dated 4 July 2011 about the process adopted to produce the report.<sup>106</sup> It also listed the Treaty breaches it asserted arose from the lack of consultation and from breaches of the Tripartite and Master Agreements with the Trust. The Trust was also worried about damage to the reputation of kōhanga reo arising from the content of the report. In a reply dated 8 July 2011, signed jointly by Secretary for Education Karen Sewell and Leith Comer, chief executive of Te Puni Kōkiri, the two senior officials asserted that there had been no breach of the Tripartite Agreement by the Crown as the ECE Taskforce was independent of it.<sup>107</sup> They concluded with the following statement:

The work being undertaken as part of the Tripartite Relationship will continue and focus on work that defines Kōhanga reo and its kaupapa. This will subsequently be the basis of policy advice the Ministry of Education will provide, which will include advice on an appropriate legal means for such a definition.<sup>108</sup>

Crown counsel argued that this response related, at least in part, to the proposal for separate legislation for kōhanga reo that the Trust’s co-chairpersons had put on the table at their meeting with Ms Sewell and Mr Comer on 5 July and that had been raised meetings

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104. Document A5 (Tina Olsen-Ratana, second brief of evidence, 16 August 2011), p 6; Titoki Black, under questioning by Crown counsel, first week of hearing, 15 March 2012 (transcript 4.1.3, pp 435–537)

105. Apryll Parata, under questioning by Tribunal, second week of hearing, 22 March 2012 (transcript 4.1.4, pp 514–515)

106. Document A19 (Timoti Kāretu and Tina Olsen-Ratana, co-chairpersons, Te Kōhanga Reo National Trust to Leith Comer, chief executive, Te Puni Kōkiri and Karen Sewell, Secretary for Education, ‘Independent ECE Taskforce Report’, letter, 4 July 2011), pp 10–16

107. Document A19 (Leith Comer, chief executive, Te Puni Kōkiri and Karen Sewell, Secretary for Education to Timoti Kāretu and Tina Olsen-Ratana, co-chairpersons, Te Kōhanga Reo National Trust, ‘Independent ECE Taskforce Report’, letter, 8 July 2011), pp 22–23. Two and half months later on 23 September, 2011 Ms Sewell wrote to the Trust acknowledging that the Ministry had not consulted on the ECE Taskforce and offered an apology for that. Document D2 (Karen Sewell, Secretary for Education and Leith Comer, chief executive, Te Puni Kōkiri to Timoti Kāretu and Tina Olsen-Ratana, co-chairpersons, Te Kōhanga Reo National Trust, letter, 23 September 2011)

108. Document A19 (Leith Comer, chief executive, Te Puni Kōkiri and Karen Sewell, Secretary for Education to Timoti Kāretu and Tina Olsen-Ratana, co-chairpersons, Te Kōhanga Reo National Trust, ‘Independent ECE Taskforce Report’, letter, 8 July 2011), pp 22–23

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of the Funding, Quality and Sustainability Working Group during 2009 and 2010. Ministry officials believed that this and a subsequent meeting on 7 July had laid the basis for re-engagement with the Trust on practical matters, including – an unusual step – a sharing with the Trust of their advice to ministers on a way forward.<sup>109</sup> For Ms Olsen-Ratana, however, ‘the 7 July meeting and the letter from the Ministry made me realise that despite our meetings and concerns, nothing was actually going to change’ and that officials were trying to fit the Trust into existing post-Taskforce processes.<sup>110</sup> There was no mention of the Tripartite Agreement’s shared outcomes and no mention of finding ways to remove any identified inequities. There was just a promise of more work to define kōhanga reo and its kaupapa, and a commitment to working with the Trust on the tripartite relationship.

Ms Sewell acknowledged before us that the Tripartite Agreement identified the kaupapa of kōhanga reo and that the claimants would have found the letter from the Ministry and Te Puni Kōkiri frustrating.<sup>111</sup>

**(6) The functioning of the Working Group**

In September 2008 the Kōhanga Reo Funding, Quality and Sustainability Working Group was established between the Trust, the Ministry and Te Puni Kōkiri. The Working Group’s task was to devise a plan to ensure adequate funding to ‘support a sustainable, high-quality network of kōhanga reo.’<sup>112</sup> The role of the Working Group was to provide oversight and leadership, agree on broad policy goals and principles, and prepare a report on options for the Minister and Associate Ministers of Education. A guiding principle of the group was that it would ‘respect and acknowledge differences of opinion and its members should also have a shared commitment to achieving agreed solutions.’<sup>113</sup>

The Working Group was charged by the Minister and Associate Ministers of Education ‘to look at issues facing kōhanga reo’ and advise what directions should be taken. The Trust wanted issues concerning the pay of kaiako, the state of kōhanga reo buildings, and high operational costs addressed.<sup>114</sup>

The Working Group’s terms of reference identified guiding principles. The Government and the Trust declared that they valued their relationship and recognised the role each other

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109. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 45–46; Geoff Short, under questioning from Crown counsel, 21 March 2012 (transcript 4.1.4, pp 399–400); Karen Sewell, under questioning by claimant counsel, 19 March 2012 (transcript 4.1.4, p 118); doc A1(a), (Tina Olsen-Ratana, ‘Tripartite Meetings’, summary, (2008–2010), 2011), appendix 2, pp 7–11

110. Document A1 (Tina Olsen-Ratana, brief of evidence in support of application for urgency, 25 July 2012), p 9

111. Karen Sewell, under questioning by the Tribunal, second week of hearing, 19 March 2012 (transcript 4.1.4, pp 112–113)

112. Document A1(a) (Ministry of Education, ‘Terms of Reference – Kōhanga Reo Funding, Quality and Sustainability Working Group’, 12 September 2008), app 3, p 1

113. Document A1(a) (Ministry of Education, ‘Terms of Reference – Kōhanga Reo Funding, Quality and Sustainability Working Group’, 12 September 2008), app 3, p 2

114. Document A1(a) (Ministry of Education, ‘Terms of Reference – Kōhanga Reo Funding, Quality and Sustainability Working Group’, 12 September 2008), app 3, p 1

had to play. They expressed their common interest as being promoting te reo Māori and better outcomes for mokopuna and whānau. The Working Group was to be guided by the role kōhanga reo play in Māori education from birth to compulsory education and then tertiary. It was also to ensure that processes recognise that te reo and tikanga Māori are at the heart of kōhanga reo. The Working Group was to have regard to the goals and outcomes of relevant Ministry strategies, including *Ka Hikitia* and *Pathways to the Future: Ngā Huarahi Arataki*. The Working Group was not to address regulations, including the implementation of the new regulatory system, current roles and responsibilities for licensing, or any other organisation not a party to the Working Group.<sup>115</sup> The working group was to focus on supporting the quality and sustainability of kōhanga reo by:

- ▶ Develop[ing] a three-year agreement between the Ministry and the Trust to replace the current annual agreement. The agreement will also support the policies agreed as part of the broader work<sup>2</sup>; and
- ▶ Develop[ing] options for, and advis[ing] on:
  - a plan to support current work by the Trust to ensure high quality provision by kōhanga reo;
  - a joint sustainability plan; and
  - a review of kōhanga reo funding.<sup>116</sup>

As we identified in the section on funding above, there was a funding inequity relating to the payment of kaiako with the Trust's specially developed Tohu Whakapakari degree as compared to what teachers with recognised ECE qualifications received. That issue had not been properly addressed between 2005 and 2008 during the review of the ECE funding system. Three funding options were developed by Crown officials developed as part of the Working Group deliberations. However, these proposals never went past the preliminary discussion stage.<sup>117</sup> Further detailed costing and formulation of those three options, involving a significant amount of work at an official level and a considerable amount of genuine consultation with the Trust, would have been necessary before a paper recommending any changes could have been put up to a Minister.

The disappointing aspect of the Working Group, which given its terms of reference held so much promise, was that its efforts never moved past an early framing of these possible models for recognising kōhanga reo and funding. A draft report was produced but its recommendations were not completed. Indeed, the funding options were not sufficiently

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115. Document A1(a) (Ministry of Education, 'Terms of Reference – Kōhanga Reo Funding, Quality and Sustainability Working Group', 12 September 2008), app 3, p 2

116. Document A1(a) (Ministry of Education, 'Terms of Reference – Kōhanga Reo Funding, Quality and Sustainability Working Group', 12 September 2008), app 3, p 2

117. Document A4, vol 2 (Ministry of Education, 'Te Kōhanga Reo Funding Options', undated), pp 212–221; doc A4, vol 2 (Pania Tahau-Hodges, 'Draft Report on the Outcomes of Te Kōhanga Reo Working Group', Group report prepared for Ministry of Education, October 2012), p 256

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advanced in the Working Group's discussion to even form part of the draft report. In short, the Tribunal does not accept the Crown proposition that those funding options discussed at the Working Group ever achieved sufficient momentum.<sup>118</sup>

Richard Walley, from the Ministry of Education, expressed the view that that the limited progress made by the Working Group might still lead to positive outcomes if the Trust now agreed to participate with respect to: the statutory recognition of kōhanga reo; the options for different funding models for kōhanga reo (even raising the option of a separate appropriation or vote for kōhanga reo under the Public Finance Act 1989); and a one-off financial package to bring all kōhanga reo property up to a licensable standard. However, he was not able to point to anything concrete to substantiate this view. Rather, he suggested that the answer is for the claimants to re-engage with the Working Group.<sup>119</sup>

The claimants asserted that much of that failure to achieve progress on the Working Group was due to matters that indicated a lack of real commitment by the Crown to achieving a rapid resolution of the issues.<sup>120</sup> Those matters included:

- ▶ The delegation of negotiator status was too far down the decision-making chain of command of the Ministry of Education and Te Puni Kōkiri.
- ▶ The presence or use of Crown personnel who were either not briefed properly, or who did not properly understand the kaupapa of kōhanga reo, meant that Trust representatives had to repeatedly explain their position.
- ▶ The inability to make progress past a barrier of Crown representatives wanting to achieve, as a first step, some agreed English redefinition of the kaupapa of kōhanga reo.
- ▶ Two senior Crown representatives disappeared from the Ministry for various reasons in the latter part of 2010.<sup>121</sup>

We consider the following factors were the reasons why the Working Group failed.

(a) *Delegation and supervision*: Māori education generally has been the responsibility of Mr Brell for many years and Ms Parata for approximately five years.<sup>122</sup> These were the people with a longstanding and deep knowledge of the kōhanga reo movement.

However, the senior manager from the Ministry of Education responsible for the Ministry's relationship with the Trust under the Master Agreement was Mr Le Quesne, and

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118. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 39

119. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 60–62

120. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 112

121. Document A1 (Tina Olsen-Ratana, brief of evidence in support of application for urgency, 25 July 2011), pp 5–6; doc A5 (Tina Olsen-Ratana, second brief of evidence, 16 August 2011), pp 3, 6; claimant counsel, oral submission, second week of hearing, 12 March 2012 (transcript 4.1.3, pp 113–115); Dame Iritana Tāwhiwhirangi, under questioning by claimant counsel, second week of hearing, 13 March 2012 (transcript 4.1.3, pp 223–224); submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 110–112; claimant counsel, oral submission and under questioning by the Tribunal, closing submissions hearing, 23–24 April 2012 (transcript 4.1.5, pp 95, 157, 159, 198, 222)

122. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), p 3; doc A58 (Apryll Parata, brief of evidence, 15 February 2012), p 1



the conduct of the relationship was largely in his hands, or those of Mr Walley, to whom he would often delegate responsibility to negotiate with the Trust.<sup>123</sup> These people were third and fourth in the line of authority from the Secretary for Education.<sup>124</sup> Their responsibilities within the ECE reforms were as urgent as those they had to complete on the Working Group. Moreover, while they have acquired some knowledge over the last few years, they both acknowledged that they did not have any background or any detailed knowledge of kōhanga reo or their kaupapa before working for the Crown on its relationship with the Trust.<sup>125</sup> The Ministry of Education should have ensured that those who managed the relationship for the Ministry of Education with the Trust had some training and knowledge of the kōhanga reo movement. We were surprised, for example, that Mr Walley has never been to a kōhanga reo.

Ultimately the responsibility for the tripartite relationship lay with the Secretary for Education, who should have supervised the progress being made on the Working Group. We are not suggesting that she should be at every meeting, rather that she should have monitored the situation and ensured progress was being made.

**(b) Lack of engagement by senior management:** The Working Group did not make much progress before Mr Le Quesne was diverted to work in Christchurch following the earthquake. Nobody can question the importance and urgency of that work.

But there were others in the Ministry who could have filled the gap. Had Mr Walley remained available for the Working Group, or had Mr Brell engaged more directly with completing its work, progress could have been sustained. However, that was not to be. The Ministry diverted Mr Walley to an entirely different project – namely to fulfil the secretariat role for the newly created ECE Taskforce.<sup>126</sup> His role for the ECE Taskforce was in essence accorded a higher priority than the completion of the Working Group negotiations.

No other senior personnel from the Ministry stepped in to fill the gap, and the Working Group effectively ceased to function. The whole drawn-out saga took more than two years before the abandonment of the Working Group negotiations. The Ministry knew that, by late 2010, the kōhanga reo system was facing cumulative funding pressure, but allowed the negotiations simply to lapse.

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123. Document A64 ('Master Agreement to Provide Services for Nga Kōhanga Reo Between Ministry of Education and Te Kōhanga Reo National Trust (to June 2011)', 2008), pp 401, 405; doc A60 (Karl Le Quesne, brief of evidence, 15 February 2012), p 1

124. Document A60 (Karl Le Quesne, brief of evidence, 15 February 2012), p 1

125. Richard Walley, under questioning by the Tribunal, second week of hearing, 20 March 2012 (transcript 4.1.4, pp 289–290); Karl Le Quesne, under questioning by the Tribunal, second week of hearing, 22 March 2012 (transcript 4.1.4, p 584)

126. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 59



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(c) **Preservation versus participation:** The Trust representatives on the Working Group were leaders of the movement rather than senior managers or policy specialists. As such, their role was to preserve the kaupapa of the Trust.<sup>127</sup> In the same way that the Secretary for Education was responsible for ensuring progress of the Working Group from the Ministry's perspective, these leaders had the same responsibility for the Trust.

We consider that the people who attended the Working Group should have been operational management staff, rather than senior leadership. The ability to explore and reflect the kaupapa of the Trust as policy goals and actions was what the officials from the Ministry were looking for.<sup>128</sup> The situation required the development of policy advice in partnership so that a proper business case to the Education Ministers for additional funding and more regulatory support could be made. This required both partners to have competencies in relation to the kaupapa of kōhanga reo and the formulation of policy advice.

(7) **Partnership in practice – regulatory review 2006–09**

As we noted above, in *Pathways to the Future: Ngā Huarahi Arataki*, the Crown announced that it would be reviewing the regulatory framework for ECE to support the 10-year plan's goals and actions.<sup>129</sup> The Technical Advisory Group, which included representation from the Trust, held a number of meetings between 2003 and 2004.<sup>130</sup> The regulatory framework was to comprise a new part 26 of the Education Act 1989 and further regulations (including standards of education and care).<sup>131</sup>

(a) **Regulations:** Attempts were made by the Trust in 2008 to revisit the regulatory framework but these were rejected.<sup>132</sup> The reason for this was that the Ministry of Education had developed, with other agencies, a set of minimum standards across the ECE sector, and those standards were not to be changed as part of the transition to the 2008 regulatory regime.<sup>133</sup> The Trust was told that its input would be limited to the curriculum criteria and that other criteria outside of the curriculum were not negotiable.<sup>134</sup>

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127. Document A1 (Tina Olsen-Ratana, brief of evidence in support of application for urgency, 25 July 2011), p 10

128. Document A60 (Karl Le Quesne, brief of evidence, 15 February 2012), p 3; Apryll Parata, under questioning by the Tribunal, second week of hearing, 22 March 2012 (transcript 4.1.4, pp 514–515)

129. Document A79 (Ministry of Education, 'Draft Criteria for the Licensing or Certification of ECE Services', undated), p 28

130. Document A92 (Mihi Tashkoff, brief of evidence, 7 March 2012); doc A62 (Richard Walley, brief of evidence, 15 February 2012), p 1212. Mr Walley placed the meetings in 2004–2005.

131. Document A64 (Karl Le Quesne, group manager, Early Childhood Education and Early Childhood and Regional Education, Ministry of Education to Minister of Education and Associate Minister of Education, 'Education Report: A Curriculum Framework for Early Childhood Education', 4 July 2008), pp 758–759

132. Document A79 (Tina Olsen-Ratana, fourth brief of evidence, 22 December 2011), p 4

133. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 12

134. Document A79 (Tina Olsen-Ratana, fourth brief of evidence, 22 December 2011), p 4; doc A79 (Rose Cole, Ministry of Education to Tina Olsen-Ratana, 29 September 2008, email), p 140

(b) *Licensing criteria*: In May 2006, the Ministry of Education released a discussion document entitled ‘Draft Criteria for the Licensing or Certification of ECE Services’ (the ‘draft criteria’). The purpose of the discussion document was to ‘gain feedback about the criteria that [would] form part of the new regulatory framework’ for ECE.<sup>135</sup>

The criteria outlined the ‘day-to-day requirements that ECE services must meet to comply with the minimum standards in the Regulations and maintain a licence to operate.’<sup>136</sup> All ECE services would then need to be relicensed in accordance with the regulatory framework. The Ministry wanted feedback on the draft criteria by 6 October 2006.<sup>137</sup>

There followed a series of consultation hui around the country on the draft criteria, and many kōhanga reo provided feedback, both orally and in writing, making up, according to Dame Iritana Tāwhiwhirangi, approximately 16 per cent of total responses to the draft criteria.<sup>138</sup> The Ministry reported that feedback from kōhanga reo was that the criteria required some changes to reflect the Trust’s *Te Korowai* chartering process and day-to-day practice in kōhanga reo.<sup>139</sup>

The Ministry made some changes to respond to the Trust’s requests and developed a separate set of licensing criteria for kōhanga reo entitled *Licensing Criteria for Kōhanga Reo Affiliated with Te Kōhanga Reo National Trust 2008*.<sup>140</sup> These criteria, the Ministry believed, balanced the desire of the Trust to have separate criteria against ‘the importance of retaining existing requirements and not regulating for areas the government is not responsible for.’<sup>141</sup> The Crown considers that this also recognises the unique place of kōhanga reo in the ECE sector and that the criteria meet the Trust’s demands in respect of kōhanga reo.<sup>142</sup>

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135. Document A79 (Ministry of Education, ‘Draft Criteria for the Licensing or Certification of ECE Services’, May 2006), p 30

136. Document A79 (Ministry of Education, ‘Draft Criteria for the Licensing or Certification of ECE Services’, May 2006), p 30

137. Document A79 (Ministry of Education, ‘Draft Criteria for the Licensing or Certification of ECE Services’, May 2006), pp 35–36

138. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), pp 19–21; doc A78 (Elisabeth Cevana, Emanuel Kalafatelis and Katriona Fryer, ‘Final Report: ECE Draft Licensing/Certification Criteria Consultation Feedback’, report to the Ministry of Education, February 2007), p 588–597. About 10 per cent of responses from centre-based services and 49 per cent of responses from individuals and organisations were from kōhanga reo. Although the numbers are not precise, it appears that roughly a quarter of all responses were from kōhanga reo.

139. Document A79 (Karl Le Quesne, senior manager, early childhood and regional education, Ministry of Education to Minister of Education and Associate Minister of Education, ‘Education Report: Te Kōhanga Reo National Trust – Emerging Issues’, 5 February 2008), p 147

140. Document A79 (Karl Le Quesne, senior manager, Early Childhood Regional Education, Ministry of Education to Minister of Education and Associate Minister of Education, ‘Education Report: Meeting with Board of Te Kōhanga Reo National Trust’, 20 May 2008), p 153; doc A64 (Licensing Criteria for Kōhanga Reo Affiliated with Te Kōhanga Reo National Trust, 2008 pursuant to regulation 41 of the Education (Early Childhood Services) Regulations 2008), pp 616–637

141. Document A79 (Karl Le Quesne, senior manager, Early Childhood Regional Education, Ministry of Education to Minister of Education and Associate Minister of Education, ‘Education Report: Meeting with Board of Te Kōhanga Reo National Trust’, 20 May 2008), p 153

142. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 13

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The claimants say that they did not agree to the licensing criteria.<sup>143</sup> In May 2008, the Trust sought Ministerial intervention through the Associate Minister of Education.<sup>144</sup> In a briefing for that meeting dated 20 May 2008, the Ministry reported on its engagement with the Trust. It noted that while the Ministry and the Trust had been able to agree on some matters, they could not agree on all requirements. The Ministry considered what the Trust wanted, which included the removal of terms ‘planning, assessment and evaluation’, as inappropriate.<sup>145</sup>

The translation of the criteria into Māori was also an issue because the Trust wanted a Māori version. The Ministry initially required a disclaimer to the effect that if any conflict existed between the two texts, the version prescribed by the Minister would prevail – namely the English version.<sup>146</sup> The matter was subsequently referred to the then Associate Minister of Education, the Hon Parekura Horomia, who agreed in principle to recognise the te reo version as equal, subject to Cabinet approval.<sup>147</sup> Ministry officials then had a full set of the criteria translated into te reo Māori by an interpreter certified under the Maori Language Act 1987. This translation was sent to the Trust, which was not happy with it and responded with its own version in te reo Māori. The Ministry responded by having that text translated into English to ensure it had a full understanding of what would be prescribed. The licensing criteria for kōhanga reo in te reo Māori have, therefore, never been finalised.<sup>148</sup> This was another unsatisfactory result for the Crown-kōhanga reo relationship.

(c) *The ECE curriculum framework:* In early 2007, the Ministry of Education commenced its consultation with the ECE sector on a proposed curriculum framework that would complement the licensing criteria. The Crown proposed to adopt the four foundation principles and five strands from *Te Whāriki* (the ECE curriculum) for all ECE services. For kōhanga reo, the Trust supported the principles of *Te Whāriki* being prescribed, but not the strands.<sup>149</sup> The Ministry wanted the strands to be applied to kōhanga reo because these set out the Crown’s clear expectations of the ECE sector.<sup>150</sup> As *Te Whāriki* explained:

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143. Document A1 (Tina Olsen-Ratana, brief of evidence in support of application for urgency, 25 July 2011), p 6

144. Document A1 (Tina Olsen-Ratana, brief of evidence in support of application for urgency, 25 July 2011), p 5; doc A5 (Tina Olsen-Ratana, second brief of evidence, 16 August 2011), pp 2–3

145. Document A79 (Karl Le Quesne, senior manager, Early Childhood Regional Education, Ministry of Education to Minister of Education and Associate Minister of Education, ‘Education Report: Meeting with Board of Te Kōhanga Reo National Trust’, 20 May 2008), pp 152–153

146. Document A1 (Tina Olsen-Ratana, brief of evidence in support of application for urgency, 25 July 2011), p 6

147. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 14

148. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 14

149. Document A79 (Ministry of Education, ‘Education Report: Kōhanga Reo – Comprehensive Review’, report prepared for the Minister and Associate Minister of Education, 8 July 2008), p 128

150. Document A79 (Ministry of Education, ‘Education Report: Meeting with Board of Te Kōhanga Reo National Trust’, report prepared for the Minister and Associate Minister of Education, 20 May 2008), p 153

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The strands and goals of the curriculum arise from the principles. Each strand embodies an area of learning and development that is woven into the daily programme of the early childhood setting and has its own associated goals for learning.<sup>151</sup>

The Trust asked whether the Education Act 1989 would allow for the prescribing of a curriculum framework for all services except kōhanga reo. It was told the Education Act 1989 did not permit more than one curriculum, but it was possible for one to be comprised of separate parts.<sup>152</sup> The Trust's other concern was that the kōhanga reo section should not be interpreted or redefined by others outside of kōhanga reo in a way that was inconsistent with the movement's kaupapa.<sup>153</sup>

On 4 July 2008, Mr Le Quesne signed out to the Minister and Associate Minister of Education an advice paper reporting on work towards the proposed new curriculum framework. The Ministry noted that consultation in 2007 had been 'widely supportive' of the curriculum framework for ECE outlined in *Te Whāriki*.<sup>154</sup> The advice paper explained that although the Trust had some concerns over the proposal, these were addressed in consultation. The Ministry also noted that it had agreed with the Trust in June 2008 to include a te reo Māori version of the strands of *Te Whāriki* developed by the Trust in consultation with the Ministry. This version, which is similar to text in *Te Korowai*, would form, together with the te reo text of the principles, a separate part c specifically for kōhanga reo affiliated with the Trust. The Ministry agreed with the Trust not to publish a translation into English of the strands for part c.<sup>155</sup>

The Ministry went on to contend that there was a risk that an additional part of the curriculum framework for kōhanga reo might be seen as contrary to current policy by differentiating a provider on the basis of its philosophy rather than structural characteristics. However, the Ministry advised, the Government had an 'agreement with the Trust which

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151. Document A64 (Ministry of Education, *Te Whāriki: He Whāriki Mātauranga Mō Ngā Mokopuna o Aotearoa. Early Childhood Curriculum*, (Wellington: Learning Media, 1996)), p700

152. Document A79 (Karl Le Quesne, senior manager, Early Childhood Regional Education, Ministry of Education to Minister of Education and Associate Minister of Education, 'Education Report: Te Kōhanga Reo National Trust – Emerging Issues', report prepared for the Minister and Associate Minister of Education, 5 February 2008), p147

153. Document A64 (Karl Le Quesne, senior manager, Early Childhood Education to Minister of Education and Associate Minister of Education, 'Education Report: A Curriculum Framework for Early Childhood Education', 4 July 2008), p762

154. Document A64 (Karl Le Quesne, senior manager, Early Childhood Education to Minister of Education and Associate Minister of Education, 'Education Report: A Curriculum Framework for Early Childhood Education', 4 July 2008), pp758–759

155. Document A64 (Karl Le Quesne, senior manager, Early Childhood Education to Minister of Education and Associate Minister of Education, 'Education Report: A Curriculum Framework for Early Childhood Education', 4 July 2008), pp762–763; doc A84 (Te Kōhanga Reo National Trust, *Te Korowai*, (Wellington: the Trust, 1995), pp529–538; doc A84 (Titoki Black, third brief of evidence, 7 March 2012), p12

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recognises the particular role of kōhanga reo in te reo Māori development'. The Ministry was here referring to the 2003 Tripartite Agreement.<sup>156</sup>

The final version of the new curriculum framework was later gazetted on 4 September 2008 to come into effect on 1 December 2008 along with the other elements of the new regulatory regime.<sup>157</sup> It was organised into three parallel parts, one for kōhanga reo only (part C) and the other two in English (part A) and Māori (part B) for other service types. For parts A and B, the text was taken directly from *Te Whāriki*. Part C, in te reo and specifically for kōhanga reo, adopted the principles from *Te Whāriki* and text for the strands from *Te Korowai*.

**6.3.4 Reviewing the partnership**

Reviews of the kōhanga reo movement date back to its early days. However, the claimants' main complaint concerns what they perceive to be their mostly negative outcomes and impacts. The claimants identify reviews and proposals for review that occurred between 2000 and 2011. All varied widely in mandate and purpose.

They include the following:

- ▶ The 2001 working party, described above, had equal representation from the Trust and the Crown under the chairmanship of Sir Rodney Gallen.<sup>158</sup> Its terms of reference were jointly agreed and addressed two of the Trust's principal concerns at the time: establishing a partnership relationship between the Crown and the Trust; and how to resolve issues concerning the property pūtea scheme.
- ▶ The 2006 PricewaterhouseCoopers costing review was commissioned directly by the Ministry of Education with the agreement of the Trust. Its purpose was to provide an independent assessment of the Trust's financial administration. The Ministry wanted an assurance that the Trust's financial reporting was robust, while the Trust had a long-standing concern that payments by the Ministry to the Trust were insufficient to cover the costs of head office services it provided under annual funding agreements.<sup>159</sup> The Trust supplied most of the data and had significant input into the review.
- ▶ The Māori Affairs Select Committee inquiry into Māori participation in ECE was an open process to which the Trust had full opportunity to make written and verbal submissions. It was conducted under the auspices of Parliament and reported in 2008.

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156. Document A64 (Karl Le Quesne, senior manager, Early Childhood Education to Minister of Education and Associate Minister of Education, 'Education Report: A Curriculum Framework for Early Childhood Education', report prepared for the Minister and Associate Minister of Education, 4 July 2008), pp 762–763

157. Document A64 ('Education (Early Childhood Education Curriculum Framework) Notice 2008', *New Zealand Gazette*, 4 September 2008, no 136), pp 817–819

158. Document A2 (Dame Iritana Tāwhiwhirangi, brief of evidence in support of application for urgency, 25 July 2011), p 7

159. Document A78 (PricewaterhouseCoopers, 'Costing Review of Te Kōhanga Reo National Trust' (commissioned research report, Ministry of Education, 2006)), p 695

In practice, the outcomes of the various reviews and reports were mixed. The Gallen report's recommendation of a formal agreement between the Trust, the Ministry of Education and Te Puni Kōkiri, although not the first preference of kōhanga reo (which was for a direct relationship with the Crown through Te Puni Kōkiri), led in 2003 to the ground-breaking Tripartite Agreement, which emphasised the significance of te reo, the role of kōhanga reo in achieving its transmission, and the Crown's Treaty obligations in that regard. Signed at governance level between the two Ministers and the Trust, this was conceived as a Treaty-based partnership that gave full recognition to the kōhanga reo kaupapa.<sup>160</sup>

On the other hand, most other positive recommendations for kōhanga reo and the Trust, including additional funding and institutional change, fell on stony ground. The Gallen report's insistence that additional non-ECE funding be provided to support the development needs of kōhanga reo, in part to compensate for the closure of the Trust's property pūtea scheme, did not get traction. Nor did the PricewaterhouseCoopers report's finding that the Trust's service agreement with the Ministry was significantly underfunded.<sup>161</sup> Its qualified endorsement of the Trust's financial systems and value for money encountered some scepticism amongst Ministry officials.<sup>162</sup> Furthermore, the recommendations on Māori participation in ECE made by the Māori Affairs Select Committee elicited no new commitments or resources beyond existing policy and practice.<sup>163</sup>

None of the reviews amounted to a general examination of the Trust and kōhanga reo. Two (the Gallen and PricewaterhouseCoopers reviews) were set up to address particular kōhanga reo issues rather than to undertake a sectoral review. They proceeded at the initiative or with the agreement of the Trust and with the Trust's participation or input. The Māori Affairs Select Committee review included kōhanga reo only incidentally as part of a much broader inquiry into Māori participation in ECE and into future directions for the ECE sector as a whole.

With the notable exception of the significant Tripartite Agreement outcome, very little was otherwise achieved from the reviews by the Trust other than a vindication of its financial administration performance.

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160. Document A24(h) (Crown and Kōhanga Reo National Trust Joint Working Group, *Report to the Ministers of Education and Maori Affairs: Review of the Relationship Between the Crown and Te Kohanga Reo National Trust* (Wellington: Crown and Kōhanga Reo National Trust Joint Working Group, 2001), pp 42–43; doc A64 ('Tripartite Relationship Agreement Between Te Kōhanga Reo National Trust and the Ministers of Education and Māori Affairs', 2003), pp 383–390

161. Document A78 (PricewaterhouseCoopers, 'Costing Review of Te Kōhanga Reo National Trust', commissioned research report, Ministry of Education, 2006), p 691

162. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p 22; doc A78 (Rawiri Brell, Deputy Secretary, Ministry of Education to Minister of Education and Associate Minister of Education, 'Education Report: Te Kōhanga Reo National Trust Update', 24 October 2006), p 699

163. Document A76 ('Government response to Report of Māori Affairs Committee Inquiry into Māori participation in Early Childhood Education', not dated), pp 695–701



6.3.4(1)

(1) *The ECE Taskforce – the final straw*

As an ongoing part of the Government's policy drive for increased participation and enhanced quality, in October 2010 the Minister of Education appointed an independent advisory taskforce on ECE. It reported in June 2011, by way of a report entitled *An Agenda for Amazing Children*.<sup>164</sup> The Taskforce's brief was to undertake a general review of the ECE sector.

The claimants argued there were deficiencies in the process adopted by the ECE Taskforce and in the information and advice it was given by the Ministry of Education. They claimed that these issues stem from not including the significance of te reo transmission in the terms of reference, selecting a panel lacking kōhanga reo experience, failing to enable Trust input, and not ensuring that the secretariat had specialist expertise on kōhanga reo. The Ministry, in the Trust's view, was responsible for configuring an environment in which the Taskforce would assess the Trust and kōhanga reo by conventional ECE standards.<sup>165</sup>

The Crown responded that the Taskforce was established with an independent mandate to provide advice on the early childhood sector generally, and was not part of the Crown. Its terms of reference, set by the Ministry, stated that it 'will be independent from Government and further that its members 'should not represent any particular organisation or voice.'<sup>166</sup>

The terms of reference for the ECE Taskforce did not make any specific reference to the Treaty of Waitangi or to the Crown's duty to actively protect te reo Māori in ECE. The terms of reference focused the Taskforce's assignment on educational objectives alone, including for Māori.<sup>167</sup>

The closest the terms of reference came to a mention of protecting te reo was the general imperative to be mindful of:

the Government's objectives around education success for Maori and Pasifika learners, the status of Ka Hikitia – Managing for Success and the Pasifika Education Plan as key strategies for these populations, and the prime importance of provision which recognises language, culture and identity as key for increasing participation in early childhood education and improving learner outcomes.<sup>168</sup>

The Trust was not consulted by the Ministry or the Minister regarding the establishment of the ECE Taskforce or its terms of reference. The Ministry knew that there were

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164. Document A4, vol1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), pp 61–455

165. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 112–117

166. Document A4, vol1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), pp 381–383

167. Document A4, vol1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), pp 381–383

168. Document A4, vol1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), p 383



agreements with the Trust requiring consultation on any changes in the sector or any new issues or policy considerations that bear upon the business of kōhanga reo.<sup>169</sup>

At a lunch on 12 October 2010 to which the Trust invited the Minister of Education Anne Tolley and Minister of Māori Affairs and Associate Minister of Education Pita Sharples; Minister Tolley promised that the Taskforce would consult the Trust, but it did not do so.<sup>170</sup> After this meeting Minister Sharples did offer to set up a small expert advisory committee, but one with a different focus: ‘to strategically evaluate the governance, management and operations of the Trust.’<sup>171</sup>

## **(2) The Taskforce secretariat and Ministry of Education support**

The Ministry of Education assigned selected staff as a secretariat to service the Taskforce.<sup>172</sup> This is orthodox practice for independent reviews commissioned by Crown agencies. Formally, the seconded staff were not part of the Ministry whilst assigned, and their actions and performance were not its direct responsibility.<sup>173</sup>

The Ministry determined the extent and quality of support it would provide to the Taskforce. That support, led by Mr Walley, assumed greater significance given that all Taskforce members fitted their assignment alongside their normal full-time work.<sup>174</sup> To judge by the Taskforce chair’s generous tribute and the secretariat’s records, Mr Walley’s team provided extensive analysis, advice, information, and drafting assistance.<sup>175</sup> As the Trust was not consulted or involved in the ECE Taskforce’s deliberations, the Taskforce would have relied mainly on its secretariat for information and advice on kōhanga reo.

We remain quite unenlightened by the Crown why it did not ensure that consultation occurred between the Taskforce and the kōhanga reo movement. Nor could Mr Walley enlighten us, although he knew better than probably anyone else the detail of the Crown’s relationship with kōhanga reo. Moreover, the Ministry and he knew that in excess of 9,000 Māori children were enrolled in kōhanga reo with another 1,000 on waiting lists.

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169. Richard Walley, under questioning by the Tribunal, second week of hearing, 20 March 2012 (transcript 4.1.4, p 262)

170. Document A5 (Tina Olsen-Ratana, second brief of evidence, 16 August 2011), p 3

171. Document A5 (Tina Olsen-Ratana, second brief of evidence, 16 August 2011), pp 3–4; doc A5 (Timoti Kāretu and Tina Olsen-Ratana, Co-Chairpersons, Te Kōhanga Reo National Trust to Anne Tolley, Minister of Education, 26 October 2010), app D; doc A5 (Pita Sharples, Minister of Māori Affairs to Timoti Kāretu and Tina Olsen-Ratana, Co-Chairpersons, Te Kōhanga Reo National Trust, 21 October 2006), app E

172. Document D1 (Ministry of Education, ‘Education Report: Revised Proposals for an ECE Taskforce’, report prepared for the Minister of Education, 6 May 2010), p 59

173. Document A4, vol 1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), p 401; Richard Walley, under questioning by claimant counsel, second week of hearing, 20 March 2012 (transcript 4.1.4, p 231)

174. Document A4, vol 1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), p 439

175. Document A4, vol 1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), p 439; doc C5 (Documents regarding the establishment and work of Early Childhood Education Task Force, 2007–2011)

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6.3.4(3)

Mr Walley made an apology during the hearing that he did not advise the ECE Taskforce that they could not make adverse comments regarding the Trust without granting to them an opportunity to respond. He stated his lack of action in advising the ECE Taskforce on the matter was unintentional.<sup>176</sup>

Ms Sewell went further, and apologised for the failure of the Crown to ensure that the Taskforce consulted with the Trust. She also acknowledged this was a breach of the Tripartite Agreement.<sup>177</sup>

**(3) The Taskforce report**

We note that section 6 of the Treaty of Waitangi Act 1975 limits our jurisdiction to actions, omissions, and policies of the Crown. The analysis of the independent Taskforce report that follows is in the main a summary of the main cause of complaint of the claimants, which is the Crown's setting up of the Taskforce and its response to the report.

The Taskforce report requires consideration because of the potential effect it will have as an authoritative body of research on the ECE sector including kōhanga reo. It made recommendations in respect of the whole ECE sector.<sup>178</sup> The report commenced its discussion on kōhanga reo with a glowing reference to the work it has performed:

The ECE Taskforce wants to acknowledge the incredible contribution Te Kōhanga Reo has made to Māori immersion early childhood education. The mission of Te Kōhanga Reo National Trust is the protection of te reo, ngā tikanga me ngā ahuatanga Māori by targeting the participation of mokopuna and whānau into the Kōhanga Reo movement and its vision is to totally immerse kōhanga mokopuna in te reo, ngā tikanga me ngā ahuatanga Māori. We unequivocally acknowledge the phenomenal achievements of kōhanga reo in relation to whānau development and Māori language revitalisation.<sup>179</sup>

It then proceeded to make several comments about kōhanga reo, beginning by noting the decline of the movement and the number of supplementary ERO reviews of kōhanga reo. The report noted that one indicator of low-quality services was the number of supplementary reviews considered necessary by ERO. It traversed this issue at length, graphing the number of supplementary reviews on a comparative basis to other ECE services.<sup>180</sup> Having

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176. Richard Walley, under questioning by claimant counsel, second week of hearing, 20 March 2012 (transcript 4.1.4, p 233)

177. Karen Sewell, under questioning by the Tribunal, second week of hearing, 19 March 2012 (transcript 4.1.4, pp 98–99); doc D2 (Karen Sewell, Secretary for Education and Leith Comer, chief executive, Te Puni Kōkiri to Timoti Kāretu and Tina Olsen-Ratana, Co-Chairpersons, Te Kōhanga Reo National Trust, letter, 23 September 2011)

178. Document A4, vol 1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), pp 61–455

179. Document A4, vol 1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), p 165

180. Document A4, vol 1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), pp 165, 167

identified that 34 per cent of kōhanga reo had incurred supplementary reviews over a three-year period, the Taskforce said:

This is not intended to reflect badly on the Kōhanga Reo movement as a whole . . . But nonetheless, our primary concern has to be for the welfare of the mokopuna in these kōhanga reo. Government must think seriously about the way it invests in kōhanga reo . . .

A dollar figure applied to 34% of kōhanga reo is around \$19m in 2009/10. [Emphasis in original.]<sup>181</sup>

The very next section of the report discussed the total annual expenditure on ECE provision for children under two of \$268 million. It concluded as follows:

Low-quality early childhood education is particularly harmful for under two-year-olds, and there can be long-term poor outcomes when they are exposed to poor quality which are costly to remediate (lower educational achievement and increased crime, for example). *So a proportion of the \$268m noted above could potentially be the poorest investment across the early childhood education portfolio.* [Emphasis in original.]<sup>182</sup>

The emphasising of the monetary sum of \$19 million, when taken with other statements in the report about poor value ECE expenditure, can be read only as a suggestion that the Government needed to review the expenditure of this \$19 million.<sup>183</sup>

Yet, the evidence before us reflects a somewhat different picture as to the meaning of the supplementary reviews of kōhanga reo. Ms Royal-Tangaere analysed 1,342 regular ERO reports over the period from 2003 to 2011, of which 32 per cent led to supplementary reviews. Her analysis showed, however, that 21 per cent of the supplementary reviews were triggered by reports that did not raise issues on non-compliance. In her view, these should not have led to supplementary reviews.<sup>184</sup> If they are discounted, the proportion of reports leading to supplementary reviews reduces to 23 per cent. This compares the Taskforce's average for all ECE of 11 per cent.<sup>185</sup> The other supplementary reports made limited recommendations for some improvements concerning the whānau involved.<sup>186</sup>

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181. Document A4, vol1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), p167

182. Document A4, vol1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), p169

183. For example document A4, vol1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), pp151, 169

184. Document A49 (Arapera Royal-Tangaere, 'Comparative Review of Education Review Office Reports', 2011), pp8, 18, 42

185. Document A4, vol1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), p167

186. Document A49 (Arapera Royal-Tangaere, second brief of evidence, 22 December 2011), pp2-3; doc A49 (Arapera Royal-Tangaere, 'Comparative Review of Education Review Office Reports', 2011), p8

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Ms Royal-Tangaere also concluded that ERO supplementary reports did not always indicate poor quality performance.<sup>187</sup> She was supported in evidence by the director of ERO, Dr Graham Stoop. Contrary to the approach the ECE Taskforce report took to the negative connotation of supplementary reviews, he told us:

So I am not happy with the connection it has drawn in the task force report between supplementaries and quality. There can be many reasons why we would call a supplementary review . . .<sup>188</sup>

Dr Stoop then described what he called a ‘developmental reason’ for a supplementary review, which can reflect positive developmental aspects to performance by a kōhanga reo. He continued:

So to draw a link, a causal link between supplementaries and poor quality is not the way I would like to refer to it. There . . . will, of course, be reasons for a supplementary, don’t get me wrong, if everything was good you wouldn’t have a supplementary but I think we have to be careful in bringing those two together in such a causal way.<sup>189</sup>

We note the Taskforce did not have the benefit of the evidence we have received, as it apparently based its conclusions solely on numbers of supplementary reviews and not on an analysis of their purpose or content.

Emphasis was also placed by the Taskforce on the importance of the Government funding ‘an over-arching governance and management support structure’ for Māori immersion ECE settings outside the kōhanga reo movement.<sup>190</sup> However, the Taskforce expressed a very different view regarding the worth of the Trust, stating:

It appears that the te kōhanga reo movement has, for some time, been viewed as too hot a political issue to touch. Added to this, any scrutiny of the institution is difficult because the Te Kōhanga Reo National Trust strongly objects to what it views as any attempt to diminish its authority.<sup>191</sup>

The Taskforce report on this issue concluded by referring yet again to its supplementary review conclusions of poor quality indicators, saying that those issues:

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187. Document A49 (Arapera Royal-Tangaere, second brief of evidence, 22 December 2011), p3; doc A49 (Arapera Royal-Tangaere, ‘Comparative Review of Education Review Office Reports’, 2011), pp 8, 41, 44

188. Graham Stoop, under questioning by Crown counsel, second week of hearing, 23 March 2012 (transcript 4.1.4, p 600)

189. Graham Stoop, under questioning by Crown counsel, second week of hearing, 23 March 2012 (transcript 4.1.4, p 600)

190. Document A4, vol1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), p 235

191. Document A4, vol1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), p 335

raise questions about consistent quality early childhood education provision, and national body leadership for all children who attend kōhanga reo, and whether the Trust is a key barrier or contributor to the original aspiration of the movement.

Political sensitivities in any guise should never trump the safety and well-being of children. A lack of progress in the area of ensuring quality early childhood education provision, targeted support and guidance for kōhanga reo is of great concern to the ECE Taskforce . . . We believe meaningful change is overdue and must be addressed.<sup>192</sup>

There was no evidence to support these criticisms of the Trust recorded in the report, no consultation occurred with the Trust, and no opportunity was given to the Trust to respond to some of the issues raised by the Taskforce. The Taskforce recommended that:

Therefore, we recommend the current Tripartite Review be completed immediately, and that the quality of initial teacher training should be added to the Tripartite review. We also think that Te Kohanga Reo National Trust's reporting and compliance requirements should be aligned with those required in other early childhood education settings.<sup>193</sup>

Those last statements can only have been made without knowledge of some important facts. As we have noted in this chapter, senior Crown officials were deployed to pursue other Ministry of Education priorities. These included Mr Walley being seconded to the ECE Taskforce secretariat, and Mr Le Quesne working for the Ministry on its response to the Christchurch earthquake. Other factors were the loss of Mr Brell to work caused by the Christchurch earthquake, and the fact that the Ministry did not arrange to replace either of those personnel.

The Taskforce also recommended that 'the quality of initial teacher training should be added to the Tripartite review'.<sup>194</sup> Again there was no evidence recorded in the report as to quality shortcomings in regard to the Tohu Whakapakari training course for kōhanga reo kaiako and whānau.

It is concerning that the Ministry of Education failed to have regard to the need to consult kōhanga reo on the Taskforce review. If this Taskforce report is considered as a basis for future policy affecting kōhanga reo, then issues relating to the Crown's Treaty obligations to actively protect te reo Māori in ECE and through kōhanga reo will continue to undermine the relationship between the parties.

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192. Document A4, vol1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), p 335

193. Document A4, vol1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), p 335

194. Document A4, vol1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), p 335

6.3.4(4)

**(4) *The Crown's response to the ECE Taskforce***

We have set out the background facts as to how the Crown responded to the ECE Taskforce, in the Tribunal's decision to grant an urgent hearing of this claim.<sup>195</sup> On 26 May 2011, the Minister received the *ECE Taskforce Report*.<sup>196</sup> She authorised the release of the report, and she then engaged in a period of consultation on the ECE Taskforce recommendations, including those concerning kōhanga reo. She also advised Cabinet on her proposed timetable of work around the implementation of those recommendations.<sup>197</sup>

The Crown proceeded to make decisions concerning the *ECE Taskforce Report* which could impact upon kōhanga reo, although the Crown endeavoured to persuade us to the contrary. These decisions included:

- (a) Establishing sector advisory groups to work with Government on:
  - (i) Identifying and improving the practice of low-quality services,
  - (ii) Developing new and improved policies for ECE for children under two years old, and
  - (iii) Improving the transition for children from ECE to primary school,
- (b) Carrying out a national evaluation of ECE curriculum *Te Whāriki* to make sure it is continuing to meet the needs of children and to decide if any improvements need to be made; and
- (c) Developing a new funding system.<sup>198</sup>

The Tribunal noted in its decision to grant urgency that 'these tasks bear a striking resemblance to aspects of the Phase 1 programme devised by the ECE Taskforce discussed in their report at pages 35–36'.<sup>199</sup>

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195. Memorandum 2.5.13 (Deputy Chief Judge C Fox, Hon Sir Douglas Kidd and Kihi Ngatai, 'Decision on an Application for Urgency', 25 October 2011)

196. Submission 3.1.26 (Crown counsel, memorandum as to disclosure, additional information and ancillary matters, 29 August 2011), p 4

197. Memorandum 2.5.13 (Deputy Chief Judge C Fox, Hon Sir Douglas Kidd and Kihi Ngatai, 'Decision on an Application for Urgency', 25 October 2011), pp 12–16 ; doc A18 (Minister of Education, 'Aide Memoire: ECE Taskforce: Report Release and Consultation', 26 May 2011), pp 20–21; doc A18 (Minister of Education to Cabinet, 'Next Steps after the Early Childhood Education Taskforce', memorandum, undated), pp 108–113

198. Memorandum 2.5.13 (Deputy Chief Judge C Fox, Hon Sir Douglas Kidd and Kihi Ngatai, 'Decision on an Application for Urgency', 25 October 2011), p 16; memo 3.1.44 (counsel for claimants, memorandum, 14 October 2011), p 2

199. Memorandum 2.5.13 (Deputy Chief Judge C Fox, Hon Sir Douglas Kidd and Kihi Ngatai, 'Decision on an Application for Urgency', 25 October 2011). pp 16–17

The hearing of this claim has stalled the making of any final announcements regarding the impacts on kōhanga reo, and the Crown moved to apologise to the claimants regarding the ECE Taskforce process.<sup>200</sup>

**(5) Policy development following the decision to grant urgency**

In January 2012, as a practical follow-up to the *ECE Taskforce Report*, the new Minister of Education, Hon Hekia Parata, established two advisory groups with a focus on improving the quality of provision of ECE services sector-wide, and for children aged less than two years.<sup>201</sup> The advisory groups were also charged with considering how the options they might recommend could align with the Government's priorities to support Māori and Pasifika learners and children from low socio-economic status backgrounds.<sup>202</sup> The Crown has not included kōhanga reo representation on the new advisory groups' or require that they work on kōhanga reo issues.

We understand that the recommendations of these advisory groups were provided to the Minister of Education on 5 April 2012, and that she has asked the Ministry to provide advice on those recommendations. Further announcements on that work were due to be made in August 2012 as to policies that might flow in practical terms.<sup>203</sup>

**(6) Partnership in practice – the problems identified**

The significant breaking points for the kōhanga movement's relationship with the Crown have emerged from a combination of rapid ECE policy reform coupled with a failure to adequately adhere to the terms of the Tripartite Agreement. The Ministry of Education noted that the pace of change in the ECE area has been significant. In the Ministry's view, the Trust has not kept up with the pace of change or met agreed timelines for feedback, particularly in relation to the regulatory framework.<sup>204</sup>

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200. Document A19 (Karen Sewell, Secretary for Education to Timoti Kāretu and Tina Olsen-Ratana, co-chairpersons, Te Kōhanga Reo National Trust, letter, 4 July 2011), pp 7–8; doc A19 (Timoti Kāretu and Tina Olsen-Ratana, co-chairpersons, Te Kōhanga Reo National Trust to Karen Sewell, Secretary for Education and Leith Comer, chief executive, Te Puni Kōkiri, 'Waitangi Tribunal Claim Regarding the Crown's Treatment of Kōhanga Reo', letter, 25 July 2011), pp 28–31

201. Document D9 (Ministry of Education, 'Terms of Reference – Advisory Group: Improving Quality of ECE Services Sector-Wide, not dated [circa 2012], pp 1–2; doc D9 (Ministry of Education, 'Terms of Reference – Advisory Group: Improving Quality of ECE Services for Children Aged Less than Two Years', not dated [circa 2012], pp 3–4

202. 'ECE Advisory Groups', Ministry of Education, <http://www.lead.ece.govt.nz/ManagementInformation/RecentAnnouncements/ECEAdvisoryGroups.aspx>, accessed 2 October 2012

203. Document D14 (Minutes of a meeting of the Early Childhood Advisory Committee, 29 February 2012), pp 2–3; doc E12 (Sector Advisory Group, 'Report – Improving Quality of Early Childhood Education Services for Children Aged Less than Two Years' and 'Report – Sector wide Quality', report for Minister of Education, undated, ); doc E9 (Minister of Education, 'Raising Quality in Early Childhood Education' (press release, Wellington, 25 May 2012)), p 1

204. Document A79 (Karl Le Quesne, senior manager, Early Childhood and Regional Education, Ministry of Education to Minister of Education and Associate Minister of Education, 'Education Report: Te Kōhanga Reo National Trust – Emerging Issues', 5 February 2008), p 146



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We note that the Crown was determined to drive its reforms through with or without the Trust, leading to a situation where new regulations have been imposed to ensure consistent minimum standards are applied across the sector.

Under these regulations new licensing and curriculum criteria have also been imposed, and a new funding mechanism has been applied. Along with coping with the work necessary to respond to the pace of change within the sector, the Trust has had to respond to reviews of both its work and that of the sector, and negotiate its Master Agreement as to kōhanga reo funding.

In chapter 4 we identified a Crown policy failure in not identifying its obligation to actively protect te reo Māori in ECE and to accord kōhanga reo an appropriate priority. In chapter 5 we reviewed what has been done about participation in ECE and compared this to the inaction in developing policies around participation in kōhanga reo. In chapters 7, 8, and 9 we look in detail at some of the sticking points regarding the implementation of quality measures, evaluation standards, funding, regulations and licensing criteria.

Essentially, there is a lack of clarity around where kōhanga reo fit in the ECE sector. On the one hand, there are separate agreements, criteria, and curriculum for kōhanga reo, even if insufficient attention has been paid to ensuring that the Trust is treated in the manner contemplated by the Tripartite Agreement. On the other, is the universal application of general ECE policies to all services, including kōhanga reo. This has led to a number of challenges for the Crown–kōhanga reo relationship outside of those that have plagued the Funding, Quality and Sustainability Working Group and these are:

- ▶ Divided responsibilities between Crown officials have led to confusion over who is responsible for different aspects of the relationship. Dame Iritana talked of how difficult it was to identify whom from the Ministry of Education they were to engage with.<sup>205</sup> She also talked of losing ‘count of all the different faces’ on the Crown’s side of the table from all the different parts of the Ministry. Mr Brell underscored this point by noting that the relationship with the Trust has, from the Ministry’s perspective, been conducted at different layers of engagement. Broader strategic engagement has been conducted by senior officials while the ‘business as usual’ or day-to-day engagement is conducted primarily by the Ministry’s regional staff.<sup>206</sup>
- ▶ The Ministry does not fully understand what the Crown’s relationship with the Trust is built upon. At least one senior staff member, Karin Dagleish, had not even read the Tripartite Agreement during her work with the Trust, as she admitted to us during the urgency hearing. Ms Dagleish was responsible for planning and providing

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205. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p 13

206. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), p 8

organisational direction and leadership for the ECE Group, and that Group's contribution to the Ministry's focus on 'Māori Enjoying Education Success as Māori'.<sup>207</sup>

- ▶ The Ministry having had the responsibility of advising the Minister of Education and the Minister of Māori Affairs, who is also the Associate Minister of Education, on the nature of the relationship with the Trust. We have seen limited evidence of any advice given by these officials to their respective Ministers regarding the Crown's Treaty obligations to te reo Māori in ECE, kōhanga reo or the Trust. Te Puni Kōkiri officials effectively defaulted to the Ministry of Education and on the basis of the evidence given in hearing by Geoffrey Short for Te Puni Kōkiri, they do not appear to have provided any significant advice either.<sup>208</sup>

Apryll Parata, former deputy secretary for Māori education, and responsible for Māori education from 2007 until early 2012, acknowledged that the frustrations for both parties have been 'palpable'. She considered that that the representatives of the Trust 'have struggled to understand the kaupapa of the Crown' in the same way that 'the representatives of the Crown have struggled to understand the kaupapa of the Trust'.<sup>209</sup> She was convinced there had not been a sufficient level of commitment from both parties:

to engaging in the depth and the breadth at a philosophical and conceptual level in truly developing understanding because as is true of any relationship where you have that and you are committed to it working, it works. It wouldn't matter what frustration or issue or challenge comes up if you're both committed to finding a way.<sup>210</sup>

Ms Parata also offered a range of suggestions as to how the relationship could be improved, including a radical reconstruction of the relationship with the Crown so that 'the kaupapa will thrive'.<sup>211</sup>

We note that personal relationships between the various senior Crown officials and the Trust's senior personnel or Trustees have not been good enough to overcome the breakdown in the relationship between the claimants and the Crown. In our view, the strained relationship is the result, on the Crown's side, of failing to adequately take into account in ECE policy, the Crown's obligation under the Treaty to actively protect te reo through kōhanga reo. The Ministry of Education has not been sufficiently seized of this obligation.

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207. Document A3 (Karin Dalglish, brief of evidence in opposition to application for urgency, 4 August 2011), p1; Karin Dalglish, under questioning by claimant counsel, urgency hearing, 18 August 2012 (transcript 4.1.1, p14)

208. Geoff Short, under questioning by claimant counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, pp 400, 414-415, 417-421, 426-431, 436-437)

209. Apryll Parata, under questioning by the Tribunal, second week of hearing, 22 March 2012 (transcript 4.1.4, p516)

210. Apryll Parata, under questioning by the Tribunal, second week of hearing, 22 March 2012 (transcript 4.1.4, p516)

211. Apryll Parata, under questioning by the Tribunal, second week of hearing, 22 March 2012 (transcript 4.1.4, p531)

6.4

On the Trust's side the problem has been that they have not effectively engaged in the Crown's policy development process.

**6.4 CONCLUSION**

On the basis of the 2003 Tripartite Agreement, the Trust and the Crown embarked on a common policy recorded as their shared outcomes. Had that policy been adhered to, giving equal effect to Māori language, Māori development and education goals, this Tribunal hearing might not have been necessary.

Instead, the policy reforms of the ECE sector have overtaken that relationship. The Trust and kōhanga reo must fit within the ECE policy framework if they want Vote Education money.

Crown actions, including its participation in reviews and their outcomes, have all essentially been aimed at advancing that policy agenda, as we discussed in chapter 4.

We find that the Crown has acted in a manner contrary to the Treaty principle of partnership as it has failed to give practical effect to the Treaty obligation to protect the rangatiratanga and kaitiakitanga of the kōhanga reo movement so as to enable it to exercise a reasonable degree of autonomy over the manner in which it pursues its kaupapa. Promising partnership initiatives such as the joint 2001 Gallen review and its recommendations and the 2006 PricewaterhouseCoopers recommendations were either not implemented or only partially implemented, and the Funding, Quality and Sustainability Working Group was allowed to fall over without completing its work. This has all contributed to leaving kōhanga reo inadequately supported in ECE, and to the breakdown in its relationship with the claimants. The combined effect, in their view, has been that they are mere supplicants to the Crown and its officials.

In our view, the Crown has by its actions and omissions failed to accord to the Trust and kōhanga reo in relationship terms an appropriate priority during the ECE reforms, despite understanding the importance of kōhanga reo to the effective transmission of te reo Māori. Mr Brell attributed the breakdown in the relationship with the Trust to the fact that issues between the parties are difficult to resolve. These issues included reconciling culturally-determined perspectives on how children learn and develop, with the Crown's regulatory functions in ECE to ensure health, safety, and accountability. The Crown also asserted that resolution also required acknowledging the Crown's Treaty obligation to balance improving Māori education outcomes with promoting and protecting te reo.<sup>212</sup>

- ▶ We believe that the partnership that the Crown should have with the Trust and kōhanga reo is so important to the protection and transmission of te reo Māori that the Crown

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212. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), pp 23–24

must accord to them a sufficient priority when developing policy, regulatory, licensing, and funding arrangements. Clearly there has been a structural policy fault, as we discussed in chapter 4.

There was also evidence of some failure by the Trust to meet deadlines and provide constructive feedback on proposals related to the ECE reforms. This may be due, in part, to under-funding of the Trust, resulting in limited capacity to respond effectively.

Mr Brell called for both parties to reinvigorate their relationship, noting that the Trust and kōhanga reo need to acknowledge the Crown's legitimate interest in ensuring the well-being and learning of children, and that the Crown needs to be more open to setting standards and providing resourcing in ways that better reflect the wider goals of kōhanga reo.<sup>213</sup> We suggest how this can be managed in a Treaty-consistent manner in chapter 11.

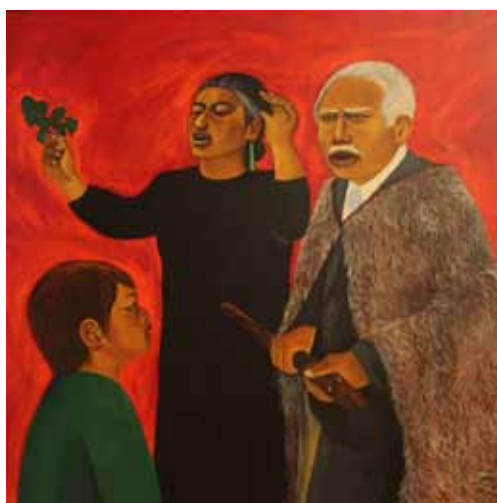
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213. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), pp 23–24



CHAPTER 7

**KIA TŪHĀHĀ NGĀ TAUMATA  
QUALITY ISSUES FOR KŌHANGA REO**



In the Tribunal's Statement of Issues, we signalled that we wished the claimants and the Crown to address how the Crown's policies, practice, and regulations concerning kōhanga reo and the Trust reflected, or failed to reflect, their respective rights, interests, and duties.<sup>1</sup> In relation to what are essentially 'quality' issues, the parties addressed:

- ▶ how quality is measured by the Trust and kōhanga reo as compared to what is measured within the ECE policy framework;
- ▶ how quality measures are assessed for ECE and for Māori educational success as Māori in ECE;
- ▶ whether kōhanga reo have been assessed in terms of quality by ERO processes that have prejudicially affected kōhanga reo relative to other ECE centres; and
- ▶ whether the Trust's qualifications, including Tohu Whakapakari, are recognised and rewarded as indicators of quality.

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1. Claim 1.4.1 (statement of issues for the Kōhanga Reo Trust urgent inquiry, 25 November 2011)

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7.1

Overseas and New Zealand research demonstrates clearly that high-quality ECE has long-term benefits for children. In order to provide this quality framework, a number of publications and discussion groups have attempted to survey what ‘quality’ means, in ECE generally, and in different types of early childhood service such as kōhanga reo, playcentres, or Pacific Island language immersion centres. Views vary, as our review of the submissions and evidence reveals.

We note that the Crown’s policies relating to ‘improving quality’ have included developing a standard curriculum for ECE, incentivising teacher-led ECES, providing funding to reflect that preference, and improving registered teacher-to-child ratios. Since our hearings concluded, the emphasis on improving quality has continued with the Minister of Education’s recent announcements that general ECES will need to improve further their current registered teacher-to-child ratios so as to ensure ‘quality’ of services.<sup>2</sup> In this chapter we address how the Crown’s ECE policies focus on quality measures, quality improvement and quality assessment have impacted on kōhanga reo.

### 7.1 THE CLAIMANTS’ MEASURES OF ‘QUALITY’

The claimants consider that kōhanga reo are high-quality early childhood te reo and whānau development providers.<sup>3</sup> The Trust uses four broad criteria for measuring quality in kōhanga reo. These criteria are:

- ▶ total immersion in te reo Māori and tikanga Māori;
- ▶ management and decision making by whānau;
- ▶ accountability to the Creator, mokopuna, the kōhanga reo movement and whānau; and
- ▶ commitment to the health and well-being of mokopuna and whānau.<sup>4</sup>

Arapera Royal-Tangaere added that indicators of quality include the presence of kaumātua and the active participation of parents in decision-making and management. Other quality measures for assessing children’s progress include whether mokopuna are being fully immersed in a Māori language environment guided by tikanga; that they are exposed to Māori culture and concepts; and that they are developing a Māori worldview. Natural conversational ability at kōhanga reo with kaumātua, kaiako, and their parents at kōhanga reo and in the home are other key indicators.<sup>5</sup>

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2. Document E9 (Minister of Education, ‘Raising Quality in Early Childhood Education’ (press release, Wellington, 25 May 2012)), p 1. It is important we should record at this point that Crown counsel gave this Tribunal an assurance that the Minister’s advisory groups following up the ECE Taskforce report were specifically instructed not to include issues concerning kōhanga reo because of this Tribunal inquiry.

3. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2011), pp 14, 26, 27

4. Document A79 (Te Kōhanga Reo National Trust Board, ‘Response of Te Kōhanga Reo National Trust Board to ECE Taskforce Report, *Agenda for Amazing Mokopuna*, 2011’, 20 December 2011), p 410

5. Document A81 (Arapera Royal-Tangaere, brief of evidence, 22 December 2011), p 8; doc A85 (Arapera Royal-Tangaere, third brief of evidence, 22 December 2011), p 15



Claimant counsel Mai Chen submitted that the Crown policies, particularly around ERO's quality reviews, did not properly recognise and provide adequately for the necessary support for 'quality' in the kōhanga reo setting. Ms Chen claimed that the Government 'exercises its kāwanatanga power in the dark as to what quality means for kōhanga reo'.<sup>6</sup>

She drew our attention to the fact that it is often the whānau and kaumātua of a kōhanga reo who are the most experienced and qualified in te reo. The Crown's 'quality' regime and its focus on teachers has, in the claimants' view, distracted from the value of kaumātua as the repositories of knowledge, and it also undervalues kaumātua and their role in kōhanga reo.<sup>7</sup> In research produced by the Trust in 2007 for the Ministry of Social Development, the authors stressed the gradual devaluing effect on kaumātua and kuia of an increased emphasis on trained kaiako in kōhanga reo.<sup>8</sup>

The emphasis on whānau and kaumātua does not mean that the Trust has any issue with developing a range of courses to assist in meeting the overall aim of lifting quality in kōhanga reo. It offers a range of qualifications designed to support the main repositories of knowledge – the kaumātua. The Tohu Whakapakari qualification for kaiako is at the forefront of these.<sup>9</sup> In addition, the claimants drew attention to courses such as Te Ara Tuatahi and Te Ara Tuarua for kaimahi and whānau.<sup>10</sup>

Tohu Whakapakari (or Whakapakari Tino Rangatiratanga) is a degree-level qualification designed by the Trust in 1991 as an alternative to general ECE qualifications for kaiako. The Tohu Whakapakari qualification covers topics such as the history of te reo Māori and kōhanga reo, te reo and tikanga Māori, Māori child-rearing practices, and Māori methods of learning and teaching and assessment.<sup>11</sup>

One-year certificate courses are offered by the Trust for parents and kōhanga reo whānau. Te Ara Tuatahi mo te Reo Māori (Te Ara Tuatahi) is a level 2 language course for people with very little reo, and also includes components on child development and management. Te Ara Tuarua mo te Reo Māori (Te Ara Tuarua) is a level 5 certificate course which focuses on Māori language skills for kōhanga reo whānau who are semi-fluent.<sup>12</sup>

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6. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2011), p 97

7. Document A81 (Arapera Royal-Tangaere, brief of evidence, 22 December 2011), pp 23–24

8. Document A81 (Te Kōhanga Reo National Trust, *Te Hā o te Tipuna*, 2007), pp 489, 496; doc A81 (Arapera Royal-Tangaere, brief of evidence, 22 December 2011), p 24

9. Document A81 (Arapera Royal-Tangaere, brief of evidence, 22 December 2011), p 27

10. Document A81 (Arapera Royal-Tangaere, brief of evidence, 22 December 2011), p 5; doc A81 (Linda Mitchell, Arapera Royal-Tangaere, Diane Mara and Cathy Wylie, *Quality in Parent/Whanau-led Services: Summary Research Report* (Wellington: Ministry of Education, 2006)), p 168

11. Document A81 (Arapera Royal-Tangaere, brief of evidence, 22 December 2011), pp 27–28

12. Document A81 (Linda Mitchell, Arapera Royal-Tangaere, Diane Mara and Cathy Wylie, *Quality in Parent/Whanau-led Services: Summary Research Report* (Wellington: Ministry of Education, 2006)), p 168. Learning outcomes at level 2 of the New Zealand Qualifications Framework are described as 'basic factual and/or operational knowledge' and at level 2 as 'broad operational or technical and theoretical knowledge within a specific field of work or study'. See <http://www.nzqa.govt.nz/studying-in-new-zealand/nzqf/understand-nz-quals/> (last accessed 4 October 2012)

According to Ms Chen, the evidence demonstrates that, the Crown has effectively assimilated kōhanga reo into ECE, and that it has undermined their ability to promote te reo and Māori traditional knowledge and beliefs.<sup>13</sup> Furthermore, the Crown has, she said, discriminated against Māori in relation to kōhanga reo because it has:

- ▶ failed to treat kaiako qualifications developed specifically for the kaupapa of kōhanga reo equally with ECE qualifications;
- ▶ failed or refused to fund kōhanga reo equally with other ECE services; and
- ▶ attempted to assimilate kōhanga reo into the ECE sector.<sup>14</sup>

Ms Chen submitted that the Crown had failed to support kōhanga reo as a means of allowing Māori to attain equality with other citizens.<sup>15</sup>

### 7.2 THE CROWN'S MEASURES OF 'QUALITY' IN ECE

In response to the claims of assimilation, discrimination and prejudice made by Ms Chen for the claimants, the Crown contended that we must bear in mind that the essence of equal protection, as found by the United Nations Human Rights Committee and by the courts of New Zealand, is the provision of equal treatment in equal circumstances.<sup>16</sup> A distinction based upon a legitimate objective difference does not discriminate. The Crown contended that there can be no finding of Treaty or discriminatory breach in the use of the Crown's system for measuring quality and the funding mechanism based upon it. This is because there are two mechanisms available for the Trust and kōhanga reo to access the higher funding rates provided to teacher-led ECE services. One is to employ staff with recognised teacher qualifications. The other is for the Trust to avail itself of the opportunity to gain recognition for Tohu Whakapakari – which would again give kōhanga reo access to the higher-tiered funding mechanism.<sup>17</sup>

The Crown's measures of 'quality' and the manner used to achieve it in ECE can be found in a range of statutory and regulatory instruments and documents. We discuss this policy framework below, but generally these documents link quality with a number of matters such as curriculum and numbers of registered teachers. This emphasis was clearly put by the Secretariat that serviced the Early Childhood Education Taskforce in its first briefing to that body in October 2010. The Taskforce was told:

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13. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 104

14. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 28

15. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 30

16. Submission 3.3.2 (Crown counsel, opening submissions, 19 March 2012), p 36

17. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012 ), p 66; Crown counsel, under questioning by Tribunal, third week of hearings, 26 April 2012 (transcript 4.1.5, p 377)

Quality in ECE is defined and regulated largely in terms of structural quality such as ratios of adults to children (this varies by service type and age of children), and qualifications of adults. Currently 50% of all staff in teacher-led ECE services are required to hold tertiary qualifications in ECE teaching.<sup>18</sup>

This is a definition consistent with the Crown's 10-year strategic plan, *Pathways to the Future: Ngā Huarahi Arataki*, and for which improving quality is a key goal.<sup>19</sup> The plan defines quality as 'the result of the interaction of the ratio of trained adults to children', 'the number of children (or group size)', and, in some services, the 'qualification levels of teachers'. Collectively, according to the authors of the plan, 'these factors form the foundation on which quality ECE is built'.<sup>20</sup> Consistent with this definition, the Crown's current regulatory and funding regimes, which we discuss in more detail in chapters 8 and 9, incentivise higher numbers of qualified teachers per ECE service.

In terms of Māori, *Ngā Huarahi* emphasises the ECE curriculum *Te Whāriki* and states that the key to improving quality, sector-wide is:

to increase the number of professionally trained teachers responsible for providing education and care to children. Māori children will benefit generally from this but the target of having all ECE teachers professionally qualified requires us to explore and take into consideration the special characteristics of community-based Māori ECE services

Māori tell us that field-based training of ECE teachers best matches the learning style of Māori and produces teachers most suited to Māori ECE services. The Government will work in partnership with Māori to develop a teacher education course for Māori immersion ECE teachers.

Partnerships will also form an important element in determining how quality is achieved in parent/whānau-provided ECE services such as kōhanga reo. Our partnership will include work with Te Kōhanga Reo National Trust to identify and support quality in these services.<sup>21</sup>

The action points around quality are clearly curriculum, teacher-led and compliance focused. They include goals to monitor the progress of Māori-language immersion ECE services in achieving teacher registration targets, including, if necessary, increasing teacher

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18. Document A14, vol1 (Ministry of Education ECE Taskforce Secretariat, 'Overview of the New Zealand Early Childhood Education (ECE) System – Introductory Briefing', October 2010), p 12

19. Document A76 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki – A 10-Year Strategic Plan for Early Childhood Education 2001–2012* (Wellington: Ministry of Education, 2002)), p 435

20. Document A73 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki – A 10-Year Strategic Plan for Early Childhood Education 2001–2012* (Wellington: Ministry of Education, 2002)), p 448

21. Document A73 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki – A 10-Year Strategic Plan of Early Childhood Education 2001–2012* (Wellington: Ministry of Education, 2002)), pp 448–449

supply.<sup>22</sup> These targets do not, as yet, apply to kōhanga reo. The Government is also keen to build on work with the Tertiary Education Commission, and the New Zealand Teachers Council to:

- ▶ develop foundation courses for Māori to meet entry criteria for teachers courses;
- ▶ ensure that teacher education courses support all ECE teachers in the use of te reo Māori me ngā tikanga; and
- ▶ develop teacher education courses suitable for ECE teachers who work in Māori immersion services.<sup>23</sup>

In terms of quality in Māori-medium ECE, the Government's Māori education strategy *Ka Hikitia* emphasises quality but provides limited detail on what this means in such settings.<sup>24</sup> The strategy identifies that challenges facing Māori language education providers in immersion and other settings include the shortage of qualified teachers and learning resources.<sup>25</sup> Under the goal of improving quality of ECE experiences and education services for Māori children, the authors list the need for evaluative reviews, assessment systems that address special education needs, and strengthened regulatory processes for licensing ECE services.<sup>26</sup> Under strengthening the quality of provision by Māori language ECE services, an agreed set of outcomes was to be completed that would define Ministry of Education support for the Trust to provide national leadership to kōhanga reo.<sup>27</sup> In addition, the Ministry was to support teachers in Māori language ECE to upgrade their teaching qualifications. It also wanted to develop exemplars of what quality looks like in Māori language ECES. This was to be done by supporting teaching and learning quality. Finally, the Ministry committed to investing in research and development so as to support the continuous investment in Māori language ECE centres.<sup>28</sup>

As the Crown's definition of quality is focused on adult to child ratios and numbers of qualified staff for teacher-led services, funding is provided on the percentage of registered teachers. For home-based services, kōhanga reo, and playcentres, funding is awarded at either 'quality' or 'standard' levels, depending on different mixes of different levels of

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22. Document A73 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki – A 10-Year Strategic Plan of Early Childhood Education 2001–2012* (Wellington: Ministry of Education, 2002)), p 450

23. Document A73 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki – A 10-Year Strategic Plan for Early Childhood Education 2001–2012* (Wellington: Ministry of Education, 2002)), p 450

24. Document A64 (Ministry of Education, *Ka Hikitia – Managing for Success: The Māori Education Strategy 2008–2012* (Wellington: Ministry of Education, 2009)), p 74

25. Document A64 (Ministry of Education, *Ka Hikitia – Managing for Success: The Māori Education Strategy 2008–2012* (Wellington: Ministry of Education, 2009)), p 78

26. Document A64 (Ministry of Education, *Ka Hikitia – Managing for Success: The Māori Education Strategy 2008–2012* (Wellington: Ministry of Education, 2009)), p 83

27. Document A64 (Ministry of Education, *Ka Hikitia – Managing for Success: The Māori Education Strategy 2008–2012* (Wellington: Ministry of Education, 2009)), p 83

28. Document A64 (Ministry of Education, *Ka Hikitia – Managing for Success: The Māori Education Strategy 2008–2012* (Wellington: Ministry of Education, 2008)), p 83

qualification held by staff, for example the home-based educator qualification, or the Tohu Whakapakari for kōhanga reo.<sup>29</sup>

### 7.3 THE ECE CURRICULUM – TE WHĀRIKI AND QUALITY

While the above definitions as to quality exist, the Crown recognises that ensuring quality in early childhood education is an ongoing process. To that end it has developed an ECE curriculum, an ECE regulatory review framework, and a funding regime that supports ‘high quality’ ECE services.

In terms of the curriculum, the Government promulgated *Te Whāriki* in 1996 as the curriculum for all ECE services.<sup>30</sup> It addresses what is to be taught and learnt and how it is to be taught and learnt. In other words it lists what the Ministry of Education’s standards for curriculum quality are.

*Te Whāriki* contains two expressions of the curriculum, one for general ECE centres and another for kōhanga reo, which is expressed in te reo Māori. These two expressions are not translations of one another. Part A of *Te Whāriki* provides a summary of the principles, strands, and goals of the curriculum. It also includes some indicators of broad stages in children’s learning and development, and identifies processes of planning, evaluation, and assessment and the ways in which these are related to the principles of the curriculum. Part B establishes the curriculum for kōhanga reo, but the Ministry of Education indicates that it may be of use for other Māori immersion services. Part C expands on each of the goals and associated learning outcomes and part D develops linkages with the New Zealand Curriculum for Schools.<sup>31</sup>

The English version in part B focuses on children as individuals, and on ECE approaches to measuring learning. By comparison, the Māori version locates the well-being and learning of a child within the context of whānau, hapū and iwi, the kaupapa of kōhanga reo, and through the strands associated with the physical, intellectual, and spiritual development of that child.<sup>32</sup> Children are to be guided through several stages of learning centred upon mana atua (well-being), mana tangata (contribution), mana reo (communication), mana whenua (belonging) and mana aotūroa (exploration).<sup>33</sup>

29. Document A15 (Ministry of Education, ECE Taskforce Secretariat, *Performance: the ECE sector performance story*, 3 December 2010), p 185

30. Document A64 (Ministry of Education, *Te Whāriki: He Whāriki Mātauranga mō ngā Mokopuna o Aotearoa – Early Childhood Curriculum* (Wellington: Ministry of Education, 1996)), pp 657–756

31. Document A64 (Ministry of Education, *Te Whāriki: He Whāriki Mātauranga mō ngā Mokopuna o Aotearoa – Early Childhood Curriculum* (Wellington: Ministry of Education, 1996)), p 666

32. Document A64 (Ministry of Education, *Te Whāriki: He Whāriki Mātauranga mō ngā Mokopuna o Aotearoa – Early Childhood Curriculum* (Wellington: Ministry of Education, 1996)), pp 689–691, 700

33. Document A64 (Ministry of Education, *Te Whāriki: He Whāriki Mātauranga mō ngā Mokopuna o Aotearoa – Early Childhood Curriculum* (Wellington: Ministry of Education, 1996)), pp 691–693

**7.4 TRIBUNAL ANALYSIS AND FINDINGS**

In our view, the Crown's and ERO's policies for measuring quality for ECE services attempt to link development and educational outcomes for children to effective processes, management, leadership, and quality educators and programmes. The focus is on how children learn and develop.

EROS policies for assessing 'quality' are also particularly clear. The weight of such assessments takes the same ECE child-focused programme approach to the issue.

However, we were told by Mr Walley from the Ministry that the Crown only applies its 'quality' improvement framework to teacher-led ECE services and not to kōhanga reo. The reason for this is that there has never been agreement with kōhanga reo on what quality measures should be adopted. What has happened is that there has been some discussion within the Quality, Sustainability and Funding Working Group, but there has never really been an agreement that quality in kōhanga reo is a problem or that it needs to be addressed. Nor has there been any agreement with kōhanga reo or with the Trust that there is a need to raise the number of kaiako with the Tohu Whakapakari qualification so as to improve quality.<sup>34</sup>

What this indicates is that the Ministry of Education has not spent sufficient time considering or discussing with the Trust and kōhanga reo what 'quality' measures should be adopted for kōhanga reo and how these should be assessed, whether through ERO or otherwise.

We understand that there are many ways of measuring and assessing quality, as the Crown's evidence demonstrates. Rita Walker, for example, with experience as an ERO reviewer, administrator of a kōhanga reo and as a witness for the Crown, considered that there is more than one way of approaching the issue. She told us that one measure of quality for a child's learning can be about assessing Māori children within their wider social context and how this impacts and influences the people they are. Tribal differences may, therefore, need to be considered as one measure of quality when assessing a child's learning.<sup>35</sup> She referred to a number of possible options for developing a Māori-focused quality framework. What we have seen is that the Crown's policies for measuring quality do not fully reflect the particular environment within which kōhanga reo operate.

Our ultimate point is that only the joint efforts of the Crown and the Trust can result in an agreed quality framework, as there are measures of quality that are currently being overlooked in terms of kōhanga reo. This means measuring quality of learning and teaching against the important contribution kōhanga reo play in the transmission of te reo Māori me ngā tikanga. This could include, for example, adding quality measures such as the expected degree of competency for children in te reo Māori before transitioning to primary school.

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34. Richard Walley, under questioning by claimant counsel, second week of hearing, 20 March 2012 (transcript 4.1.4, p 253)

35. Document A69 (Rita Walker, brief of evidence, 15 February 2012), p 3



This would require the Ministry and the Trust agreeing on a system of tracking children and measuring their competency in te reo. In their discussions the Crown and the Trust should also address the following matters.

#### 7.4.1 The ECE curriculum – *Te Whāriki* and quality

According to Ms Walker, the general *Te Whāriki* offers the potential for quality learning outcomes for children.<sup>36</sup> She emphasised that, in her view, the Crown's broader framework for ECE has generated a willingness in the general ECE sector to engage, at various levels, with te reo me ngā tikanga Māori. This was a matter she considered important given the proportion of Māori in ECE who attend non-kōhanga reo services.<sup>37</sup> We note that the latest published statistic for this proportion is more than 77 per cent in mid-2011.<sup>38</sup>

We note further that *Te Whāriki* was drafted with extensive input from Trust experts before its publication in 1996, that generally the parties have reached a consensus on its content and that the curriculum framework promulgated in 2008 contained a te reo wording of the principles and strands from *Te Whāriki* that was agreed between the Ministry and the Trust.<sup>39</sup> The sole remaining issue between them relates to the translation of the licensing criteria. This should be addressed by the parties during their discussions.

#### 7.4.2 Teacher-led ECE services and quality

The evidence from senior officials appearing as Crown witnesses demonstrates that there is built into the ECE policy approach for measuring 'quality' a preference for teacher-led ECE services. That evidence also indicates that the Ministry of Education has found it difficult to envisage improving quality in ECE other than by increasing the involvement of ECE teachers with recognised qualifications.

In this regard, we note that at least two senior managers for the Ministry described this as the preferred approach and it appears to have become a 'hard' sticking point in the Crown's relationship with the Trust. Karen Sewell, who was Secretary for Education from 2006 to 2011, made that plain, as did Rawiri Brell, one of the Ministry's senior managers responsible for Māori education. Ms Sewell considered that trained teachers were critical to the system

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36. Document A69 (Rita Walker, brief of evidence, 15 February 2012), p 7

37. Document A69 (Rita Walker, brief of evidence, 15 February 2012), p 3

38. Education Counts, Ministry of Education, <http://www.educationcounts.govt.nz>, accessed 5 October 2012

39. Document A81 (Arapera Royal-Tangaere, Vyletta Arago-Kemp and Keri Newman, 'Te Kōhanga Reo – Transition, Transmission and Transformation: Meeting the Challenge (A Think Piece)' April 2005), p 467; doc A66, (Anne Meade, brief of evidence, 15 February 2012), pp 14–15; doc A64 (Karl Le Quesne, senior manager, Early Childhood Education to Minister of Education and Associate Minister of Education, 'Education Report: A Curriculum Framework for Early Childhood Education', 4 July 2008), pp 762–763



7.4.3

and to the way in which learning and education happens.<sup>40</sup> Mr Brell advised that there was an issue around whether kōhanga reo are only about language and whānau development, or whether they offer language and education. In his view, the issue related to what ‘quality’ means and who is best placed to assess the quality. He was also convinced it was related to the debate around mainstream teaching qualifications versus the Tohu Whakapakari qualification. He noted that this issue links to the expectations of Ministers ‘in terms of their commitment to teacher registration and the qualifications framework.’<sup>41</sup>

The fact that two senior Crown officials made the statements above illustrates the Ministry’s preference for improving quality through the employment of more teachers with recognised qualifications in ECE services, including in kōhanga reo.

The Crown contended its policies concerning teacher-led services did not reflect an assumption, let alone a bias, that kaiako and Tohu Whakapakari are not contributors to quality in kōhanga reo.<sup>42</sup> We note that the Crown has included kōhanga reo in a two-tier funding regime that in part recognises Tohu Whakapakari as a measure of ‘quality.’ But that regime limits the ability of parent/whānau-led services access to the higher rates available to teacher-led ECE centres, unless they employ ECE teachers with recognised qualifications, a matter we focus on in chapter 8. The underlying assumption for paying a higher rate must be that ECE teachers with recognised qualifications contribute more to quality in ECE services and that is why they should be paid more.

As we noted above, the Crown’s submission to us on this point was that the answer lies in the Trust’s own hands. It should just seek recognition for Tohu Whakapakari through the Teachers Council to ensure pay parity as between kaiako and registered teachers.<sup>43</sup> Alternatively, kōhanga reo could employ more ECE teachers with recognised qualifications.

**7.4.3 Increasing the number of teachers with recognised qualifications**

The Crown referred to the evidence of Rita Walker, which demonstrates that some kōhanga reo are employing ECE-qualified staff. Her evidence was that her teacher-led kōhanga reo prefers to employ ECE-trained teachers, because their training provides them with knowledge of planning, assessment, and evaluation.<sup>44</sup> As we noted above, these are key areas that ERO reports evaluate in respect of kōhanga reo quality performance. Ms Walker was adamant that this did not unsettle in any manner the kaupapa of kōhanga reo.<sup>45</sup> Thus, kōhanga

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40. Karen Sewell, under questioning by claimant counsel, second week of hearings, 20 March 2012 (transcript 4.1.4, p 114)

41. Rawiri Brell, under questioning by the Tribunal, second week of hearings, 20 March 2012 (transcript 4.1.4, p 198)

42. Submission 3.3.5 (Crown counsel, closing submissions, 23 April 2012), p 65

43. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 33–34

44. Document A69 (Rita Walker, brief of evidence, 15 February 2012), p 8

45. Document A69 (Rita Walker, brief of evidence, 15 February 2012), p 9

reo should employ more staff with ECE qualifications in order to become eligible for higher funding rates and this would be consistent with the claimants' rangatiratanga.<sup>46</sup>

We note that teacher-led kōhanga reo account for only 0.6 per cent of all kōhanga reo, indicating the loyalty and solid commitment of kōhanga reo whānau to the Trust and its kaupapa.<sup>47</sup> Approximately 69 per cent of these kōhanga reo employ one or more kaiako with the Tōhu Whakapakari qualification.<sup>48</sup> This is the reality that the Crown faces and, given the size of the cohort of children the kōhanga reo movement is responsible for, a policy response is required. We consider that there are other means to accelerate 'quality' in kōhanga reo without actively encouraging a shift to teacher-led kōhanga reo. Such means include developing with the Trust a better quality assessment policy framework and recognising the Trust's Tohu Whakapakari qualification.

#### 7.4.4 Tohu Whakapakari and Teachers Council recognition

Ms Chen advised that the Trust did not support any requirement that it pursue recognition of Tohu Whakapakari by the Teachers Council as a mechanism for accessing the ECE four-tiered system of funding. In its view such an approach would require a fundamental pedagogical change to its kaupapa, from a Māori learning environment to a teacher-led method.<sup>49</sup>

The agreed position between the claimants and the Crown is that the Trust made an application to the Teachers Council in 2003 for approval of Tohu Whakapakari.<sup>50</sup> The documentation of this process by the Teachers Council and the Trust has been scanty to say the least (only a draft copy of the application was available to us).<sup>51</sup> The application appears to have been either sent back without being recorded in the Teachers Council's documentary process, or uplifted as the claimants were advised that they were unlikely to meet Teachers Council requirements.<sup>52</sup> What is definitely clear is that it was never resubmitted.<sup>53</sup>

The claimants say that was because it was made plain to them informally by a representative of the Teachers Council that there was no prospect of the application being successful.<sup>54</sup> An e-mail confirming this understanding was sent to the Trust and listed a number of steps

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46. Submission 3.3.5 (Crown counsel, closing submissions, 23 April 2012), p 23

47. Document A85 (Arapera Royal-Tangaere, brief of evidence, 7 March 2012), p 4

48. Calculated from data in document A79 (Te Kōhanga Reo National Trust, 'Te Reo Māori Committee Review Submission', December 2010), pp 563, 583, 585

49. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 139

50. Submission 3.3.5 (Crown counsel, closing submissions, 23 April 2012), p 66; submission 3.3.3 (claimant counsel, opening submissions, 12 March 2012), p 137

51. Document A84 (Arapera Royal-Tangaere, brief of evidence, 22 December 2011), p 30

52. Document A67 (Peter Lind, brief of evidence, 15 February 2012), pp 5-6; submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 142

53. Document A67 (Peter Lind, brief of evidence, 15 February 2012), pp 5-6

54. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), pp 141-142

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required as part of the approval process from the Teachers Council.<sup>55</sup> The e-mail recorded: ‘You may find this email disappointing.’ That was an accurate prediction, and since that time the Trust has rejected the notion of pursuing recognition with the Teachers Council

The claimants assert that the steps suggested in that e-mail are more properly suited to a teacher-led ECE environment and do not fit the kaupapa of kōhanga reo.<sup>56</sup> The Trust considered that to meet those requirements would mean an unacceptable change to the design of the Tohu Whakapakari qualification.<sup>57</sup>

Amongst the Teachers’ Council requirements were the following:

- ▶ A practicum experience needed to be identified (essentially field experience in other institutions). It has to be of some 14 to 20 weeks duration, of which eight weeks had to be spent in institutions other than kōhanga reo.<sup>58</sup> The Teachers Council imposed that requirement because it said registration would enable the teacher to teach in any ECE centre – an ability which the Trust was not seeking for its kaiako.<sup>59</sup> The Trust witnesses also pointed out that this type of broader practicum was not feasible for a language and culture transmission process focused on te reo me ngā tikanga, which was exclusive to the Māori language and culture, and where the Tohu Whakapakari qualification process involved not just the kaiako but also the whole whānau. Such practicums were not seen as feasible without departing from that combined approach which was fundamental to the kaupapa of kōhanga reo.<sup>60</sup>
- ▶ A policy needed to be established as to how Tohu Whakapakari graduates could ‘update’ their studies to be able to gain a Diploma of Teaching. Again, this was not something the Trust sought or considered appropriate for its kaiako.<sup>61</sup>
- ▶ A conceptual framework document was needed to demonstrate ‘connections with world theories and knowledge of principles of ECE with Māori world views. The programme needs to be show [*sic*] the links between theory, language teaching, and practice, cultural expectations, preparation for leadership and management’.<sup>62</sup>
- ▶ These requirements would need some discussion with the Trust and kōhanga reo as to their suitability for kōhanga reo if the Trust were to pursue recognition. We note that

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55. Document A81 (Val Burns, New Zealand Teachers Council, to Arapera Royal-Tangaere, Te Kōhanga Reo National Trust, email, 28 May 2004), p 676; submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 60, 71, 139–140

56. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 142–143

57. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 142–145

58. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 142–143

59. Document A81 (Val Burns, New Zealand Teachers Council to Arapera Royal-Tangaere, Te Kōhanga Reo National Trust, email, 28 May 2004), p 676

60. Arapera Royal-Tangaere, under questioning by Crown counsel, first week of hearing, 14 March 2012 (transcript 4.1.3, pp 335–336)

61. Document A81 (Val Burns, New Zealand Teachers Council to Arapera Royal-Tangaere, Te Kōhanga Reo National Trust, email, 28 May 2004), p 676

62. Document A81 (Val Burns, New Zealand Teachers Council to Arapera Royal-Tangaere, Te Kōhanga Reo National Trust, email, 28 May 2004), p 676

changes have occurred within the Teachers Council since the appointment in 2005 of its new director, Dr Peter Lind. Further changes occurred in 2010 to the Teachers Council's guidelines. Dr Lind's evidence was that a far more flexible approach to other education pedagogies was now taken under these new guidelines. He instanced recent Māori courses being approved for recognition such as Te Aho Tātairangi for kura kaupapa and the three-year Bachelor of Teaching – Ki Taiao qualification which enables some recognition of prior learning from the Tohu Whakapakari course.<sup>63</sup> However, these courses are focussed on teacher-led pedagogies and it would be entirely appropriate for the Teachers Council to recognise them.

Despite Dr Lind's refreshingly open approach to such Māori courses, we remain unconvinced that the path the Trust would face under the 2010 guidelines is as free of obstacles as Crown counsel would have us accept. Dr Lind, for example, noted that the Teachers Council has very tight requirements around practicums and how they are delivered. Students are expected to have a range of experiences on practicums, with placements in different settings. The Teachers Council wants to broaden student teachers' experience and test their teaching in a range of settings, to give an assurance that 'they will be able upon graduation and registration to teach in a range of New Zealand settings in their sector'.<sup>64</sup>

We do, however, accept that with dialogue some of these and other potential barriers may be overcome, including altering the Teachers Council's preference that registration ought to demonstrate an ability to teach in a wide range of ECE settings. However, we note that the Trust and kōhanga reo do not seek that ability, and see the teacher-led model as being alien to the learning kaupapa of kōhanga reo.

#### 7.4.5 Alternative recognition pathway

We are, however, of the view that the Teachers Council recognition is unnecessary to progress the issue of how to measure and improve quality in kōhanga reo. If the Crown's concern is that the Tohu Whakapakari is deficient as far as teaching methodology is concerned, it did not demonstrate that in evidence before us in any significant way.

We consider that what is required, and what has not happened, is a close mutual examination by the Crown and the Trust of how the Trust's qualifications and courses contribute to improving 'quality' in kōhanga reo. The Quality, Sustainability and Funding Working Group could have addressed this matter, but it did not. The consequence of this omission on the part of the Crown has been that the Tohu Whakapakari and other Trust courses related to te reo have been undervalued. The claimants have repeatedly asserted that the risk to the quality of te reo Māori by the devaluing of Tohu Whakapakari is very real, and

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63. Document A67 (Peter Lind, brief of evidence, 15 February 2012 ), pp 5–7

64. Document A67 (Peter Lind, brief of evidence, 15 February 2012 ), pp 7–8

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is a fact known to the Crown.<sup>65</sup> An indirect consequence, according to the claimants, has been the devaluing of quality Māori immersion education offered through kōhanga reo.<sup>66</sup> The Crown does not accept that it has adopted such an attitude and there is evidence that in 2006 the Ministry of Education was concerned enough to note:

There are risks for the National Trust in allowing a kōhanga reo to be recognised for qualifications not provided by the National Trust because other kōhanga reo may question whether the Trust qualifications are still valuable. Further, some kōhanga reo may end up being led by kaiako who are not sufficiently skilled in te reo Māori. However, this risk may not be high because the Trust still requires kaiako to be attested in te reo Māori for affiliation purposes.<sup>67</sup>

While we do not agree totally with the claimants' position, we do consider that the NZQA recognition of the Tohu Whakapakari as equivalent to a level 7 degree course has added value to it as a qualification and more than justifies recognising it. We explain below how this may happen.

Under an amendment to the Education (Early Childhood Centres) Regulations 1998 all teacher-led centres, defined as any centre not 'excluded' as such under regulation 36A(1) were required to ensure that from 31 December 2007, at least 50 per cent of the required staff of that centre held a recognised qualification.<sup>68</sup> Recognised qualifications were defined as ECE teaching qualifications recognised by the Teachers Council for registration purposes. Excluded centres were defined as including any kōhanga reo affiliated to the Trust, other than a kōhanga reo that had been approved by the Secretary for Education, after consultation with the Trust, as a centre that complied with the qualification requirements for a teacher-led centre.<sup>69</sup> Accordingly, the 50 per cent quality staffing requirement did not attach to 'excluded centres' such as kōhanga reo.

Despite some changes to these definitions made in the Education (Early Childhood Services) Regulations 2008, similar exemption provisions still apply to kōhanga reo. The terminology has changed to refer to 'teacher-led service' and 'excluded service', with the 'teacher-led service' being defined in regulation 44(4)(b) as any early childhood service that is not an excluded service.<sup>70</sup> The definition of 'excluded service' in regulation 44 is effectively the same as it was in 2007.<sup>71</sup> Schedule 1 to the 2008 regulations maintained the requirement of the 1998 regulations, as amended in 2007, that every teacher-led service must ensure that

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65. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 72–73

66. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 72–73

67. Document A64 (Ministry of Education, 'Education Report: Change to ECE Funding Rules – Widening Access to Teacher-led Rates', report prepared for the Minister of Education, 18 September 2006), p 643

68. Education (Early Childhood Centres) Amendment Regulations 2007 (SR2007/365), s4; document A64 (Education (Early Childhood Centres) Regulations 1998, regulation 36A(2)), pp 603–604

69. Document A64 (Education (Early Childhood Centres) Regulations 1998, s36A(1)), p 603

70. Document A64 (Education (Early Childhood Services) Regulations 2008, s44(4)(b)), p 556

71. Document A64 (Education (Early Childhood Services) Regulations 1998, s36A(1)), p 603

at least 50 per cent of the required staff of that centre hold a recognised qualification.<sup>72</sup> The latest target, now final, is 80 per cent by 2012.<sup>73</sup>

Kōhanga reo have been exempted throughout from compulsory teaching qualifications and targets. Both the 1998 and 2008 regulations, however, also enabled the Ministry to prescribe recognised qualifications of any kind for ECE services, either generally or for particular service types. Clause 3 of the 2008 regulations now provides that ‘recognised qualification’ means:

- (a) in relation to a licensed service that is teacher led, an early childhood teaching qualification recognised by the New Zealand Teachers Council for registration purposes
- (b) in relation to any other licensed service or any other licensed service of a kind specified by the Secretary, a qualification held by an adult providing education and care as part of that service which is recognised by the Secretary as a qualification for this purpose by notice in the *Gazette*.<sup>74</sup>

No specific definition of ‘licensed service’ is separately provided for in regulation 3, but the sense of it is derived from a combination of the definitions of ‘early childhood service’ and ‘licensed early childhood service’ both being defined in regulation 3 as having the same meaning as in section 309 of the Education Act 1989.

Given definition (a) of ‘recognised qualification’ under the 2008 regulations, which restricts recognition by the Teachers Council to teacher-led services, it seems to us that two different regimes for recognition of qualifications have been established. For teacher-led services, recognition is only possible through the Teachers Council. That is what has been argued before us by the Crown as being the course it maintains is still open to the Trust, and it called extensive evidence on the prospects of success for that course from Dr Peter Lind of the Teachers Council.<sup>75</sup>

For other licensed services, such as kōhanga reo, however, recognition under definition (b) of a ‘recognised qualification’ lies in the hands of the Secretary for Education. That being so, it has been and remains open to the Secretary to recognise Tohu Whakapakari by notice in the *Gazette*. This could be specified as applying to all licensed kōhanga reo services falling under the 2008 regulations.<sup>76</sup>

Assuming our interpretation is correct, and the Crown did not contend otherwise, we have been provided with no reason why the Secretary cannot immediately recognise Tohu

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72. Document A64 (Education (Early Childhood Services) Regulations 2008, s36A(2)), p 564; doc A64 (Education (Early Childhood Services) Regulations 1998, s36A(1)), p 604

73. Anne Tolley, Minister of Education, ‘Extension for teacher registration targets’, media release, 29 October 2009, <http://www.beehive.govt.nz/release/extension-teacher-registration-targets>, accessed 2 October 2012

74. Document A64 (Education (Early Childhood Services) Regulations 2008, s3), p 530

75. Document A67 (Peter Lind, brief of evidence, 15 February 2012)

76. The same could be done for ‘excluded’ kōhanga reo still operating under section 38 of the 1998 regulations; however, under section 39 the ‘person responsible’ for running a kōhanga reo would be required to hold that qualification.

Whakapakari, given its approval in 1994 as a level 7 degree-equivalent course by the New Zealand Qualifications Authority.

Even if we are incorrect in our interpretation, the Crown could still promulgate a regulation tomorrow that would clearly and unambiguously give the Secretary for Education this power, covering all licensed kōhanga reo. That power could also provide a transition period to enable any kōhanga reo not yet licensed under the 2008 regulations to benefit from such recognition.

The Secretary would be merely giving life to the recognition of Tohu Whakapakari accorded since 2005 in the Ministry's own 'Early Childhood Funding Handbook'. With respect to Tohu Whakapakari, it states:

**Qualification information**

Tino Rangatiratanga Whakapakari Tohu is the teaching qualification recognised by the Trust Board for whānau involved in kōhanga reo.

The Ministry of Education acknowledges the right of the Trust Board to set the Tino Rangatiratanga Whakapakari Tohu as the teaching qualification for te kōhanga reo kaiako.

Kōhanga whānau are also supported to undertake training in Te Ara Tuatahi and Te Ara Tuarua to support the acquisition and use of te reo Māori by whānau in the home and in the kōhanga reo.<sup>77</sup>

Moreover, the Secretary can be assured that such a course would be consistent with the views of Professor Stephen May, who made the following observations about Tohu Whakapakari in his oral evidence after he had been given a copy of it to review:

Having reviewed the document there are no specific references to bilingual learning or second language acquisition, but much of the approach of Tohu Whakapakari aligns very well with broad principles of bilingual learning and teaching. What we did was looked at it in relation to Ellis' – Rod Ellis who is a leading person in second language acquisition, and his 10 principles of language learning, and there is a very strong correspondence right across the document in terms of those broad principles. So having read Tohu Whakapakari now, it seems a very robust, enabling document in terms of the language learning process, bilingualism . . .<sup>78</sup>

Thus, it is open to the Crown to recognise the Tohu Whakapakari qualification and we see no reason why it should not do so. In fact, by recognising the qualification, the Crown would be standardising all ECE qualifications for a similar purpose and it would be acting in manner consistent with its guarantee of rangatiratanga under the Treaty of Waitangi.

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77. Document A23(b) (Ministry of Education, 'Funding Handbook, chapter 3: The ECE Funding Subsidy, 3-C-4, Te Kōhanga Reo', Ministry of Education, <http://www.lead.ece.govt.nz>, accessed 6 August 2012), p178

78. Stephen May, under questioning by Crown counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, p370)



**7.4.6 ERO and assessing quality**

By legislation, the Crown has delegated its regulatory reviews to assess quality in ECE to ERO. In 2004, ERO published its *Framework for Kōhanga Reo Education Reviews*.<sup>79</sup> We discuss the process of how this framework was developed in chapter 10. The framework has four main strands: kōhanga reo priorities; planning and evaluation; areas of specific Government interest as to the effects of policies; and compliance.<sup>80</sup>

One section of the framework concerns quality, which ERO links to whānau management, the employment of professional kaiako, and high-quality programmes underpinned by the philosophy of kōhanga reo, *Te Whāriki*, and the involvement of communities.<sup>81</sup> After this framework was adopted, ERO published *Evaluation Indicators for Education Reviews* in 2005.<sup>82</sup> Its *Manual of Standard Procedures for Education Reviews* has been regularly updated and reprinted since it was first published in 1990.<sup>83</sup>

Ms Royal-Tangaere, for the claimants, considered that the review process set up through ERO to measure quality fails to review kōhanga reo according to their kaupapa.<sup>84</sup> In her view, ERO emphasises ECE theory and practice as well as teaching qualifications.<sup>85</sup> She was adamant that, because of the focus on Western ECE models of quality rather than on the kaupapa of kōhanga reo, general ECE services have been made to appear of higher quality and therefore more attractive to whānau.<sup>86</sup>

We note that ERO's reviews of kōhanga reo have created an impression that there are quality problems. The Wai 262 Tribunal, for example, which did not hear from either the Trust or ERO, referred to ERO's work during the 1990s as indicating that 'the quality of teaching and even the use of te reo at many kōhanga was distinctly lacking'.<sup>87</sup>

In more recent times the Early Childhood Education Taskforce discussed the number of ERO supplementary reviews conducted on kōhanga reo as a possible indicator that quality may be an issue for kōhanga reo.<sup>88</sup> A supplementary review 'evaluates the extent and effectiveness of actions a service has taken towards addressing issues specified in a previous

79. Document A57 (Education Review Office, *Framework for Kōhanga Reo Education Reviews* (Wellington: Education Review Office, 2004, reprinted 2008)) p1

80. Document A57 (Education Review Office, *Framework for Kōhanga Reo Education Reviews* (Wellington: Education Review Office, 2004, reprinted 2008)), pp10–12

81. Document A57 (Education Review Office, *Framework for Kōhanga Reo Education Reviews* (Wellington: Education Review Office, 2004, reprinted 2008)), pp19–20

82. Document A57 (Education Review Office, *Evaluation Indicators for Education Reviews* (Wellington: Education Review Office, 2005, revised in 2006))

83. Document A57 (Education Review Office, *Manual of Standard Procedures for Education Reviews* (Wellington: Education Review Office, 1990, fifteenth revision, 2011)), pp85–188

84. Document A81 (Arapera Royal-Tangaere, brief of evidence, 22 December 2011), p 26

85. Document A81 (Arapera Royal-Tangaere, brief of evidence, 22 December 2011), p 27

86. Document A81 (Arapera Royal-Tangaere, brief of evidence, 22 December 2011), p 34

87. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, vol 2 (Wellington: Legislation Direct, 2011), p 408

88. Document A4, vol 1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), pp165, 167

education review and or any additional areas identified since that review.<sup>89</sup> The Taskforce was told by the Ministry of Education Secretariat that ‘supplementary reviews are a possible indicator that a service is suffering from quality difficulties in one or more aspects of its operation. This may in turn indicate poorer performance.’<sup>90</sup> However, we were told that the decisions made by ERO to conduct a supplementary review do not always indicate poor quality performance, a view endorsed by Dr Graham Stoop, the director of ERO.<sup>91</sup> Dr Stoop also gave his view that ‘the key reason for the greater number of supplementary reviews in kōhanga is capability with respect to self-review’,<sup>92</sup> which is a matter of development rather than non-compliance.

In addition, the overall number of supplementary reports received some analysis by Ms Royal-Tangaere. She analysed 1,342 supplementary reports completed by ERO for kōhanga reo over the period 2003 to 2011. As we discussed in chapter 6, her analysis showed that the number of supplementary reports triggered by non-compliance issues in regular reviews of kōhanga reo was not as high as the overall number would indicate. About a fifth of the reviews that led to supplementary reports made recommendations for some improvements concerning the whānau involved.<sup>93</sup> Alternatively, they related to development issues. This is consistent with the research produced for the ECE Taskforce, demonstrating that there is a tendency for a higher percentage of supplementary reviews to occur in poorer areas and in community-based services. Kōhanga reo tend to operate in poorer areas and are a community service.<sup>94</sup>

Interestingly, in *Quality in Parent/Whānau-led Services*, a 2006 report completed for the Ministry of Education, the authors found that when assessed against their own kaupapa, kōhanga reo were performing well. That is borne out by several ERO monographs since the 1990s. The predominant strengths of kōhanga reo are clearly recognised as te reo, tikanga Māori, and socialisation. But when measured against ECE education standards relating to programme development, planning, assessment and evaluation, kōhanga reo tended to rate less highly.<sup>95</sup>

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89. Document A15 (Ministry of Education ECE Taskforce Secretariat, *Performance: the ECE sector performance story*, 3 December 2010), p186

90. Document A15 (Ministry of Education ECE Taskforce Secretariat, *Performance: the ECE sector performance story*, 3 December 2010), p186

91. Graham Stoop, under questioning by Crown counsel, second week of hearing, 23 March 2012 (transcript 4.1.4, p 600)

92. Graham Stoop, under questioning by Crown counsel, second week of hearing, 23 March 2012 (transcript 4.1.4, p 603)

93. Document A49 (Arapera Royal-Tangaere, second brief of evidence, 22 December 2011), pp 2–3; doc A49 (Arapera Royal-Tangaere, ‘Comparative Review of Education Review Office Reports’, 2011), p 8

94. Document A15 (Ministry of Education ECE Taskforce Secretariat, *Performance: the ECE sector performance story*, 3 December 2010), p186

95. Document A81 (Arapera Royal-Tangaere, brief of evidence, 22 December 2011), p11

#### 7.4.7 Impact of the Crown's current quality framework on kōhanga reo

The Crown has the right to govern, which includes an obligation to develop policy for measuring 'quality' in all ECE. The well-being, health, safety and educational success of children require it. In that respect, the Crown's general policy on how to measure 'quality' is appropriate for English-medium ECES and ECE services offering limited te reo Māori content. Māori have the right to send their children to such services, in accordance with the principle of options, and – in common with other citizens – they have the right to expect 'quality' no matter what service they choose.

As we said in chapter 3, we also accept that a degree of state systemisation of measures such as those concerning quality is the corollary of state funding, albeit not to the extent that Māori initiative and motivation is stifled. But, on our review of the evidence from all the experts, including Professor May, which we discussed in chapter 4, kōhanga reo are not the same as English-medium ECE services. Thus the measures to be applied to them should reflect that difference. To treat them the same, or claim that the Crown's different treatment is not inequitable when clearly it is, reflects a lack of understanding of what is needed to promote and improve quality in kōhanga reo.

As we recorded above, Mr Walley, for the Ministry of Education, acknowledged there was no system for measuring 'quality' for kōhanga reo and thus we must conclude this is an omission that has had a disproportionate impact on kōhanga reo relative to ECE services generally. That, in turn, has meant that the ERO process for assessing quality has been largely developed without a consensus on what those core essential measures of quality should be. It has then had to draw on informal discussions with Trust representatives and with people involved in kura kaupapa Māori to develop assessment criteria. We discuss this further in chapter 10.

The Crown has, therefore, allowed a situation to continue where no framework for measuring quality in kōhanga reo has been developed and where ERO has had to fill the measurement gap. This is an omission that has resulted in kōhanga reo being subjected to unfair treatment both in the manner in which the Crown perceives kōhanga reo as a service with quality issues, in terms of funding and in terms of assessments. There have been resulting reputational concerns.

It is no response to suggest that in such a situation, kōhanga reo should rectify the policy failure by employing more registered teachers, or requiring the Trust to obtain Teachers Council registration for the Tohu Whakapakari qualification. This imposes an unnecessary barrier in the pathway of the kōhanga reo movement so as to stifle initiative. It is an indirect way of imposing the Ministry of Education's preference for measuring quality. In our view, such policies amount to breaches of the Treaty guarantee of rangatiratanga and the right of Māori to transmit their own taonga of te reo me ngā tikanga in their own way,

which includes, but is not limited to, the employment of kaiako with the Tohu Whakapakari qualification.

#### **7.5 CONCLUSION**

The Crown needs to provide sufficient support to enable kōhanga reo to operate within a framework that measures quality based on all the key learning that occurs for children in that environment and the overall impact that will have for the survival of te reo Māori as a living language. The Crown can assess this by commissioning joint research with the Trust to ascertain what the overall benefits of kōhanga reo are, and what that means in the long term for Māori education success.

The Crown should work in partnership with the Trust to complete this work. It owes a duty to develop effective and efficient policy on what quality measures should be applied to kōhanga reo. The aim should be to ensure that these measures address the kaupapa of kōhanga reo, including the transmission of te reo me ngā tikanga Māori. That, of course, means that the Trust must participate by coming back to the table to complete this process. We discuss what this means in terms of ECE funding and the regulatory regime in more detail in chapters 8, 9 and 10. In developing appropriate quality measures the Crown and the Trust may find it worthwhile to explore the views of Professor May, reviewed in chapter 4, as to the benefits of learning and drawing from alternative pedagogies, including those pursued by indigenous peoples in comparable jurisdictions.

As our review of the claimants' and Crown's divergent definitions of 'quality' demonstrates, the road ahead to reach agreement may be difficult. But finding common ground on how to achieve quality in kōhanga reo is obviously required. In the end, the system must be transparent and accountable because that too is the corollary of state funding. We recommend how this should be done in chapter 11.

CHAPTER 8

**NGĀ RAUEMI PŪTEA  
FINANCIAL RESOURCING**



As the kōhanga reo movement developed from its initial heavy reliance on volunteers, adequate and targeted funding from the State became essential to fulfilling its mission and to meeting the Government's objectives for the early childhood sector. In this chapter, we assess the extent to which the financial resources the Crown made available to kōhanga reo and the Trust, principally within the framework of its ECE policy, enabled it to fulfil its duty of active protection of te reo Māori through Māori-initiated early childhood immersion. We consider, in particular:

- ▶ the impact on kōhanga reo of the pre- and post-2005 models for subsidising ECE services;
- ▶ whether the operational funding regime treated kōhanga reo differently from other ECE services and whether this amounted to discrimination;
- ▶ the sufficiency of the ECE subsidy and other sources of operational funding to sustain the work of kōhanga reo towards fulfilling their kaupapa of transmitting the Māori language and customary knowledge;

Painting by Robyn Kahukiwa reproduced by permission of Te Kōhanga Reo National Trust Board

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- ▶ the adequacy of funding in support of the Trust's kaitiaki functions, including training and learning programmes for kaiako and kōhanga reo whānau members, as well as targeted research; and
- ▶ whether the terms and amount of capital funding were adequate and appropriate for enabling kōhanga reo to maintain their premises and infrastructure on a sustainable basis.

**8.1 THE CLAIMANTS' POSITION**

The claimants alleged, first, that by locating and funding kōhanga reo as part of the ECE sector the Crown failed to provide resources that were either sufficient or fully appropriate to their needs and objectives. Nor did it fund the full range of Government outcomes to which kōhanga reo contributed. They asserted further that the funding available to kōhanga reo was inequitable within the ECE framework itself.<sup>1</sup>

The claimants challenged the neutrality of the Crown's funding regime, pointing to what they considered to be inherent discrimination arising, both directly and indirectly, through the tiered system of funding for teacher-led service types. The system, they said, formally prevented kōhanga reo from achieving the higher hourly rates of ECE subsidy available to teacher-led ECE centres.<sup>2</sup> Alternatively, in order to access teacher-led subsidy rates, kōhanga reo were required to compromise fundamental aspects of their approach to immersion language transmission and whānau development, thereby putting at risk their core kaupapa in favour of delivering mainstream educational objectives.<sup>3</sup> The Crown had failed to provide resources sufficient and appropriate for kōhanga reo to fulfil their kaupapa and the te reo outcome they shared with the Crown.<sup>4</sup> Finally, insufficient capital funding had, the claimants said, contributed to the widespread deterioration of kōhanga reo premises, putting at risk the ability of a sizeable number to meet the licensing standards in force.<sup>5</sup>

The claimants' case was that the Crown's failure to provide sufficient and appropriate funding breached the principle and duty of active protection by undermining the ability of Māori to sustain their taonga, te reo me ngā tikanga Māori.<sup>6</sup> This failure also limited the ability of kōhanga reo to enable Māori to achieve equality with other citizens. The indirectly discriminatory effect of the funding regime amounted to a breach the Treaty principle of equity.<sup>7</sup> Furthermore, the Crown had, the claimants said, not acted in good faith in failing

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1. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 59–62  
2. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 62–63, 66  
3. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 70–71, 139–140  
4. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 59–60  
5. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 78–81  
6. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 75–76  
7. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 72–73

properly to address the flaws and negative impacts of its funding regime when these were raised by the claimants, despite its assertions at various times that each of them was recognised or being addressed.<sup>8</sup>

The claimants identified a number of prejudicial effects that they attributed in whole or in part to the Crown's acts and omissions. A principal impact, they alleged, was the continuing decline in the number and roll of kōhanga reo as whānau whānui, kaimahi, and kaumātua wanting to pass on te reo Māori were deterred from participating in kōhanga reo.<sup>9</sup> The lower rates of funding had a pronounced negative impact on Māori and devalued the customary methods of training, transmitting, and learning employed by kōhanga reo whānau.<sup>10</sup>

## 8.2 THE CROWN'S POSITION

In response, the Crown argued that it had consistently met all its Treaty obligations. In particular, it made the following points:

- ▶ The Crown had always ensured that kōhanga reo were funded on a neutral basis compared to similar ECE providers, without discrimination one way or the other for kōhanga reo. Māori parents thus had an unbiased freedom to choose, discharging the Crown's article 3 Treaty obligation to ensure equal citizen rights in education.<sup>11</sup>
- ▶ Operational funding for kōhanga reo had been substantial over a long period and had risen substantially in real terms in recent years. Both features marked the ongoing significance that the Crown had always accorded kōhanga reo for language protection, thus discharging its article 2 duty to protect the taonga of te reo.<sup>12</sup>
- ▶ The Crown had demonstrated its commitment to enhancing the skills of Māori involved in transmitting te reo by funding the Trust's training courses, notably Tohu Whakapakari, and enabling the latter's recognition as a level 7 degree course in 1994 by the New Zealand Qualifications Authority.<sup>13</sup>
- ▶ The Crown had made sincere and conscientious attempts through the Funding, Quality and Sustainability Working Group to achieve a new funding regime for kōhanga reo and recognition of their broader value to other social and cultural objectives alongside education. While acknowledging that progress been slow, Crown counsel insisted that this initiative had progressed well and had reached an advanced stage before the lodging of a claim.<sup>14</sup>

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8. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 59–63

9. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 59, 76–77

10. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 59–62

11. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 26, 80

12. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 5–6, 14, 54–56

13. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 66

14. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 38–40



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More specifically, Crown counsel and Ministry witnesses stressed the range and scale of the financial resources it had provided to kōhanga reo and the Trust, which included:

- ▶ More than \$70 million of operational funding in 2011–12, totalling more than \$1 billion over the last 20 years, with a doubling of the annual provision for kōhanga reo over the last five years.<sup>15</sup>
- ▶ Under-utilised ‘20 hours ECE’ funding, of which more than \$10 million a year was still available for kōhanga reo to uplift.<sup>16</sup>
- ▶ The funding of the Trust itself, to the extent of \$2.56 million per year, an arrangement unique in the ECE sector.<sup>17</sup>
- ▶ The funding of capital grants for kōhanga reo property to the value of \$27 million over a period of 20 years, under the superseded Discretionary Grants Scheme.<sup>18</sup>
- ▶ The availability of its replacement, the Targeted Assistance for Participation scheme, for future capital funding aligned to Government support for raising Māori participation in ECE.<sup>19</sup>
- ▶ Tertiary funding to a reasonable level of the Trust’s Tohu Whakapakari qualification.<sup>20</sup>
- ▶ Funding for research relevant to kōhanga reo, with the participation of researchers associated with the Trust and kōhanga reo.<sup>21</sup>

**8.3 TRIBUNAL ANALYSIS AND FINDINGS**

**8.3.1 Access to operational funding**

Kōhanga reo, in common with other types of ECE service, rely overwhelmingly on State funding of their operations. The Trust estimates that Government subsidies provide about 95 per cent of the total income of kōhanga reo, the remainder coming mainly from parental fees.<sup>22</sup> In this section we examine the terms of access to Government operational funding, and then in the following section we assess the sufficiency of the operational funding for achieving the long-term educational and te reo outcomes shared by the Crown and the kōhanga reo movement.

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15. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 77; doc A62 (Richard Walley, brief of evidence, 15 February 2012), p 28

16. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 41

17. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 36

18. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 77; doc A62 (Richard Walley, brief of evidence, 15 February 2012), pp 50, 57

19. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 80–82

20. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 14, 117–120

21. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 37

22. Document A83 (Angus Hartley, second brief of evidence, 7 March 2012), pp 4, 17

**(1) The ECE funding regime up to 2004**

Since the mainstreaming of *kōhanga reo* into early childhood education in 1990, their main source of State funding has come from Vote: Education, administered by the Ministry of Education. Until 2004, the great bulk of State operational funding comprised the ECE subsidy, which provided a single scheme for all ECE services. Its purpose was, and remains, firmly educational: as Richard Walley informed us, the Government ‘anticipates that these services will deliver education, and achieve education outcomes.’<sup>23</sup>

The ECE subsidy was designed to part-fund the costs of ECE services. It was paid initially at uniform hourly rates to most types of ECE service at two levels, one for children two years old and over and a second higher level for under-tuos, who require a higher staffing ratio.

In 1996, the Ministry introduced a higher rate of ‘quality’ funding as an incentive for ECE centres to attain standards above the minimum set by regulation. Because it was restricted to chartered services, the Trust secured access by chartering to the Ministry on behalf of all *kōhanga reo*. It also negotiated a quality standard specifically for *kōhanga reo*, geared to *te reo* transmission and tied to its own Tohu Whakapakari qualification. This standard enabled *kōhanga reo* meeting the threshold to access the same higher ‘quality’ hourly rate of ECE subsidy as was available to most other ECE services.<sup>24</sup>

Between 1996 and 2004, the framework of ECE hourly subsidy rates changed little. In most categories the ‘quality’ premium remained at a modest 10–12 per cent above the base ‘standard’ level. Apart from a 6 to 7 per cent increase in 1997, the subsidy rates were increased annually at close to the rate of inflation (see figure 8.1). Over the eight years to 2004, after allowing for inflation the standard rate rose by 10 per cent and the quality rate by 13 per cent.<sup>25</sup>

Kindergartens, whose intake comprised mostly three and four-year-olds and whose staff, unlike most other ECE centres at the time, comprised mainly teachers, were the principal exception and were allocated a higher rate of their own. From 16 per cent above the quality rate for two-and-overs in 1996, the kindergarten margin had widened to 37 per cent by 2004. After allowing for inflation, the kindergarten rate was 39 per cent higher in 2004 than in 1996 (see figure 8.2).<sup>26</sup>

*Kōhanga reo* were fully integrated into the mainstream of what was a universal subsidy scheme. Within it, the recognition of the Trust’s specialised qualifications as criteria for quality funding enabled *kōhanga reo*, through the higher quality rate, to draw on a small

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23. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 23

24. Document A81 (Arapera Royal-Tangaere, brief of evidence, 22 December 2012), pp 18–19; doc A62 (Richard Walley, brief of evidence, 15 February 2012), pp 32, 37; doc A60 (Karl Le Quesne, brief of evidence, 15 February 2012), pp 21–22

25. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 37; doc A43 (Angus Hartley, Early Childhood Education Funding Rates, table, 1995–2011), pp 8–13

26. Calculated from document A43 (Angus Hartley, Early Childhood Education Funding Rates, table, 1995–2011), pp 8–13. See also doc A62 (Richard Walley, brief of evidence, 15 February 2012), p 37.

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8.3.1(1)

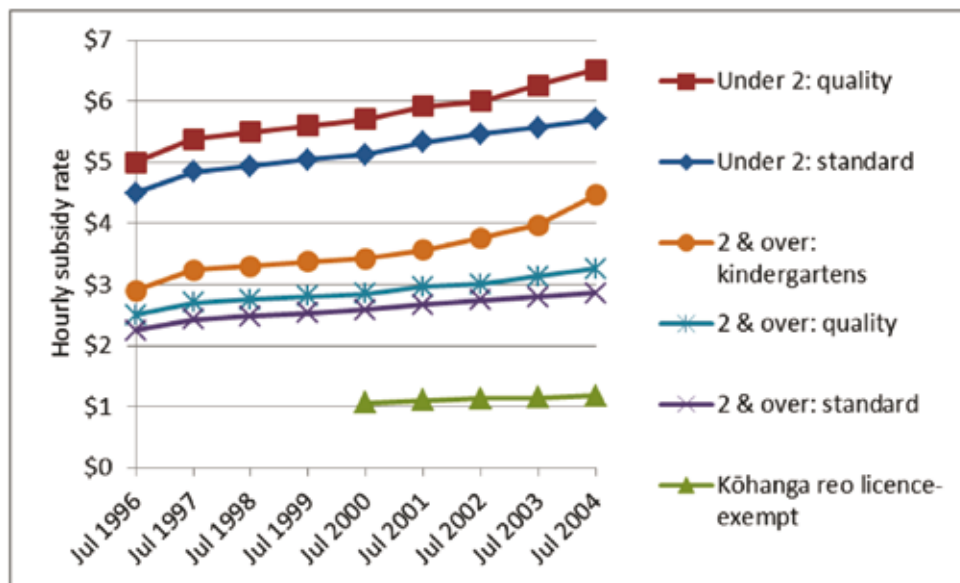


Figure 8.1: Rates of ECE subsidy per child hour, 1996–2004. Note: Subsidy rates for all services were set at two levels, for children aged under two and children aged two and over. Licence-exempt kōhanga were funded at a basic flat rate.

Source: Document A43 (Angus Hartley, Early Childhood Education Funding Rates, table, 1995–2011), pp 8–13

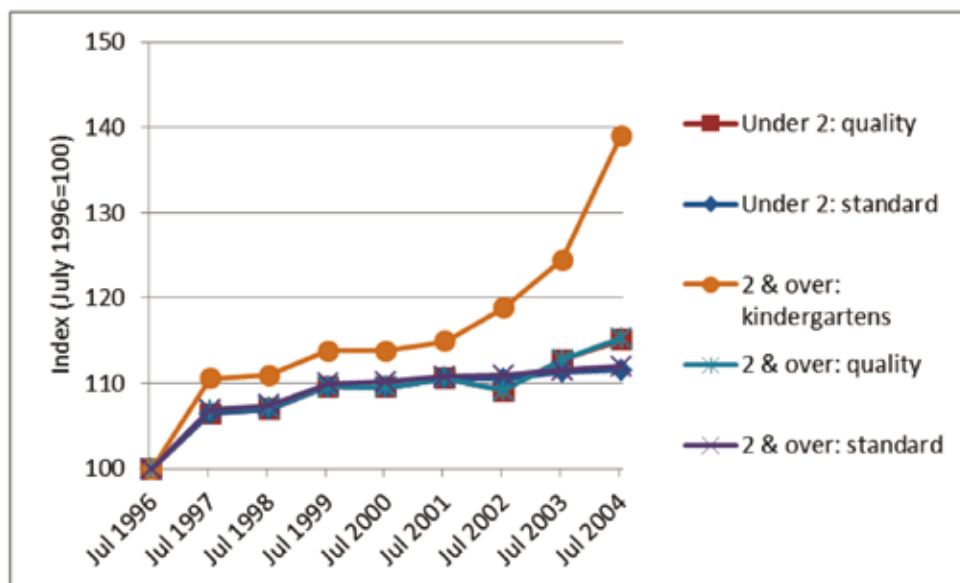


Figure 8.2: Indexed rates of ECE subsidy per child hour, 1996–2004, adjusted for inflation (1996 = 100)

Sources: Document A43 (Angus Hartley, Early Childhood Education Funding Rates, table, 1995–2011), pp 8–13; Reserve Bank, 'Economic indicators', spreadsheet ha3.xls, <http://www.rbnz.govt.nz/statistics/econind/a3>, accessed 13 July 2012

additional resource to support kaiako and whānau members with skills directly relevant to delivering their kaupapa. This apart, the scheme was geared to the Government's education objectives by providing increased funding solely in relation to teacher qualifications. There was no funding specifically targeted for promoting te reo, a matter to which we will return below.

**(2) The 2005 reform of the ECE funding model**

In 2000, the Government embarked upon a major policy reform of the ECE sector with the twin aims of improving service quality and increasing ECE uptake. We have discussed a number of its implications in previous chapters. Here, we consider the new funding model that was put in place to implement the Government's long-term goals. Improving ECE service quality was to be achieved principally by employing more teachers with a registered ECE teaching qualification.

The policy's chief instruments combined a mix of incentives and compulsion. The incentives came mainly through higher funding rates.<sup>27</sup> The compulsion was achieved by regulating for a minimum proportion of registered teachers on the staff of ECE centres, by a set target date.<sup>28</sup> Increasing the rate of ECE participation was to rely mainly on moving part of the ECE subsidy from partial to full funding through what became known as '20 hours ECE'.<sup>29</sup> It was augmented by supplementary funding streams to compensate for such factors as social disadvantage and remote location.<sup>30</sup>

The Government signalled in its 10-year strategic plan *Ngā Huarahi Arataki*, published in 2002, that it intended to review the ECE funding system.<sup>31</sup> In March 2002, Cabinet approved a comprehensive review of the ECE regulations and the funding of all ECE services.<sup>32</sup>

There followed a period of consultation with the ECE sector generally. During 2003–2004, Trust representatives participated in the Technical Advisory Group, which the Ministry convened to advise it on the development of the new funding regime and regulatory framework.<sup>33</sup> They gave feedback on Ministry working papers and put forward the Trust's position on a number of issues, including the unworkability of the proposed framework for kōhanga reo. In their view, the Ministry officials' main concern was to 'tick their boxes' on plans already decided. There appears to have been some involvement of the Trust in that process. However, it was their evidence that they were not formally consulted on the detail

27. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 38

28. Document A60 (Karl Le Quesne, brief of evidence, 15 February 2012), p 23

29. This was put into effect through the '20 hours free ECE' scheme: doc A62 (Richard Walley, brief of evidence, 15 February 2012), pp 38–39.

30. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 27–31

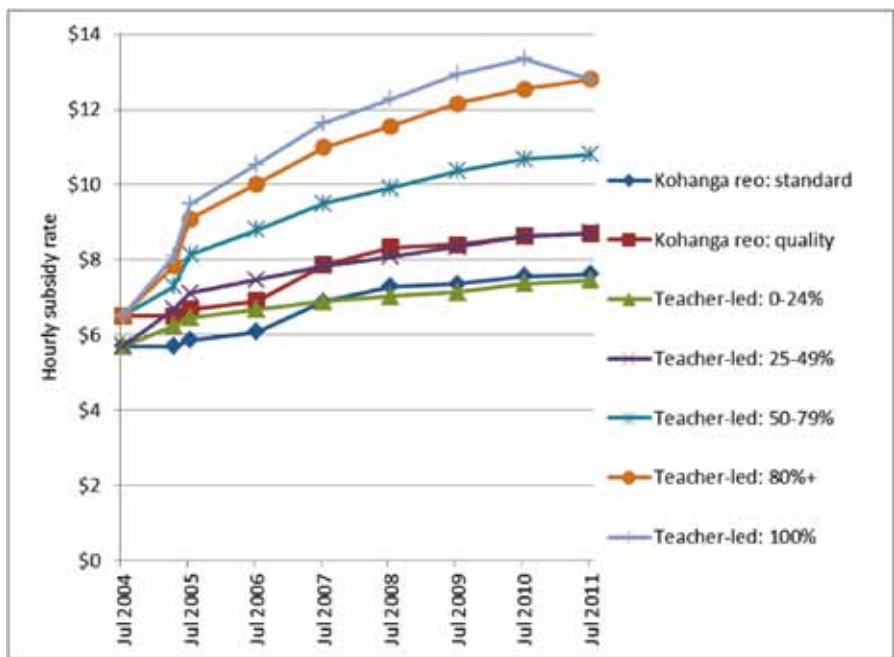
31. Document A73 (Ministry of Education, *Pathways to the Future: Ngā Huarahi Arataki* (Wellington: Ministry of Education, 2002), p 444

32. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 10

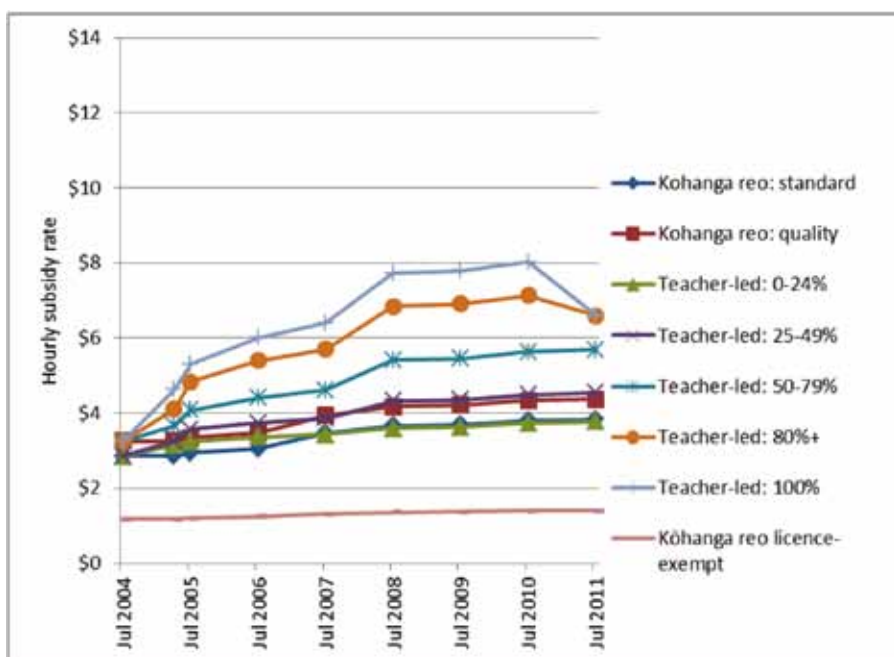
33. Document A81 (Arapera Royal-Tangaere, brief of evidence, 22 December 2011), p 33; doc A92 (Mihi Tashkoff, brief of evidence, 7 March 2012), p 2; doc A62 (Richard Walley, brief of evidence, 15 February 2012), p 10

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8.3.1(2)



(a) Children aged under two



(b) Children aged two and over

Figure 8.3: ECE subsidy rates per child hour for all-day teacher-led services and kōhanga reo, 2004–2011

Source: Document A43 (Angus Hartley, Early Childhood Education Funding Rates, table, 1995–2011), pp 8–13

of the proposed funding regime.<sup>34</sup> The revamped funding model for all ECES was implemented in 2005 and, with minor subsequent adjustments, remains in place today.<sup>35</sup>

The 10-year strategy and the new funding regime inaugurated a division of the ECE sector into two parts. On one side of the divide were types of licensed ECE service – mainly education and care centres and kindergartens – designated as ‘teacher-led’. These services were compelled to employ a minimum percentage of registered ECE teachers on their staff, and incentivised to employ more. The original registration target of 100 per cent by 2010 later became 50 per cent by 2007 and 80 per cent by 2012.<sup>36</sup> On the other side were ‘parent/whānau-led’ service types – mainly playcentres and kōhanga reo – which were exempted from the requirement to employ registered teachers.<sup>37</sup>

The division of the sector into two categories, and their respective definitions, were to have significant implications for kōhanga reo. The in-built dichotomy was mirrored in the new funding regime. Teacher-led services could draw on five graduated tiers of hourly subsidy rates, which increased with the proportion of registered teachers employed (see figure 8.3).<sup>38</sup>

The new rates meant that the higher the proportion of registered teachers a teacher-led service had on its staff, the bigger the subsidy rate it could claim. Up to 2004, there had been a single quality rate, which had been set at 10–12 per cent above the standard rate.<sup>39</sup> Under the new scheme, in July 2005 the ratio between the top and bottom teacher-led rates was much higher. For children under two, the top rate, available to all-day ECE centres with an all-teacher staff, was set at a margin of 47 per cent above the bottom rate, which applied to ECE centres with teachers comprising 0–24 per cent of their staff. For children aged two and over, the difference in rates was 64 cent. By July 2008, the margins were even higher at 75 and 114 per cent respectively (see figure 8.4 and table 8.7).

Although the highest rates were cut back from 2010 onwards, especially with the abolition of the top 100 per cent level in 2011,<sup>40</sup> this band structure has retained a decidedly steep gradient, with ECE centres employing high proportions of registered teachers receiving

34. Document A81 (Arapera Royal-Tangaere, brief of evidence, 22 December 2011), pp 32–33; doc A81 (Te Kōhanga Reo National Trust, ‘Feedback and Comments On: The Review of Regulations For Early Childhood Education’, 23 July 2004), pp 746–758; doc A92 (Mihi Tashkoff, brief of evidence, 7 March 2012), p 2; doc A92 ([Technical Advisory Group to the Reviews of Funding and Regulation of Early Childhood Education, ‘Notes from Meeting held on 16 June 2003’], pp 5–16; Mihi Tashkoff, oral submission, first week of hearing, 16 March 2012 (transcript 4.1.3, pp 565–569)

35. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 34, 37; doc E10 (Ministry of Education, *Early Childhood Education: Funding Handbook* (Wellington: Ministry of Education, 2005))

36. Education (Early Childhood Services) Regulations 2008, reg 44(1)(a), sch 1; Minister of Education, ‘Extension for Teacher Registration Targets’ (press release, Wellington, 29 October 2009); doc A60 (Karl Le Quesne, brief of evidence, 15 February 2012), p 23; doc A62 (Richard Walley, brief of evidence, 15 February 2012), p 41

37. See the definition of ‘excluded centres’ in Education (Early Childhood Services) Regulations 2008, reg 36A(1)

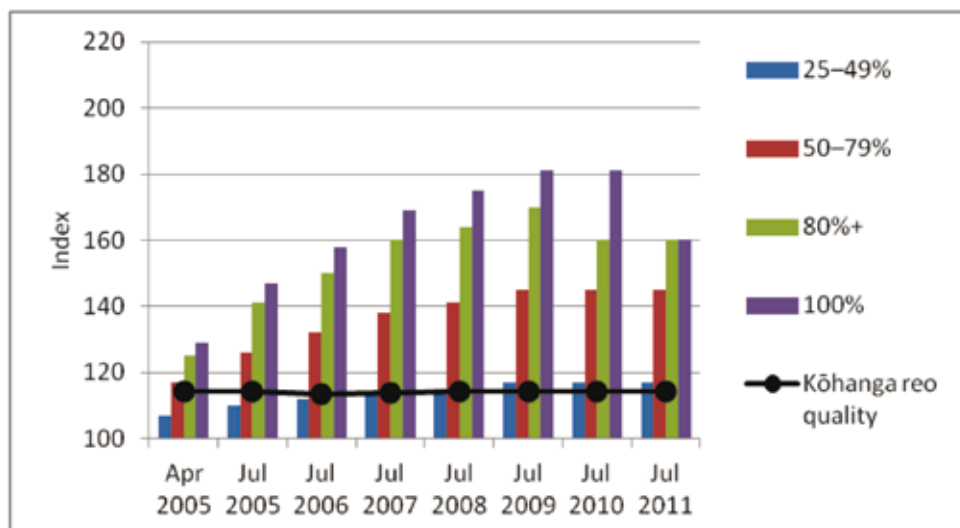
38. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 31–32; 37–38

39. Kindergartens received a single rate higher than the quality rate for other service types: doc A43 (Angus Hartley, *Early Childhood Education Funding Rates*, table, 1995–2011), pp 8–13.

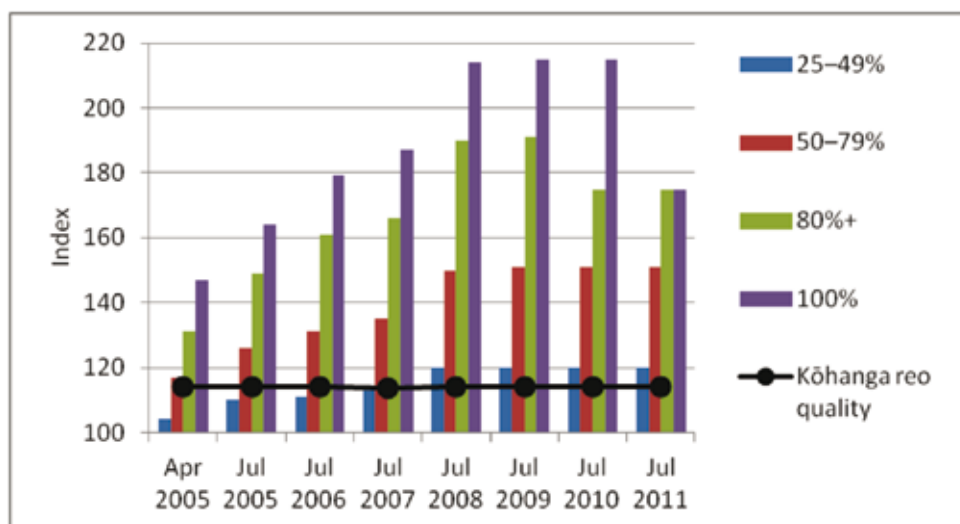
40. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 41

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8.3.1(2)



(a) Children aged under two



(b) Children aged two and over

Figure 8.4: Ratio of all-day teacher-led and kōhanga reo ECE subsidy rates per child hour to the lowest rate band, 2005–2011 (lowest band = 100). Note: The charts show, for each year, the ratio of each rate band to the lowest band. For teacher-led services this is the 0–24 per cent band (qualified teachers comprise up to 24 per cent of staff). For kōhanga reo it is the standard rate. In each year, the lowest rate is set at 100. The charts illustrate the structure of the rates in each year. See table 8.7.

Source: Document A43 (Angus Hartley, Early Childhood Education Funding Rates, table, 1995–2011), pp 8–13



much higher hourly subsidy rates. By contrast, the quality margin for kōhanga reo was held at a uniformly low 14 per cent from 2005 onwards, meaning that those employing a qualified kaiako could gain only a small increase in their hourly subsidy rate and no further increase if they employed more kaiako than the minimum required by the quality standard (see figure 8.4 and table 8.7).

Not only did teacher-led ECE centres have a much broader structure of subsidy rates, but those rates also rose sharply, especially for the upper teacher-led funding bands. Rates were raised in two steps in 2005. While the rates for the bottom all-day teacher-led band (with teachers making up 0–24 per cent of staff) rose by an inflation-adjusted 10 per cent compared to the 2004 standard rate, for the top teacher-led band (teachers comprising 100 per cent of staff) the increase was much higher, at 43 per cent for children under two and 60 per cent for children two and over compared to the 2004 quality rate (see figure 8.5 and table 8.8).

Adjusted for inflation, the higher teacher-led rates continued to increase between 2005 and 2008. From 2008 onwards, they held steady or declined. Nonetheless, the top rate available in 2011, for the 80 per cent and above band (teachers comprising 80 per cent or more of staff), was still 73 per cent higher in real terms for under-twos than it had been in 2004, and 79 per cent higher for two-and-overs (see figure 8.5 and table 8.8).

For services defined as ‘parent/whānau-led’, which included kōhanga reo, little changed. The same two-level structure of standard and quality rates that had applied between 1996 and 2004 remained in place from 2005 onwards. The difference was that they could not access the higher ‘quality’ rates of ECE subsidy for teacher-led ECE centres. In 2007, kōhanga reo received an 11–12 per cent increase above inflation. Otherwise, their hourly rates barely kept pace with inflation. In 2011 they were just 10 per cent above their 2004 level after adjusting for inflation (see figure 8.5 and table 8.8).

The effect of the differential funding structure was to create a widening gap in funding rates between the higher bands of teacher-led ECE services and those employing fewer or no registered teachers. In practice, over the seven years since 2005, the standard and quality subsidy rates for kōhanga reo have remained fairly close to those for the lowest two teacher-led bands respectively. In 2011, the standard kōhanga reo rate was 2 per cent above the teacher-led rate for the lowest band (teachers comprising 0 to 24 per cent of staff) and the quality rate was 0 to 4 per cent below the teacher-led rate for the second-lowest band (teachers comprising 25 to 49 per cent of staff) (see figure 8.3 and table 8.6).

### **(3) Equality of access to funding**

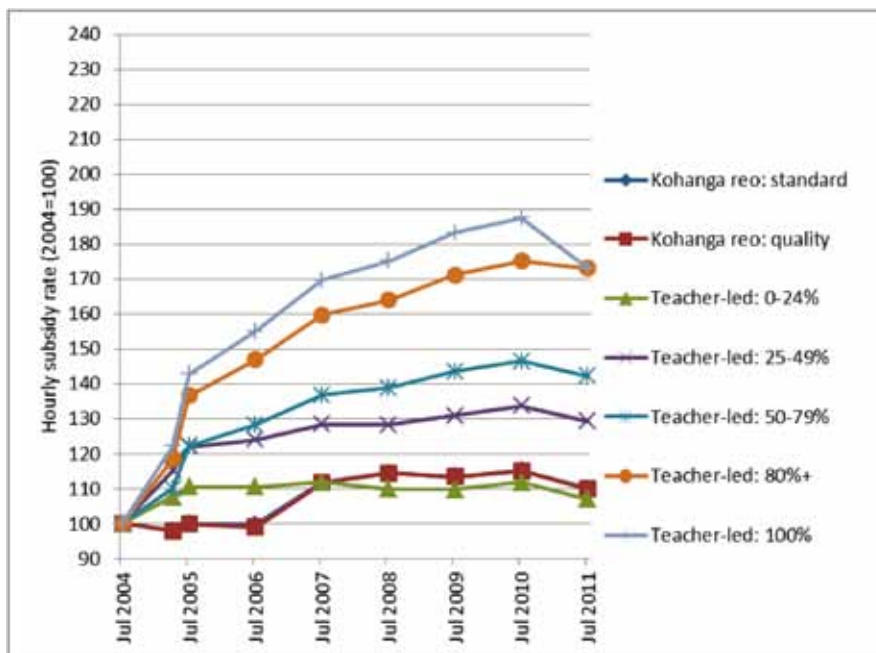
Claimant counsel and witnesses argued that the funding model put in place in 2005 was inequitable and also indirectly discriminatory.<sup>41</sup> The Crown argued that because kōhanga

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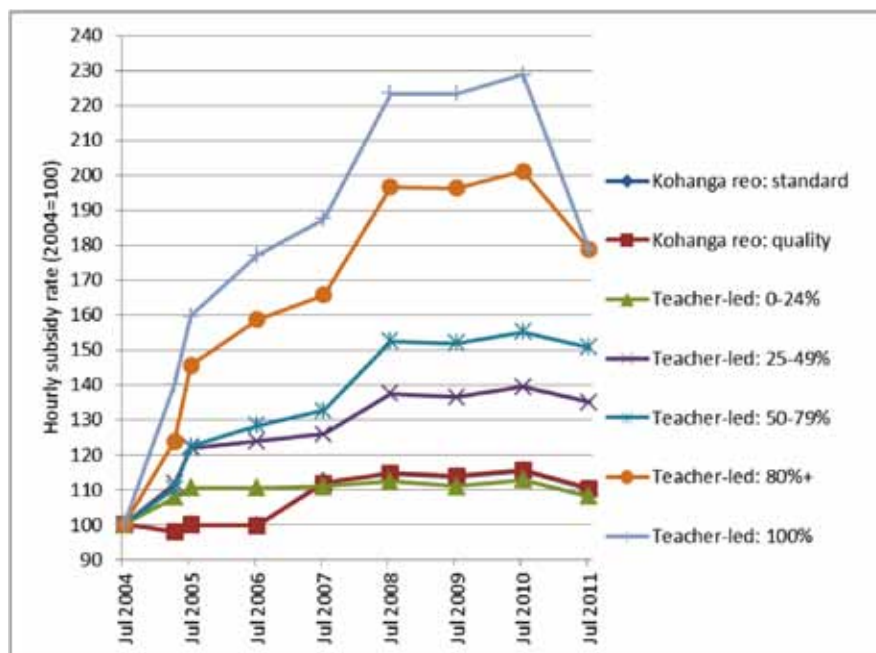
41. Submission 3.3.3 (claimant counsel, brief of evidence, 23 April 2012), pp 62–63, 71–72

MATUA RAUTIA : REPORT ON THE KŌHANGA REO CLAIM

8.3.1(3)



(a) Children aged under two



(b) Children aged two and over

Figure 8.5: Indexed rates of ECE subsidy per child hour for all-day ECE teacher-led and kōhanga reo services, 2004–2011, adjusted for inflation (2004 = 100). Note: Because the constant price index values for the kōhanga reo standard and quality rates are virtually identical, the quality rate line overlays the standard rate line in the charts.

Sources: Document A43 (Angus Hartley, Early Childhood Education Funding Rates, table, 1995–2011), pp 8–13; Reserve Bank, 'Economic indicators', spreadsheet ha3.xls, <http://www.rbnz.govt.nz/statistics/econind/a3>, accessed 13 July 2012

reo were excluded from the compulsory targets for employing registered teachers, they did not incur the higher costs of teacher-led services and were therefore not disadvantaged by lower 'quality' funding rates.<sup>42</sup>

We consider first the formal position. The new funding rates were introduced in 2005, more than three years before the revised ECE regulations came into effect. Initially, the placement of kōhanga reo in the parent/whānau-led category meant that the only way they could access the higher rates was by changing their status to a teacher-led service, including the compulsory targets for employing registered teachers.

This exclusion was tested in 2006, when the Mana Tamariki Kōhanga Reo requested recognition as a teacher-led service. As required by its charter agreement with the Trust, the Ministry sought the Trust's approval. The Trust supported Mana Tamariki's right to opt for teacher-led rates while remaining affiliated with it. As a result, the Ministry adjusted its funding rules to allow parent-led services to access teacher-led rates if they were able to meet the associated conditions.<sup>43</sup>

This adjustment was implemented in the ECE regulations of December 2008, which required the Ministry to consult the Trust but not to seek its approval.<sup>44</sup> The 2008 ECE regulations continued the previous exclusion of kōhanga reo from the requirement to employ registered teachers to the minimum specified staffing level, but allowed them to opt to qualify voluntarily as teacher-led by employing registered teachers.<sup>45</sup> Apart from a brief period in 2005 and 2006, kōhanga reo have thus been able, subject to the Trust's approval, to access the teacher-led funding rates whilst remaining affiliated with the Trust.

We have considered whether or not the differential in ECE funding rates is discriminatory, either directly or indirectly. However, it is our view that ultimately that is a question to be answered in another forum. Rather we consider that the funding regime is inconsistent with the principles of the Treaty of Waitangi, namely: the guarantee of rangatiratanga including support for Māori initiatives that are designed to protect taonga such as te reo; the Crown's duty of active protection; and the principle of equity.

#### **(4) *Incentivising quality: an ill-fitting funding structure***

The claimants' case, however, extended to wide-ranging allegations of inequity in the operation of the new funding system. Their central claim was that kōhanga reo were forced into

42. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 64–66; doc A60 (Karl Le Quesne, brief of evidence, 15 February 2012), pp 20–21; doc A62 (Richard Walley, brief of evidence, 15 February 2012), p 32

43. Document A64 (Heather Penny, acting senior manager, Early Childhood and Regional Education to Minister of Education, 'Education Report: Change to ECE Funding Rules – Widening Access to Teacher-led Rates', 19 September 2006), pp 640–644

44. Education (Early Childhood Services) Regulations reg 44(4)(a). The regulations came into force on 1 December 2008 in tandem with most sections of the replacement early childhood legislation under part 26 of the Education Act 1989, which was enacted in May 2006 by section 53 of the the Education Amendment Act 2006 and ended the chartering regime that had been in place since 1990.

45. See definition of 'excluded centres' in Education (Early Childhood Services) Regulations 2008, reg 44(4)

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one of two Ministry-defined service categories, neither of which was a good fit with their kaupapa and service configuration. On the one hand, kōhanga reo were whānau-managed, not teacher-led. On the other, they employed Tohu Whakapakari-qualified kaiako and kaumātua played a central role.<sup>46</sup>

The origin of these two categories go back to the report in 2001 of the Government's Early Childhood Care and Education working group, chaired by Dr Anne Meade, which envisaged progressively rising compulsory targets for registered ECE teachers as a key driver for improving quality. However, the report excluded 'parent and whānau EC services' provided by playcentres and kōhanga reo. The latter were excluded largely because the working group could see no early solution to the shortage of te reo-qualified teachers.<sup>47</sup>

As we noted in chapter 6, the Trust participated in the working group and its Māori caucus during 2000 and 2001. The process included consultation by members with their constituencies and then a national round of hui on the draft plan.<sup>48</sup> The working group's report did not specify a precise funding scheme, but did call the Government's attention to the particular situation of kōhanga reo:

Funding arrangements need to recognise the additional costs often faced by ngā kōhanga reo and Māori immersion EC services in preparing their own resources, engaging fluent speakers, and supporting the engagement of whānau and learning of kaiako.<sup>49</sup>

The working group recognised that the role of 'kaitiaki o te reo Māori' incurred extra costs and accorded high priority to the 'development of a te reo Māori policy to support Māori immersion services.' Under the auspices of a unified funding regime, it recommended a new formula using cost-adjusted weightings 'modelled for each service type', resulting, amongst other objectives, in 'a fair and equitable level of support for parents and whānau provided services.'<sup>50</sup>

The working group expected that reforming the funding system 'would require significant consultation with the early childhood sector.'<sup>51</sup> Following the launch of *Ngā Huarahi Arataki* in 2002, the Trust was, as we noted above, represented on the Ministry's Technical Advisory Group on the development of the new funding regime and regulatory framework.<sup>52</sup> The

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46. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2011), pp 62–66, 157

47. Document A73 (Ministry of Education, 'Final Report of the Strategic Plan Working Group to the Minister of Education', October 2001), pp 478–480

48. Document A73 (Ministry of Education, 'Final Report of the Strategic Plan Working Group to the Minister of Education', October 2001), p 463; doc A66 (Anne Meade, brief of evidence, 15 February 2012), pp 11–12

49. Document A73 (Ministry of Education, 'Final Report of the Strategic Plan Working Group to the Minister of Education', October 2001), p 490

50. Document A73 (Ministry of Education, 'Final Report of the Strategic Plan Working Group to the Minister of Education', October 2001), pp 478, 489–490, 500–501

51. Document A73 (Ministry of Education, 'Final Report of the Strategic Plan Working Group to the Minister of Education', October 2001), p 501

52. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), p 17; doc A92 (Mihi Tashkoff, brief of evidence, 7 March 2012), p 2

Government, nonetheless, did not follow the working group's recommendations to develop an ECE te reo immersion policy and a funding model tailored to the cost configuration of kōhanga reo. Instead, the two-level system of standard and quality rates was retained, with no change in the level of funding. For the Trust, it became the lesser of two evils given its adamant opposition to being required to convert to a teacher-led ECE model.<sup>53</sup> For its part, the Ministry has, since 2000, provided for the exclusion of kōhanga reo at every point at which teacher-led requirements have been imposed on other ECE service types.

Although kōhanga reo have the option to access the higher subsidy rates by becoming teacher-led, the vast majority have not done so.<sup>54</sup> As a consequence, the claimants argue, kōhanga reo are unfairly disadvantaged compared to teacher-led ECE centres.<sup>55</sup>

Advancing the claimants' case, Angus Hartley, the Trust's accountant, produced a hypothetical budget for a 36-child kōhanga reo fully staffed with qualified kaiako. He compared what it would receive at the current quality rate and at the top teacher-led rate respectively. He concluded that there was a large gap, which demonstrated an unfair denial of resources to kōhanga reo.<sup>56</sup>

Crown witnesses argued to the contrary, saying that the rates were calculated to cover service costs; thus services employing more teachers received higher rates to cover the extra cost of their salaries. Mr Walley maintained, and this point was strongly emphasised by Crown counsel in closing, that funding for kōhanga reo was provided on an equal footing with other ECE centres and hence neutral and non-discriminatory in effect, and that the higher quality rate for kōhanga reo provided for the employment of qualified kaiako.<sup>57</sup> In Mr Walley's opinion, the 'government seeks to ensure that . . . there is a parity across ECE providers.'<sup>58</sup> He maintained that the system therefore allowed parents equal choice of any form of ECE, including kōhanga reo.<sup>59</sup>

The Ministry's position was thus that its ECE subsidy rates have been calculated to cover estimated costs on the basis of equal treatment. But this intention has been frustrated by the very structure of the subsidy rates. On the one hand, a low quality margin, with a ratio to the standard rate that has remained virtually unchanged for 15 years, could take little account of actual market salaries for kaiako. On the other, having the single quality rate could not cover the extra cost of additional qualified kaiako.

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53. Document A43 (Angus Hartley, first brief of evidence, 22 December 2011), p 3; doc A83 (Angus Hartley, second brief of evidence, 7 March 2012), p 8; doc A62 (Richard Walley, brief of evidence, March 2012), pp 34, 42

54. Document A43 (Angus Hartley, first brief of evidence, 22 December 2011), pp 3–4; doc A83 (Angus Hartley, second brief of evidence, 7 March 2012), p 8

55. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 72–73

56. Document A83 (Angus Hartley, second brief of evidence, 7 March 2012), p 21

57. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 65; doc A62 (Richard Walley, brief of evidence, 15 February 2012), p 32; Crown counsel, under questioning by Tribunal, third week of hearing, 26 April 2012 (transcript 4.1.5, pp 367–370)

58. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 27

59. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 2; Richard Walley, under questioning by claimant counsel, second week of hearing, 20 March 2012 (transcript 4.1.4, p 246)

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This scheme could only work on the assumption that kaiako are paid little more than untrained staff. Were kōhanga reo to employ registered ECE teachers, though, the door to extra funding would open wide. In the Mana Tamariki Kōhanga Reo case, to which we referred above, the Ministry's briefing to its Minister acknowledged that, because it could meet the minimum 50 per cent registered teacher threshold, Mana Tamariki would immediately be entitled to a 21 per cent increase in the under-twos subsidy rate and 27 per cent in the two-and-overs rate, as well as access to teacher supply funding such as incentive grants and relocation grants.<sup>60</sup> That prediction was confirmed two years later in April 2008 when a ministerial briefing assessed the increases in ECE funding received by the three kōhanga reo which had elected to become teacher-led. The increases were significant, ranging from 13 per cent for one kōhanga reo on the 25 to 49 per cent teacher-led rate to 55 per cent for another on the 100 per cent rate (see table 8.1).<sup>61</sup>

The Ministry acknowledged the risk to the Trust in allowing a kōhanga reo to take the teacher-led option, 'because other kōhanga reo may question whether the Trust qualifications are still valuable'.<sup>62</sup> It recognised, in other words, that the subsidy rate structure incentivised kōhanga reo to employ ECE teachers whether or not they possessed the essential reo skills and penalised those who employed additional Trust-trained kaiako.

We consider that the design of the 2005 funding scheme was inequitable for kōhanga reo, and remains so. The scheme was not consistent with the principles associated with article 3 of the Treaty of Waitangi, namely the principles of equity.

**(a) A widening gap between teacher-led and parent- or whānau-led subsidy rates:** An examination of the rate scale's structure and trends gives us some cause to doubt the equality of treatment. We raise two areas of concern. The first is the widening disparity between teacher-led and parent/whānau-led rates. Teacher-led rates continued to rise steeply for several years after the new band structure was established in 2005. This was particularly the case with the top two bands (where 80 to 100 per cent of staff were teachers), for which rates at constant prices rose over the four years to 2009 by 25 to 28 per cent for under-twos and 34 to 39 per cent for two-and-overs (see table 8.8).

These increases, Mr Walley explained, were driven largely by rises in teachers' salaries negotiated through the Kindergarten Teachers, Head Teachers and Senior Teachers' Collective Agreement. Mr Walley estimated salaries as comprising about 75 per cent of an average ECE

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60. Document A64 (Heather Penny, acting senior manager, Early Childhood and Regional Education, Ministry of Education to Minister of Education and Associate Minister of Education, 'Education Report: Change to ECE Funding Rules – Widening Access to Teacher-led Rates', 18 September 2006), p 642

61. Document A78 (Karl Le Quesne, senior manager, Early Childhood and Regional Education, Ministry of Education to Minister of Education and Associate Minister of Education, 'Education Report: Kōhanga Reo Comprehensive Overview', 8 April 2008), p 201

62. Document A64 (Heather Penny, acting senior manager, Early Childhood and Regional Education, Ministry of Education to Minister of Education and Associate Minister of Education, 'Education Report: Change to ECE Funding Rules – Widening Access to Teacher-led Rates', 19 September 2006), p 643



centre's total budget, while Julian King, drawing on the 2011 cost driver survey, put the figure at 65 per cent.<sup>63</sup>

Increases for other services over the same period were far lower – for *kōhanga reo* it was 13 to 14 per cent at constant prices (see table 8.8). This was in large measure because, as Mr Walley informed us, '[p]arent-led services including *kōhanga reo* have not received salary component increases, but have received other sustainability adjustments unrelated to salary.'<sup>64</sup> Of these two factors, the implied freeze on the salary component was by far the more significant since, on average, some 80 per cent of their staff were paid and salaries accounted for around 70 per cent of their expenditure, close to the level for ECE centres.<sup>65</sup> This unequal treatment of *kōhanga reo* costs is likely to have exerted pressure on *kōhanga reo* budgets, and to have reduced their ability to compete with teacher-led ECE services. It has also driven them to use their maintenance budgets to keep their day-to-day operations going, and is one of the causes of the lamentable state of their buildings.

**(b) Setting the subsidy rates for *kōhanga reo*:** Another area of concern is the level of realism in setting subsidy rates for *kōhanga reo*. The Ministry witnesses argued that updated cost calculations are reflected in an annual adjustment of the hourly subsidy rates. We were given little evidence on the information gathered through the Ministry's cost driver surveys of ECE services or on the methodology for calculating the rates. Mr Walley told us that, apart from salaries, the various cost components were adjusted in line with Treasury's inflation forecasts.<sup>66</sup> The Ministry's 2005 'Funding Handbook' went no further than to explain that the subsidy was calculated according to 'standard operating costs for all ECE services' (such as administration, utilities, and educational resources) and components that varied between service types, including 'higher labour costs' to meet teacher registration targets.<sup>67</sup>

Whatever the methodology, with one exception the rates for *kōhanga reo* have in fact been the same as those for playcentres since the inception of the present funding model in 2005. The single exception, in 2007, arose because playcentres had benefited the previous year from an election commitment. Although Mr Walley attributed the 2007 increase to the Government's concern with *kōhanga reo* sustainability, he confirmed that in 2008 the

63. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 34; doc A65 (Julian King, brief of evidence, 15 February 2012), p 45, fn 16

64. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 34

65. Document A83 (Angus Hartley, second brief of evidence, 7 March 2012), pp 5, 17; doc A81 (Karl Le Quesne, senior manager, Education Childhood and Regional Education, Ministry of Education to Minister of Education and Associate Minister of Education, 'Education Report: Free ECE and Funding Subsidy Rates for *Kōhanga Reo*', 14 November 2006), p 423. For playcentres the average was about 20 per cent. See doc A65 (Julian King, brief of evidence, 15 February 2012), p 45, fn 16

66. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 34

67. Document E10 (Ministry of Education, *Early Childhood Education: Funding Handbook* (Wellington: Ministry of Education, 2005), ch 3, p 8



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Government decided to keep kōhanga reo and playcentre at the same rates so as ‘to retain funding parity across whānau-led services.’<sup>68</sup>

This decision seems to us to have lacked a rational basis for rate-setting, given the quite different configurations of the two service types. In particular, we were told that staff salaries accounted for a much lower 20 per cent of total average costs in playcentres as compared to more than 70 per cent for kōhanga reo. This is a difference of which the Ministry should have been aware from Trust accounts dating back to at least 2000.<sup>69</sup>

In the absence of more specific evidence on the Ministry’s methodology and practice, we observe only that the Ministry’s approach to setting the subsidy rates left kōhanga reo at risk of underfunding over a period of more than half a decade. Although the Trust withdrew from the Ministry’s 2011 cost driver survey,<sup>70</sup> the Ministry had access to substantial information from the Trust’s audited annual reports<sup>71</sup> and, in any case, a duty to acquire the data it needed to assure fair and equitable treatment in setting the subsidy rates.

We fail to understand why the Ministry has been able to devise an elaborate framework of rates for other parts of the ECE sector, but has been either unable or unwilling to design, in consultation with the Trust, a funding structure better tailored to the way kōhanga reo actually deliver their service.<sup>72</sup> This failure has persisted despite the need to do so being clearly identified, as we described above, in the report of the Early Childhood Care and Education working group more than a decade ago, despite being the subject of repeated requests from the Trust to address the issue, and despite featuring prominently in the mandate of the Funding, Quality and Sustainability Working Group.<sup>73</sup> As a result, kōhanga reo have remained bracketed by default with playcentres, from which their service configuration differs in major respects. Issues of funding appropriate to delivering the kōhanga reo movement’s kaupapa have been on the table from at least as far back as the Gallen report in 2001. We discuss two of them briefly below.

**(c) Sustaining quality through staff trained in te reo transmission:** The first point of difference is the cost of employed staff. While relying extensively on whānau management and

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68. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 40

69. Document A65 (Julian King, brief of evidence, 15 February 2012), p 45, fn 16; doc A83 (Angus Hartley, second brief of evidence, 7 March 2012), p 5

70. Richard Walley, under questioning by Tribunal, second week of hearing, 21 March 2012 (transcript 4.1.4, pp 293–294)

71. Richard Walley, under questioning by Tribunal, second week of hearing, 21 March 2012 (transcript 4.1.4, p 299); Angus Hartley, under questioning by the Tribunal, first week of hearing, 14 March 2012 (transcript 4.1.3, p 539)

72. Richard Walley under questioning by the presiding officer, second week of hearing, 21 March 2012 (transcript 4.1.4, pp 295–296)

73. Document A73 (Ministry of Education, ‘Final Report of the Strategic Plan Working Group to the Minister of Education’, October 2001), pp 489–490; doc A4 vol 2 (Pania Tahau-Hodges, ‘Draft report on the outcomes of Te Kohanga Reo Working Group: report prepared for Ministry of Education’, October 2012), pp 233–234, 256; doc A2 (Dame Iritana Tāwhiwhirangi, brief of evidence in support of application for urgency, 25 July 2011), p 9

involvement, including volunteer time and the often unpaid contributions of kaumātua, the kōhanga reo operating model also depends on kaiako and kaiāwhina, all of whom contribute directly to the educational outputs supported by the Ministry.

The market for Māori fluent in te reo has continued to expand in recent years, drawing away skilled kaiako, as the Trust pointed out in its submission to the Government's Te Paepae Motuhake Māori language review committee in December 2010.<sup>74</sup> The general drive to expand participation in ECE, and especially by Māori, has also tripled the number of qualified Māori teachers working in ECE services, excluding kōhanga reo, from 318 in 2002 to 1,095 in 2011.<sup>75</sup> Some are likely to have transferred from kōhanga reo, and the higher teacher-led subsidy rates have enhanced ECE centres' ability to pay competitive salaries.<sup>76</sup>

Kōhanga reo have found it increasingly difficult to engage and retain qualified kaiako, despite turning out about 50 Tohu Whakapakari graduates each year between 2006 and 2009. In 2010, according to the Trust's figures, 49 per cent of 471 kōhanga reo employed one fully-qualified kaiako, 17 per cent employed two, and less than 3 per cent employed three or more, while 31 per cent had none.<sup>77</sup> Research commissioned by the Ministry of Education between 2004 and 2006 from the Trust and the Council for Educational Research on quality in parent/whānau-led ECE services, reported that kōhanga reo whānau were finding it increasingly hard to recruit and retain fluent kaiako unless able to offer a competitive salary. Those kōhanga reo in the study who said they did so had to charge higher fee levels than others.<sup>78</sup>

The report pointed to limitations in the provision of ongoing training in te reo and on the curriculum through Whakapiki Reo and Te Whāriki contracts with the Ministry. Lack of availability of expertise meant that not all kōhanga reo could receive support and building up that expertise would be a lengthy process. A lack of human and financial resourcing held back an expansion of the Trust's role to review all kōhanga reo.<sup>79</sup>

There is a clear incentive for young people considering their future to seek an ECE teacher's qualification, rather than a kōhanga reo Tohu Whakapakari, because the higher rates of funding teacher-led ECES can access enable them to offer higher rates of pay. Within the

74. Document A79 (Te Kōhanga Reo National Trust, 'Te Reo Māori Committee Review Submission', December 2010), p 585

75. Education Counts, 'Māori in ECE' (Excel spreadsheet, Wellington: Ministry of Education, 16 May 2012), [http://www.educationcounts.govt.nz/\\_data/assets/excel\\_doc/0016/105631/Maori-in-ECE.xls](http://www.educationcounts.govt.nz/_data/assets/excel_doc/0016/105631/Maori-in-ECE.xls), tab MAO22

76. Angus Hartley, under questioning by the Tribunal, first week of hearing, 14 March 2012 (transcript 4.1.3, p 308); Makere Smith, under questioning by claimant counsel, second week of hearing, 23 March 2012 (transcript 4.1.4, p 671)

77. Calculated from data in document A79 (Te Kōhanga Reo National Trust, 'Te Reo Māori Committee Review Submission', December 2010), pp 563, 583, 585.

78. Document A81 (Linda Mitchell, Arapera Royal-Tangaere, Diane Mara and Cathy Wylie, *Quality in Parent/Whānau-led Services*, (Wellington: Te Kōhanga Reo National Trust and New Zealand Council for Educational Research, 2006)), pp 138, 205–206

79. Document A81 (Linda Mitchell, Arapera Royal-Tangaere, Diane Mara and Cathy Wylie, *Quality in Parent/Whānau-led Services*, (Wellington: Te Kōhanga Reo National Trust and New Zealand Council for Educational Research, 2006)), pp 138, 205

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movement, many kōhanga reo staff are likely to be sacrificing market salary rates as part of their commitment to the kaupapa of kōhanga reo. The higher proportion of kōhanga reo receiving the ECE subsidy at the quality rate – rising from 40 per cent to 69 per cent in 2011<sup>80</sup> – points to a more widespread employment of kaiako already qualified or well advanced in training. There would be corresponding pressure on kōhanga reo budgets to pay them adequately.

Notwithstanding the loyalty of many kaiako, kōhanga reo have to find ways to retain and develop them in a labour market potentially more challenging than the professionalised regime in teacher-led ECE. For that purpose, the small quality premium over the standard subsidy rate – a scarcely changing 11 per cent before 2004 and 14 per cent since then – has afforded little assistance.

This leads to the second point of difference between kōhanga reo and many other parent-led services: the employment of additional kaiako. We agree with the claimants that the single quality rate imposes a disincentive: if additional qualified staff are employed above the eligibility threshold, an unfunded gap arises between their salaries and the lower costs of unqualified staff, which has to be met either by reducing salaries below the market level or by diverting funds from other purposes. This is, after all, the rationale that has driven the linking of higher teacher-led subsidy rates to higher staffing ratios of registered teachers. The absence of similarly graduated rates has denied the opportunity for kōhanga reo wishing to employ higher ratios of qualified staff to access adequate funding without becoming teacher-led.

This absence undermines the Crown's claim to be even-handed in its funding provision. Karl Le Quesne's assertion that 'there is not yet the same case for increasing funding for kōhanga' as for teacher-led services facing higher costs for employing more registered teachers is, as we noted above, contradicted by the Ministry's own advice in 2006 that kōhanga reo qualifying as teacher-led would receive higher rates.<sup>81</sup>

It is not sufficient for the Crown to say that there is no consensus that quality in kōhanga reo needs to be raised or, if it is, by what means.<sup>82</sup> The Crown's general goal for the last decade has been to achieve high quality standards across ECE services through the employment of professionally-trained staff. Yet its funding model has failed to cover the extra cost to those kōhanga reo wanting to raise quality by employing additional qualified staff, as it did for teacher-led ECE centres. This is, we consider, an unacceptable limitation built into the structure of the Crown's funding regime.

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80. Calculated from document A65 (Julian King, brief of evidence, 15 February 2012), p 43, fig 26; doc A60 (Karl Le Quesne, brief of evidence, 15 February 2012), p 12

81. Document A60 (Karl Le Quesne, brief of evidence, 15 February 2012), p 23; doc A64 (Ministry of Education, 'Education Report: Change to ECE Funding Rules – Widening Access to Teacher-led Rates', September 2006), pp 642–643

82. Richard Walley, under questioning by claimant counsel, second week of hearing, 20 March 2012 (transcript 4.1.4, p 253)

(d) *A failure in partnership*: Our discussion in this section has focused on base operational funding directed to areas in which educational and te reo transmission objectives have coincided. We consider that over the last decade the Ministry has had ample opportunity to inform itself of the service configuration and cost structure of kōhanga reo, in particular under the auspices of the Tripartite Agreement, which bound both parties to ‘open dialogue, growth and commitment to change’ and to support ‘strategies for sustainable improvement’ with ‘sound research [and] accurate and informative data.’<sup>83</sup>

Whether adequately informed or not, the Ministry did not adapt its 2005 funding model to the circumstances of kōhanga reo when it did so for other types of ECE service. Nor, it seems, did the Funding, Quality and Sustainability Working Group get as far as developing specific funding options before its demise in 2010.<sup>84</sup>

The Ministry has long known, or had opportunity to learn, of a risk of inequity that has put its commitment to funding parity into question and with which its tripartite partner, the Trust, has had longstanding concerns. We consider that its failure over a lengthy period to make a concerted attempt to resolve the issue so as to ensure it is discharging its duty of active support of te reo, means it has failed to meet its commitment to act in good faith partnership with the Trust towards achieving the agreed shared outcomes.

**(5) *The teacher-led pathway and professional recognition***

The Crown pointed to an alternative way for kōhanga reo to access higher rates of funding: they could join the teacher-led regime.<sup>85</sup> This alternative reflects the Ministry’s general association of high quality in ECE with professionalising the service through the leadership of trained teachers. It was a perspective clearly expressed by the previous Secretary for Education, Karen Sewell, in agreeing that the tiered teacher-led rate bands valued teaching qualifications. She said:

I think it does . . . one of the things I said at the beginning is that sometimes in a relationship we’ve got really, really hard things to deal with, and I believe that this is one of them. And I still believe that trained and qualified teachers are absolutely critical to the system and to the way in which learning and education happens. It doesn’t mean that there aren’t other ways, too, of learning sometimes.<sup>86</sup>

83. Document A2(a) (‘Tripartite Agreement Between Te Kōhanga Reo National Trust and the Ministers of Education and Māori Affairs’), pp 5–6

84. Document A4 vol 2 (Pania Tahau-Hodges, ‘Draft report on the outcomes of Te Kohanga Reo Working Group: report prepared for Ministry of Education’, October 2012), p 256

85. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 33–34

86. Karen Sewell, under questioning by Tribunal, second week of hearing, 19 March 2012 (transcript 4.1.4, p 114)

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Crown witnesses and counsel identified two possible avenues.<sup>87</sup> We examine each in turn. One was for individual kōhanga reo to employ registered ECE teachers and become teacher led. But kōhanga reo adopting this course would have faced practical obstacles. Since 2005, the funding scheme has counted only teachers with a ‘recognised qualification’, which was later defined as meaning ‘an early childhood qualification recognised by the New Zealand Teachers Council for registration purposes.’<sup>88</sup> Since competence in te reo and its transmission has not normally been part of ECE teacher training, few ECE teachers would have been equipped for the role of kōhanga reo kaiako. On the other hand, kaiako qualified with a Tohu Whakapakari would be required to study for a recognised ECE qualification in order to become registered as teachers.

To date, just three kōhanga reo have opted to become teacher-led.<sup>89</sup> We were told that the Trust gave its approval only reluctantly, because to convert any kōhanga reo to that system undermines the movement’s kaupapa.<sup>90</sup> Kōhanga reo are not teacher-led centres.

The second option identified by the Crown was for the Trust was to apply to the Teachers Council to register Tohu Whakapakari,<sup>91</sup> the three-year advanced level of the Trust’s te reo training programme.<sup>92</sup> This would enable kōhanga reo to qualify for the teacher-led rates. We reviewed in chapter 7 the history of the Trust’s initial application in 2004 to have Tohu Whakapakari registered.

Yet, from the outset there was a third path to recognition of professionally qualified staff in kōhanga reo for subsidy purposes. The same regulatory powers used to specify ECE teaching qualifications and the role of the Teachers Council could also have been invoked to recognise Tohu Whakapakari and to designate a body appropriately equipped to validate what is a whānau-led Māori practice qualification.<sup>93</sup> We are surprised that, despite awareness on both sides that non-recognition of Tohu Whakapakari poses potentially serious

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87. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 34; submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 114; doc E10 (Ministry of Education, *Early Childhood Education: Funding Handbook* (Wellington: Ministry of Education, 2005), ch 3, p 45

88. Document E10 (Ministry of Education, *Early Childhood Education: Funding Handbook* (Wellington: Ministry of Education, 2005), ch 3, p 12. Glossary, p 12

89. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 33. A small number of te reo immersion centres – 11 in 2011 with a roll of 233 – operate as education and care centres outside the ambit of the Trust: Education Counts, ‘Māori in ECE’ (Excel spreadsheet, Wellington: Ministry of Education, 16 May 2012), [http://www.educationcounts.govt.nz/\\_data/assets/excel\\_doc/0016/105631/Maori-in-ECE.xls](http://www.educationcounts.govt.nz/_data/assets/excel_doc/0016/105631/Maori-in-ECE.xls), tabs MAO12, MAO16.

90. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 70–71; document A91 (Tina Olsen-Ratana, sixth brief of evidence in reply to Crown evidence, 7 March 2012), p 10

91. Its full title is Te Tohu Mātauranga Whakapakari Tino Rangatiratanga o Te Kōhanga Reo: document A79 (Te Kōhanga Reo National Trust, ‘Te Reo Māori Committee Review Submission’, 2010), p 583

92. Document A79 (Te Kōhanga Reo National Trust, ‘Te Reo Māori Committee Review Submission’, 2010), p 583; doc A81 (Arapera Royal-Tangaere, second brief of evidence, 22 December 2011), pp 27–29

93. The regulatory powers for funding licensed ECE services are provided by the Education Act 1989, s 311 and implemented through the Ministry’s *Funding Handbook*. Under s 317(h) the Act enables teacher qualifications to be regulated and clause 3 of the Education (Early Childhood Services) Regulations 2008 enables the Secretary for Education to recognise any qualification by gazette notice.

difficulties under the new funding regime, the matter has not been pursued by the Ministry with any vigour under the auspices of the Tripartite Agreement.

We note that the Ministry's 'Funding Handbook' explicitly recognises both Tohu Whakapakari as 'the teaching qualification recognised by the Trust Board for whānau involved in kōhanga reo' and the Trust's right to prescribe it for kaiako.<sup>94</sup> The Ministry has, however, not incorporated that recognition into its regulatory and funding regimes. We agree with the claimants that this missed opportunity has had adverse financial consequences for kōhanga reo.

The claimants also alleged that the higher funding of Teachers Council-recognised ECE teaching qualifications, as a principal marker of quality, implied that the unrecognised Tohu Whakapakari was of lesser value.<sup>95</sup> The Ministry's funding regime is likely to have fostered this perception amongst potential kaiako and teachers, as well as among whānau and prospective parents.

The funding regime has accorded weight to educational quality delivered by registered teachers rather than te reo me ngā tikanga quality delivered by kaiako and kaumātua. Although little evidence was presented on the matter, we would nevertheless note the impact of reputation, amongst other factors, on parental choice of ECE service.

We consider that the Crown's failure to provide a funding regime that recognises the obligation to actively protect te reo Māori through kōhanga reo has led to a devaluing of the Tohu Whakapakari with adverse funding consequences for kōhanga reo, and it has contributed towards incentivising parents towards mainstream ECE.

What this underscores is that there has been a general failure on the part of the Crown to provide an adequate funding system that recognises the unique nature of kōhanga reo. This omission is a breach of the Crown's Treaty duty to actively protect the taonga, te reo me ngā tikanga Māori, and to actively protect the claimants' tino rangatiratanga over the manner of transmitting and preserving that taonga.

#### **(6) Other sources of operational funding**

In addition to the main ECE subsidy, two other lines of state operational funding are available to kōhanga reo, both designed to compensate for socio-economic disadvantage. We have outlined their characteristics in chapter 2. Both are in general more significant for kōhanga reo than for other ECE service types, since the Māori communities that kōhanga reo serve tend to be located towards the lower end of relative socio-economic deprivation.

The first is the childcare subsidy, a means-tested benefit that is paid directly to kōhanga reo for each qualifying beneficiary caregiver. The basic conditions of eligibility have been

94. Document E10 (Ministry of Education, *Early Childhood Education: Funding Handbook* (Wellington: Ministry of Education, 2005)), ch 3, p 45; Ministry of Education, *Early Childhood Education: Funding Handbook*, ch 3, p 45, <http://www.lead.ece.govt.nz/~media/Educate/Files/Reference%20Downloads/Lead/Files/Funding/FundingHandbook/Chapter3TheECEFundingSubsidy.pdf>, accessed 8 October 2012

95. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 139–142



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in place since 1993–94, and in 2010–11 provided up to 50 hours per week for parents in employment, training, other approved activity, or if the child had a disability or illness. Other parents are capped at nine hours per week.<sup>96</sup> In 2011 the subsidy was paid at an hourly rate of \$3.84 for one child, reducing to \$1.84 for each of three or more children.<sup>97</sup>

This supplementary subsidy has been an important source of support for kōhanga reo whānau since the early days of the movement. It is not, however, an addition to the ECE subsidy but a means of reducing the impact of fees on parents who may find it difficult to afford them.<sup>98</sup> We also note that it is not designed to cover other categories of beneficiary, including the unemployed and those on the domestic purposes benefit. Without venturing into the detail of social policy, we would note that the goals of high ECE participation and te reo transmission are best served by having regard to compensating for any inability of Māori whānau to participate because of socio-economic disadvantage.

The second source of funding is the equity funding regime introduced in 2002. All four of its components have been relevant to kōhanga reo: ‘low socio-economic communities’; special needs and non-English speaking backgrounds; isolation; and non-English language and culture.<sup>99</sup>

The rates for low socio-economic status and special needs funding are calculated on the basis of attending children’s addresses, and scaled according to a four-point equity index. The rates per child hour in 2011 ranged from \$0.09 up to \$0.42 for low socio-economic status and \$0.08 to \$0.20 for special needs.<sup>100</sup> As at March 2011, nearly all kōhanga reo were registered for the scheme. Of the 463 registered kōhanga reo, 37 per cent qualified in the lowest equity index band and 83 per cent in the lowest three bands; only 9 per cent did not qualify.<sup>101</sup> In the year to September 2011, 414 kōhanga reo received a total of \$3.1 million for low socio-economic status and \$1.4 million for special needs, averaging \$7,522 and \$3,486 a year respectively.<sup>102</sup> Although much lower than the ECE subsidy rates, this was nonetheless a significant top-up for many kōhanga reo.

The third component is the Annual Top-up for Isolated Services, which is designed to set a minimum level of gross annual ECE subsidy for small, isolated centres. In the year

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96. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 28–29; doc A83 (Angus Hartley, second brief of evidence, 7 March 2012), pp 12–13

97. Document A64 (Ministry of Education, ‘Current ECE Funding Rates, and Rates for the Childcare Subsidy and Equity Funding’, 2011), p 647

98. Richard Walley, under questioning by claimant counsel, second week of hearing, 20 March 2012 (transcript, 4.1.4, p 254)

99. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 29–30

100. Document A64 (Ministry of Education, ‘Current ECE Funding Rates, and Rates for the Childcare Subsidy and Equity Funding’, 2011), p 648

101. Calculated from Ministry of Education, ‘Equity Funding’, spreadsheet ‘Equity Index Values – Eligible ECE Services March 2011’, <http://www.lead.ece.govt.nz/ManagementInformation/Funding/EquityFunding.aspx> (accessed 24 August 2012)

102. Document B8 (Te Kōhanga Reo National Trust, ‘Equity Funding Report’, report prepared for the Ministry of Education, March 2012), p 3



to September 2011, this yielded \$0.3 million for 134 kōhanga reo at an average of \$3,486 a year.<sup>103</sup> We note that Mr King's analysis identifies rural kōhanga reo as more vulnerable to closure, especially because of falling rolls or the responsible whānau members retiring or disestablishing the service.<sup>104</sup> Some 29 per cent were also rated as relatively isolated under the Ministry's isolation index, with more than 12 per cent in the highest isolation band.<sup>105</sup>

The final component, 'non-English language and culture', is the only ECE subsidy that may be used to support te reo transmission. It is paid as a fixed monthly grant to all kōhanga reo. In the year to September 2011, it provided a total of just \$0.924 million. This averaged just under \$2,000 a year for each kōhanga reo, or about 40 cents to 50 cents a day per child.<sup>106</sup>

As specific support for te reo transmission, we agree with the Trust's comment to the Ministry that 'overall investment in this key Government priority is profoundly lacking'.<sup>107</sup> It does not demonstrate a commitment to actively protecting te reo Māori in ECE. We return to this question below.

#### **(7) The ECE subsidy and long-term decline**

The claimants identify inequitable and inadequate operational funding as a major cause of the long-term decline of the kōhanga reo movement.<sup>108</sup> We would not go so far. The impact of funding deficiencies must be weighed alongside a range of other demographic, social, economic, and cultural factors. Looking at the 30-year history of the movement, kōhanga reo numbers and total enrolment first grew rapidly when State funding was limited, then declined sharply in the late 1990s when funded on an equal footing with most other ECE services, and stabilised after 2007 when the differential with teacher-led rates was at its widest.

It does not suffice, however, for the Crown to argue that nothing changed for kōhanga reo under the new ECE funding model because their subsidy structure and rates were the same after 2005 as before and were kept ahead of inflation. The new funding regime worsened their relative position in the ECE sector and failed to protect the fragile skill base of Tohu Whakapakari-trained kaiako. Efforts to boost salaries beyond what the slim quality margin would sustain were bound to erode the general financial viability of kōhanga reo.

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103. Document B8 (Te Kōhanga Reo National Trust, 'Equity Funding Report', report prepared for the Ministry of Education, March 2012), p 3

104. Document A65 (Julian King, brief of evidence, 15 February 2012), p 47, fig 29. The applicable categories are 'declining roll' and 'owner retired/disestablished'.

105. Document A65 (Julian King, brief of evidence, 15 February 2012), p 47, fig 28; doc B8 (Te Kōhanga Reo National Trust, 'Equity Funding Report', report prepared for the Ministry of Education, March 2012), p 5

106. Document B8 (Te Kōhanga Reo National Trust, 'Equity Funding Report', report prepared for the Ministry of Education, March 2012), p 3. Averages estimated on the basis of 9,631 children at 463 kōhanga reo open for between 200 and 250 weekdays per year.

107. Document B8 (Te Kōhanga Reo National Trust, 'Equity Funding Report', report prepared for the Ministry of Education, March 2012), p 8

108. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 59, 153, 155–156, 159

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A possible indicator of financial stress can be seen in the reasons given for the closure of kōhanga reo. An analysis of closures between 1997 and 2005 undertaken for the Trust found that in 49 per cent of closures the principal reason given was a falling roll.<sup>109</sup> Mr King similarly identified declining rolls and small roll size as leading factors, and also as possible contributors to disestablishment and mergers. Financial reasons were given in only 5 per cent of cases, but more than two-thirds had small rolls of 13 or fewer at time of closure;<sup>110</sup> this may also imply a lack of financial viability. Arapera Royal-Tangaere identified the restrictions on entitlement to the childcare subsidy introduced in 1993–94 and the later exclusion of a number of rural localities from eligibility for the unemployment benefit as significant factors in the disproportionate decline and closure of rural kōhanga reo.<sup>111</sup>

We note Mr King's caution in interpreting 'reason for closure' data.<sup>112</sup> We think it reasonable to conclude that financial factors, in addition to the level of the ECE subsidy, would have contributed to the closure of a number of kōhanga reo.

**8.3.2 Sufficiency of operational funding**

**(1) Funding te reo immersion through kōhanga reo**

Having reviewed at some length the claimants' contentions concerning access to operational funding, in this section we consider the Crown's expenditure on kōhanga reo and relate it to its intended and actual outcomes, particularly in the area of te reo revitalisation. The Crown's contention is that it has done enough in the ECE sphere to promote and actively protect te reo Māori through kōhanga reo, in terms of its operational funding of kōhanga reo and the Trust.<sup>113</sup> We query whether it can maintain that position when the outcome of its policies is that the proportion of Māori children learning and becoming fluent in te reo Māori in ECE, particularly in kōhanga reo, is plummeting.

We agree that the financial expenditure to date by the Crown has been important and that it has contributed to and facilitated the operation of the kōhanga reo movement. This contribution should be acknowledged. We note, however, that nearly all of the Government's operational expenditure on kōhanga reo is also committed in fulfilment of the Government's general educational programme in the ECE sector. Thus if the 9,000 to 10,000 children currently enrolled in kōhanga reo centres were to transfer to other ECE services, the cost of accommodating these children would also transfer in approximately the same amount or more. In other words, since kōhanga reo are funded to deliver the

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109. Document A81(Arapera Royal-Tangaere, Te Kōhanga Reo National Trust Board, 'Te Kōhanga Reo Aspirations and Struggles', 2011), p 801

110. Document A65 (Julian King, brief of evidence, 15 February 2012), pp 27–29

111. Document A81 (Arapera Royal-Tangaere, 'Te Kōhanga Reo Aspirations and Struggles', paper for Te Kōhanga Reo National Trust Board, 2011), p 800

112. Document A65 (Julian King, brief of evidence, 15 February 2012), p 27

113. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 5–6

Government's educational objectives, language revitalisation through immersion is largely ignored in the costing formula.

We also note that the Crown spent as much as \$502 million in 2009 on te reo Māori in the education sphere, including ECE. This amounted to 84 per cent of the total of \$596 million available for te reo Māori expenditure in that year.<sup>114</sup> This was the overall expenditure on all te reo Māori programmes, including Māori-medium schools and English-medium school programmes with a te reo Māori component. In the ECE sector, the expenditure on non-immersion te reo may have value in its own right. However, it is, as we concluded in chapter 4, only the component expended on immersion services that directly promotes te reo revitalisation. In this field, kōhanga reo overwhelmingly predominate. Thus, it is only when we consider expenditure targeted at kōhanga reo that we start to see whether financial support has been sufficient for promoting te reo me ngā tikanga Māori through early childhood immersion.

### **(2) Operational funding of kōhanga reo**

The main source of State funding for kōhanga reo has been the ECE subsidy, since 2007 partly replaced by 20 hours ECE, and since 2002 supplemented by equity funding. The Ministry's evidence was that the ECE subsidy of about \$71.9 million in operational funding for kōhanga reo equated to 5 per cent of the total Vote: Education budgeted figure of \$1,423 million in 2010–11 for ECE generally, which was about the same proportion as that of kōhanga reo children in the overall number of children enrolled in ECE.<sup>115</sup>

In the decade following the launch of *Ngā Huarahi Arataki* in 2002, the Ministry's total ECE payments to kōhanga reo were at first flat or declining, before rising steeply from 2007 onwards (see table 8.2).

The gross figures are somewhat misleading as they do not take account of inflation, enrolments, age, hours of attendance, changes in funded activity and other factors. A better indicator is expenditure per enrolled child, which according to Mr King's data was flat or declining from 2002 until 2006, then increased sharply from 2007 to 2010. He calculated that average expenditure per child had risen from \$3,795 to \$7,674 between 2000 and 2010, and to \$5,940 after adjusting for inflation, an increase in real terms of 57 per cent.<sup>116</sup>

Most of this rise in expenditure per child occurred under the new funding regime in the four years from 2007 to 2010, during which it was running well above the annual increases in funding rates. The difference may be due in part to the expanding number of kōhanga reo on the ECE subsidy's quality rate and to the uptake of 20 hours ECE. This new funding stream, open to three- and four-year old children attending ECE, replaced the combination

114. Document A73 (Independent Panel on the Māori Language, 'Te Reo Mauriora Te Arotakenga o te Rārangi Reo Māori me te Rautaki Reo Māori', April 2011), p 427

115. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 26–28

116. Document A65 (Julian King, brief of evidence, 15 February 2012), pp 35–37

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of partial ECE subsidy and parental fees with full cost coverage and no fees. For kōhanga reo, 20 hours ECE was paid at about double the two-and-over ECE subsidy rate.<sup>117</sup> While we accept that, from 2007 onwards, ECE payments per kōhanga reo child kept ahead of consumer price inflation, we remain cautious as to the size of the gain given the higher salary costs of qualified kaiako and the extension of activity covered by the funding.

We outlined the general funding situation of kōhanga reo in chapter 2. Looking at all categories of income, the main sources of State funding in 2010–11 were the ECE subsidy (55.5 per cent) and 20 hours ECE (19.9 per cent). These proportions were the reverse of other ECE services (29.1 per cent and 42.3 per cent respectively) and reflected the much slower uptake of 20 hours ECE by kōhanga reo. Equity funding (6.8 per cent) and the childcare subsidy (12.8 per cent) were both much higher in comparison to other ECE services (0.4 and 6.5 per cent) and highlighted the fact that the communities served by kōhanga reo tend to be located in poorer urban suburbs and rural areas. This was also reflected in the contribution made by fees, estimated at approximately 5 per cent for kōhanga reo and over 20 per cent for the rest of the ECE sector (see table 8.3).<sup>118</sup>

Calculating total Government spending per child enables us to make an approximate comparison between kōhanga reo and other ECE services. This yields an average of \$868 a year for kōhanga reo, which is slightly higher than the \$809 a year for the rest of the ECE sector.

However, a breakdown of these figures reveals some marked imbalances. ECE expenditure averaged \$689 per kōhanga reo child, below the \$728 per child for other services. Conversely, components compensating for socio-economic disadvantage are much higher for kōhanga reo: \$62 per child from equity funding as against \$4 per child in other services, and \$117 compared to \$67 respectively from the childcare subsidy (see table 8.4).

These averages must in any case be treated with caution. First, the age profile of kōhanga reo is lower – an average age of 2.4 in kōhanga reo and 2.8 in other services – with a larger proportion of children (25 per cent compared to 17 per cent) qualifying for the higher under-two subsidy rate.<sup>119</sup> Furthermore, the average attendance hours per child at kōhanga reo are likely to be above the sector average of 20.4 per week.<sup>120</sup>

Taking these factors into account, it seems safe to conclude that average Government funding for kōhanga reo mokopuna is no higher than the average for other ECE services

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117. Document A43 (Angus Hartley, first brief of evidence, 22 December 2011), pp 10–13

118. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 23; doc A83 (Angus Hartley, second brief of evidence, 7 March 2012), p 4

119. Document A65 (Julian King, brief of evidence, 15 February 2012), p 15; calculated from Education Counts, 'Māori in ECE' (Excel spreadsheet, Wellington: Ministry of Education, 16 May 2012), [http://www.educationcounts.govt.nz/\\_data/assets/excel\\_doc/0016/105631/Maori-in-ECE.xls](http://www.educationcounts.govt.nz/_data/assets/excel_doc/0016/105631/Maori-in-ECE.xls), tab MA010.

120. Elenito Castillo, 'Annual ECE Census Summary Report 2011' (Wellington: Ministry of Education, [2011]), <http://www.educationcounts.govt.nz/statistics/ece2/annual-ece-summary-reports>, sec 5, tbl 10

and may be lower. Adding in parental fees shifts the balance of advantage sharply towards other ECE services.

These various qualifications suggest that a simple comparison of total Government expenditure per child does not tell the full story, and that total resourcing, including fees, may be lower for kōhanga reo children.

**(3) *The Crown's general obligation to actively protect te reo***

In our discussion of Treaty duties in chapter 3, we identified the duty of the Crown to actively protect the transmission of te reo given its vulnerable state. The Crown's response before us has been to highlight its general funding for kōhanga reo over past decades as evidence of that commitment to the active promotion of te reo. To some extent, that must carry significant weight. However, the proportion of native speakers amongst Māori has again fallen into decline. It is in that light that we must consider the nature and extent of the funding necessary to truly discharge the Treaty duty to actively protect te reo.

The Crown's reliance on ECE operational funding to demonstrate its continued commitment to protection of te reo only has merit if sufficient expenditure is in fact targeted at fostering the effective transmission of te reo through immersion.<sup>121</sup> This means, with only a handful of exceptions, transmission through the kōhanga reo movement. We have seen that the combined operational funding from Vote: Education and the Ministry of Social Development in support of kōhanga reo amounted to \$84 million in 2010–11. In practice, most of this funding was geared to educational and social policy outcomes.

This raises questions in two dimensions. The first is whether, despite or alongside the educational and social purposes, current ECE expenditure on kōhanga reo is nevertheless also effective in promoting the revitalisation of te reo. The claimants' proposition is that it has been subordinated to the Government's major policy drive to extend the level of preschool education, in particular by increasing participation and improving quality. The result, they say, is that kōhanga reo are now being funded mostly to perform a significant general educational policy role unrelated to transmission of te reo.<sup>122</sup>

Whether related or not, there can be no doubt that over the last two decades, as we noted above, the placement of kōhanga reo within the ECE mainstream has assured a consistent, stable, and long-term funding framework for kōhanga reo. By bringing kōhanga reo into the ECE domain, the Crown accepted, broadly speaking, that their kaupapa was, in the words of the 2008 licensing criteria, a valid 'philosophy . . . that outlines the fundamental beliefs, values and ideals that are important to the people involved in the service' and

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121. Richard Walley, under questioning by Tribunal, second week of hearing, 20 March 2012 (transcript 4.1.4, p 269)

122. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 59–60

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therefore fulfilled an educational purpose.<sup>123</sup> Channelling operational funding through the Trust enabled it to work as kaitiaki to safeguard the kaupapa.

This approach has allowed the Ministry and the movement, to varying degrees, to override their deep philosophical differences. Educational funding was, for the most part, directed into transmitting te reo me ngā tikanga, while both Ministry and Trust were committed to expanding Māori uptake and to improving service quality. Notwithstanding the friction and conflict over funding adequacy, design of the funding regime, regulatory compliance, and quality standards, the kōhanga reo movement has been able to apply the Crown's ECE operational funding to sustaining and developing most core aspects of its kaupapa.

This brings us to the second dimension, which is whether the Crown is committing sufficient resource to assure the long-term success of te reo revitalisation. This is, in our view, critical to the Crown's fulfilment of its Treaty obligations.

Crown witnesses and counsel took some pains to draw our attention to the recent stabilisation and, possibly, slight recovery in the kōhanga reo enrolment trend.<sup>124</sup> While any positive trend is to be welcomed, our concern is with the far bleaker big picture, laid out in chapter 2, which is that early childhood immersion has continued its seemingly inexorable decline as a proportion both of the Māori preschool population and of Māori in ECE. Had kōhanga reo maintained their peak 1993 share of Māori enrolments in ECE, the movement would today have half of the Māori ECE roll and more than double its present numbers – in the early, heady days of rapid expansion, the movement's leaders had aimed to have 75 per cent of all Māori children under five attending kōhanga reo by the mid-1990s.<sup>125</sup> But the slight absolute increase of a few hundreds from 2007 to 2011 – the Trust's count of total enrolment suggests a further fall to June 2012 – parallels a further decline in the kōhanga reo share of Māori ECE enrolments from 26 per cent to 22 per cent.<sup>126</sup>

The central issue here is policy neutrality: as Mr Walley explained, the subsidy regime is designed to allow funding to follow parental choice without advantaging any one service over others.<sup>127</sup> We have seen, earlier in this chapter, that in some areas practice has departed from the even-handedness promised by policy, but we are concerned here with the wider implications of neutrality. It is abundantly clear, from the Ministry's enrolment data, that over the last decade or more Crown funding has been following Māori mokopuna

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123. Document A64 (Licensing Criteria for Kōhanga Reo Affiliated with Te Kōhanga Reo National Trust, 2008 pursuant to regulation 41 of the Education (Early Childhood Services) Regulations 2008), p 618

124. Document A65 (Julian King, brief of evidence, 15 February 2012), p 3; submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 47

125. Document A65 (Julian King, brief of evidence, 15 February 2012), p 3, fig 1; doc A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), p 495

126. Elenito Castillo, 'Annual ECE Census Summary Report 2011' (Wellington: Ministry of Education, [2011]), <http://www.educationcounts.govt.nz/statistics/ece2/annual-ece-summary-reports>, sec 3, tbl 2; doc A65 (Julian King, brief of evidence, 15 February 2012), p 3, fig 1; submission 3.4.13 (claimant counsel, memorandum providing additional information, 1 August 2012); doc E15 [table attached to submission 3.4.13]

127. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 2



predominantly into ECE services that offer, at best, part-time te reo as the language of communication.<sup>128</sup>

Between 2002 and 2011, ECE services offering 50 per cent or less of contact time in te reo increased by 8,872 mokopuna, a number by itself close to the total kōhanga reo roll. While such services may have delivered some worthwhile te reo and tikanga gains for the Māori and other children attending, they are likely to have contributed little to te reo revitalisation through intergenerational transmission. ECE centres offering above 50 per cent te reo, on the other hand, rose only marginally, while the kōhanga reo roll fell by 1,223.<sup>129</sup> Of the total increase in the Government spend on Māori mokopuna in ECE, the great majority has thus gone to non-immersion services (see table 8.5).

The ECE policy focus has been strongly on parents as educational decision-makers, which has detached Crown policy from pursuit of the specific and different objectives of language revitalisation and from co-developing broader partnerships and programmes. Resources specifically committed to te reo revitalisation purposes in the early childhood sphere would, in other words, have exerted positive leverage on the much larger-scale financing of ECE services, supporting more Māori parents to opt for immersion, principally through kōhanga reo. Instead, Māori parents have moved in large numbers in the opposite direction. For this major and negative outcome, we consider that the Crown does bear some responsibility.

ECE resources directed to specific te reo purposes have been too small and disconnected to make a major and sustained impact. We have focused here on outcomes, since the evidence is that te reo is in a vulnerable state.

We consider that the Crown's Treaty obligations as regards te reo are not neutral: it has a duty of active protection of te reo. Even a scenario of well performing, adequately resourced kōhanga reo with nonetheless a declining share of the total Māori roll will not suffice to fulfil that duty. Rather, there is an obligation on the Crown to seek, in partnership with Māori, to achieve participation in kōhanga reo, as the principal te reo immersion provider, in sufficient numbers to ensure that te reo remains a living language. That must be the outcome against which Crown policies are measured.

#### **(4) Administrative funding of the Trust**

One resource specifically targeted on support for early childhood te reo immersion has been the state funding of the Trust itself, which is, Mr Brell pointed out, unique in the

128. Elenito Castillo, 'Annual ECE Census Summary Report 2011' (Wellington: Ministry of Education, [2011]), <http://www.educationcounts.govt.nz/statistics/ece2/annual-ece-summary-reports>, sec 3.3, tbl 5; doc A65 (Julian King, brief of evidence, 15 February 2012), p 5, fig 2

129. Calculated from document A65 (Julian King, brief of evidence, 15 February 2012), p 24, fig 16; Education Counts, 'Māori in ECE' (Excel spreadsheet, Wellington: Ministry of Education, 16 May 2012), [http://www.educationcounts.govt.nz/\\_data/assets/excel\\_doc/0016/105631/Maori-in-ECE.xls](http://www.educationcounts.govt.nz/_data/assets/excel_doc/0016/105631/Maori-in-ECE.xls), tab MAO16



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modern ECE sector.<sup>130</sup> We agree that the Crown's financial support to the Trust has made an important and targeted contribution to sustaining te reo immersion through kōhanga reo.

The claimants have, nevertheless, pointed to inadequate funding of the Trust as undermining its ability to function effectively. Increasingly, in their view, the Crown has failed to actively support the agent best placed to sustain the intergenerational transmission of te reo.<sup>131</sup> It is an agreed fact that the funding of the Trust by the Crown, at a level of \$2.56 million a year, has remained unchanged for the last 17 years.<sup>132</sup> In that time, inflation has reduced its value to two thirds of its original purchasing power. This is in direct contrast to the approach taken to general ECE subsidies where cost components were adjusted in line with Treasury's inflation forecasts.<sup>133</sup>

In instituting the administrative support payment, our view is that the Crown was recognising the value that both kōhanga reo and the Crown itself received by having a central organisation administering the needs and representing kōhanga reo to government, rather than Crown agencies having to deal individually with hundreds of kōhanga reo. Although the number of kōhanga reo has dropped steeply over the same period, the range and complexity of the Trust's role in accounting, reporting, and representing kōhanga reo in Government processes has expanded greatly over the last decade.

The Crown's financing of the Trust has amounted to more than administrative convenience in devolving the disbursement of funds. By supporting a strong central body, the Crown enabled the Trust to build its capacity to:

- ▶ develop and maintain its ability to represent kōhanga reo and its functions in administration, accounting, and reporting;
- ▶ sustain its network of district kaimahi working in direct support of kōhanga reo on the ground;
- ▶ institute and continue Tohu Whakapakari and several other training courses for whānau; and
- ▶ help start new kōhanga reo.

These functions underpinned, in turn, the ability of kōhanga reo to transmit the language. The Crown thereby fulfilled part of its duty of active protection of te reo.

Given that situation, by allowing the benefits gained to be run down at the hands of inflation the Crown has undermined the ability of the Trust to perform its role. Both the Gallen report in 2001 and the PricewaterhouseCoopers costing review in 2006 concluded that the

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130. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), p 9

131. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 84–85

132. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 84

133. Document E10 (Ministry of Education, *Early Childhood Education: Funding Handbook* (Wellington: Ministry of Education, 2005), ch 3, p 8

Trust was underfunded even at those dates.<sup>134</sup> They considered that some of its objectives in providing financial and developmental support to kōhanga reo lay outside the scope of the funding provided by the Ministry through the annual Memorandum of Agreement and currently under a three-yearly Master Agreement.<sup>135</sup> The PricewaterhouseCoopers review stated:

The rate of \$50 per hour for this work, which we understand to be a 'best guess' at the time of negotiating the 2005 contract, does not cover the total cost of this service. For the present number of hours expected under the MOA [memorandum of agreement], it is estimated that the rate should be approximately \$70 per hour. This rate would enable the Trust to fulfil the hours required under the MOA, based on a 40 hour working week.<sup>136</sup>

The general pattern has been one of demands from the Ministry for the Trust to engage by responding to proposals to implement *Ngā Huarahi*.<sup>137</sup> This has not been matched with additional funding to ensure capacity to respond. The reasons why the level of funding for the Trust has not been adjusted were not explained to us and remain obscure.

We consider that the ever-reducing funding level demonstrates a lack of support for the kaitiakitanga role of the Trust for kōhanga reo and is inconsistent with the active protection of the taonga, te reo me ngā tikanga Māori, and the guarantee of rangatiratanga under the Treaty.

### 8.3.3 Capital funding issues

The premises in which ECE activities occur are said to significantly affect the quality of ECE provision. The Crown, therefore, has been properly concerned with the quality of those premises, establishing regulations for standards since 1985. It has, however, been less rigorous about how the capital for those premises should be funded, including provision for maintenance, debt servicing and depreciation. Because the current system of grants has not been explicit about capital funding, a series of ad hoc decisions has been made over the years. We are not able to say whether this has resulted in an overall failure of the ECE

134. Document A24(h) (Crown/Kohanga Reo National Trust Joint Working Group, *Report to the Ministers of Education and Maori Affairs, Review of the Relationship Between the Crown and Te Kohanga Reo National Trust* (Wellington: Crown/Kohanga Reo National Trust Joint Working Group, 2001)), p 44; doc A78 (PricewaterhouseCoopers, 'Costing Review of Te Kōhanga Reo National Trust', Report Commissioned by Ministry of Education, 31 March 2006), pp 657–658

135. Document A24(h) (Crown/Kohanga Reo National Trust Joint Working Group, *Report to the Ministers of Education and Maori Affairs, Review of the Relationship Between the Crown and Te Kohanga Reo National Trust* (Wellington: Crown/Kohanga Reo National Trust Joint Working Group, 2001)), pp 40–41, 48–49; doc A78 (PricewaterhouseCoopers, 'Costing Review of Te Kōhanga Reo National Trust', Report Commissioned by Ministry of Education, 31 March 2006), p 659

136. Document A78 (PricewaterhouseCoopers, 'Costing Review of Te Kōhanga Reo National Trust', Report Commissioned by Ministry of Education, 31 March 2006), pp 657–658

137. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 84–85

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premises but, given the evidence presented to us, we are in no doubt that many kōhanga reo premises are in a poor state of repair.<sup>138</sup>

In 2009, the Trust sought and obtained funding from Te Puni Kōkiri to undertake a national survey of kōhanga reo premises. After that research was completed in July 2010, the Trust submitted its conclusions to the Ministry in the form of a property proposal that sought some \$20 million by way of assistance over four years to bring all the kōhanga reo buildings up to standard.<sup>139</sup>

The project grant from Te Puni Kōkiri enabled the Trust to appraise the extent to which kōhanga reo property was likely to fail to comply for relicensing under the 2008 regulations. The report identified 172 out of 464 kōhanga reo that could not meet the licensing criteria. Of those 172, 27 required rebuilds, at a capital cost of \$12.66 million; 52 required upgrading work within the next six months at a cost of \$3.8 million; and 93 required upgrade work over the next 12 months at a cost of \$3.55 million.<sup>140</sup> We were provided with details and photographs from the property report of those premises in the top three of the six assessment categories.<sup>141</sup> They point to a serious state of disrepair and thus to a high risk of not satisfying the criteria for relicensing. In that event, up to a third of kōhanga reo would have to find alternative premises or close. It is a looming disaster that can only be averted by prioritised funding.

This situation has come about due to the history of capital funding we outline below.

**(1) *The closure of the property pūtea as a revolving fund***

In the early years of rapid expansion, kōhanga reo found their own premises in marae, homes, garages, church and community halls, and other facilities, with some support from the Crown in terms of access to Government-owned buildings and land. Once Government regulation of licensed ECE services was imposed in 1985, which increasingly ruled out these earlier premises and required more specialised, purpose-built ones, in part to ensure that kōhanga reo premises were safe for mokopuna,<sup>142</sup> the duty to assist became obvious. The Crown is to be commended for the help it did provide in the late 1980s and early 1990s in the

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138. Document A8 (Nikorima Broughton, Kaupapa Kaimahi, Te Kōhanga Reo National Trust to Ministry of Education, 'Kōhanga Reo Meeting MOE Re-licensing Requirements, Proposal', July 2010), app c; doc E7 (Te Kōhanga Reo National Trust Board, 'Kōhanga Reo Property Reports', for Waitangi Tribunal, April 2012); doc A93 (Te Kōhanga Reo National Trust, table of assessments of kōhanga reo premises requiring action, undated), pp 56–82

139. Document A68 (Geoff Short, brief of evidence, 15 February 2012), p 8; doc A8 (Nikorima Broughton, Kaupapa Kaimahi, Te Kōhanga Reo National Trust to Ministry of Education, 'Kōhanga Reo Meeting MOE Re-licensing Requirements, Proposal', July 2010), app c

140. Document A8 (Nikorima Broughton, Kaupapa Kaimahi, Te Kōhanga Reo National Trust to Ministry of Education, 'Kōhanga Reo Meeting MOE Re-licensing Requirements, Proposal', July 2010), app c, sec 20

141. Document E7 (Te Kōhanga Reo National Trust Board, 'Kōhanga Reo Property Reports', for Waitangi Tribunal, April 2012)

142. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p 16; doc A36 (Harata Gibson, brief of evidence, 22 December 2011), p 5; doc A76 (Government Review Team, *Report of the Review of Te Kohanga Reo* (Wellington: Government Review Team, 1988)), pp 516–517, 523

form of a block capital works grant through Vote: Māori Affairs and then Vote: Education, which by 1993–94 had contributed some \$10.4 million to kōhanga reo development.<sup>143</sup>

It was during this period that the Trust set up its property pūtea as a revolving loan scheme. The Trust's long-term aim was to end dependence on the Crown for capital funding and become fully self-reliant, both in financing kōhanga reo property and in supporting those development needs of the movement that the Crown did not fund. These included, as we outlined in chapter 2, an asset insurance scheme, a child health fund, and information technology equipment.

When the Discretionary Grant Scheme (described below) replaced block grants in the mid-1990s, the Trust continued, with Ministry of Education approval, to assist individual kōhanga reo with loans rather than grants. By 2001, according to Dame Iritana Tāwhiwhirangi, the Trust had paid out a total of \$31.9 million to kōhanga reo.<sup>144</sup>

After the Auditor-General found that this practice was unlawful, the Trust was obliged to end the use of grant funding for loans, as recorded in 2001 by the Gallen report (see chapter 6).<sup>145</sup> This left the property pūtea without a source of replenishment.<sup>146</sup>

The Crown did not take up the Gallen report's recommendation that alternative development funding be provided to the Trust.<sup>147</sup> Nor did it provide its own alternative to meet the need. As a consequence, the Trust's property pūtea fund dwindled, reducing the Trust's ability to provide direct support to kōhanga reo.<sup>148</sup>

The Trust's ability to exercise its role as kaitiaki in financing either kōhanga reo property or its broader development and support goals has largely disappeared,<sup>149</sup> and this has changed the Trust's role to being largely an administrative agent for Crown capital funding provided directly to individual kōhanga reo. This targeting of grants led to a marked change in the terms of access to development finance. While the pūtea was operating as a revolving fund, grants from the Discretionary Grant Scheme were treated as mortgages which beneficiary kōhanga reo repaid. The repayments were in effect a charge on their operational income, which derived mainly from Government ECE subsidies. The Trust was able to apply

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143. Document A75 (Andrew Hema, first brief of evidence, 22 December 2011), p 2; doc A75 (Te Kohanga Reo National Trust Board to Ministry of Education, 'Proposal to Maintain the Annual Capital Works Grant', 14 June 1994), p 10; doc A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p 17; doc A89 (Andrew Hema, second brief of evidence, 7 March 2012), p 8; doc A62 (Richard Walley, brief of evidence, 15 February 2012), p 47

144. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), pp 16–17

145. Document A24(h) (Crown and Kōhanga Reo National Trust Joint Working Group, 'Report to the Ministers of Education and Maori Affairs: Review of the Relationship Between the Crown and the Te Kohanga Reo National Trust', 31 July 2001), p 47

146. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), pp 17–18

147. Document A24(h) (Crown and Kōhanga Reo National Trust Joint Working Group, 'Report to the Ministers of Education and Maori Affairs: Review of the Relationship Between the Crown and the Te Kohanga Reo National Trust', 31 July 2001), p 32

148. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p 18; Andrew Hema, oral evidence, first week of hearing, 16 March 2012 (transcript 4.1.3, p 550)

149. Document A75 (Andrew Hema, first brief of evidence, 22 December 2011), p 8

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the proceeds to assist other kōhanga reo or the movement generally, a policy which had the broad support of the movement.<sup>150</sup> After the use of Discretionary Grant Scheme grants for loans was stopped in 2001, kōhanga reo receiving the grants no longer had to repay them and thus received the full benefit, but conversely the resources could no longer be redeployed for the wider benefit of the kōhanga reo movement. In addition, the autonomy of the Trust to set policy and deploy funds for development purposes was largely ended.

**(2) The Discretionary Grant Scheme**

The Ministry's Discretionary Grant Scheme, designed to assist the establishment of new community-based ECE centres and expand existing ones, ran from 1990 to 2010.<sup>151</sup> From 1996, it was the Crown's vehicle for providing capital funding to kōhanga reo, which was disbursed through the Trust. By virtue of that funding, the Crown provided selective assistance to kōhanga reo in their large-scale transition into purpose-built accommodation that they owned.<sup>152</sup> The total amount received by kōhanga reo through the Discretionary Grant Scheme over the 15 years until 2010 was some \$27 million.<sup>153</sup>

Various policy priorities applied during the period, but fairly consistent themes were support for immersion education in te reo and the increased participation of Māori children in ECE.<sup>154</sup> Those policies, in our view, reflected Crown Treaty duties at the time, and still do.

The targeting of Discretionary Grant Scheme funding on kōhanga reo nevertheless became increasingly unfocused. The separate Māori pool created in the 1996 budget was for two years (1996–97 and 1997–98) restricted to te reo immersion services. From 1998, the Māori pool was contestable among any community-based services that aimed at increasing Māori participation in early childhood education, with first priority given to te reo immersion. In 2005, the Māori pool was merged with the other two Discretionary Grant Scheme pools into a single fund with broadened priority criteria that now included areas of high population growth.<sup>155</sup> From resources targeted specifically on te reo immersion, kōhanga reo now had to compete with other ECE service providers and amongst a diverse range of priority purposes.

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150. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), pp 16–17; doc A62 (Richard Walley, brief of evidence, 15 February 2012), p 47; doc A24(h) (Crown and Kōhanga Reo National Trust Joint Working Group, 'Report to the Ministers of Education and Maori Affairs: Review of the Relationship Between the Crown and the Te Kohanga Reo National Trust', 31 July 2001), pp 47–48

151. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 49. 'Community-based' was defined as not-for-profit.

152. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 49; doc A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p 17; doc A75 (Andrew Hema, brief of evidence, 22 December 2011), pp 7–8

153. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 57

154. For example see document A62 (Richard Walley, brief of evidence, 15 February 2012), p 48

155. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 48–50; doc A75 (Andrew Hema, first brief of evidence, 22 December 2011), p 3

After the closure of the property pūtea's revolving fund in 2001, grants from the Discretionary Grant Scheme were tied to specific projects. The scheme did generate substantially more funding for kōhanga reo than previously, a total of \$18.9 million between 2003–04 and 2010–11 at an average of \$2.7 million per year.<sup>156</sup> Some 82 kōhanga reo received grants between 2000 and 2008. But a high proportion of kōhanga applications still failed: 15 out of 25 in 2006–07 and 7 out of 12 in 2007–08.<sup>157</sup>

The focus of the Discretionary Grant Scheme was on improving participation rates in community-based ECE services by creating new or additional ECE places, rather than on upgrading existing facilities.<sup>158</sup> The Ministry's approach to assessing an area's need for new capacity was to pool vacancies at all ECE centres, even though kōhanga reo served a purpose distinct from other ECE services, that of revitalisation of te reo.<sup>159</sup> This approach involved, in part, assessing a centre's roll against its maximum licensed capacity, yielding a so-called occupancy rate. The apparently low occupancy rate in kōhanga reo, 54 per cent in 2007 with a gradually declining trend, persisted as a complicating factor.<sup>160</sup> Ministry officials were unsure whether this was attributable to falling rolls or to decisions by kōhanga reo to restrict numbers.<sup>161</sup> In practice, some kōhanga reo were located on marae or other premises not purpose-built but nevertheless licensed for their maximum physical space. Capacity was also affected by a range of other factors, such as staffing and whānau policy. As a result, where apparently spare physical capacity at times coincided with waiting lists, Discretionary Grant Scheme funding could not be accessed.<sup>162</sup>

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156. Document A89 (Andrew Hema, second brief of evidence, 7 March 2012), p 8; doc A75 (Andrew Hema, 'MOE Funding Received by Kohanga Reo', 1996–2011, table), p 37

157. Document A78 (Karl Le Quesne, senior manager, Early Childhood Regional Education, Ministry of Education to Minister of Education and Associate Minister of Education, 'Education Report: Kōhanga Reo – Comprehensive Overview', 8 April 2008), p 203. Grants to kōhanga reo amounted to \$16.7 million between 2000 and 2008.

158. Document A75 (Ross Boyd, senior manager, Education Management Policy, Ministry of Education to Minister of Education, 'Early Childhood Discretionary Grants Scheme Changes', 5 November 2004), pp 14–15, 18; doc A75 (Ministry of Education, 'Response to Kohanga Concerns Raised to Ministry of Education Personnel', undated), p 40

159. Document A75 (Ross Boyd, senior manager, Education Management Policy, Ministry of Education to Minister of Education, 'Early Childhood Discretionary Grants Scheme Changes', 5 November 2004), pp 14–15; doc A75 (Ministry of Education, 'Response to Kohanga Concerns Raised to Ministry of Education Personnel', undated), p 40

160. Document A78 (Karl Le Quesne, senior manager, Early Childhood Regional Education, Ministry of Education to Minister of Education and Associate Minister of Education, 'Education Report: Kōhanga Reo – Comprehensive Overview', 8 April 2008), p 211. By contrast, the Trust's estimate of capacity utilisation was 68 per cent in 2010: doc B3 (Te Kōhanga Reo National Trust, 'Provision of Services in Support of Te Kōhanga Reo: Annual Report – 1 January to 31 December 2010: Report to the Ministry of Education', 2011), p 62

161. Document A78 (Karl Le Quesne, senior manager, Early Childhood Regional Education, Ministry of Education to Minister of Education and Associate Minister of Education, 'Education Report: Kōhanga Reo – Comprehensive Overview', 8 April 2008), p 201

162. Document A36 (Harata Gibson, brief of evidence, 22 December 2011), pp 16–17; doc A75 (Ministry of Education, 'Response to Kohanga Concerns Raised to Ministry of Education Personnel', undated), p 40



**(3) Kōhanga reo capacity and waiting lists**

That additional capacity is needed is indicated by the fact that, notwithstanding the long-term decline in numbers and total enrolment, kōhanga reo had somewhat in excess of 1,200 mokopuna on their waiting lists in late 2011.<sup>163</sup> The claimants argued that kōhanga reo lacked the finance either to expand their existing facilities or start new kōhanga reo.

The reasons for this situation were in some dispute. Claimant witnesses stated that many kōhanga reo with waiting lists were not in the areas currently targeted for funding under the Targeted Assistance for Participation Scheme (see below).<sup>164</sup> For the Ministry, Mr Walley pointed out that, as some children were placed on more than one waiting list, actual demand was likely to be less than the total listed. He also referred to the apparently large spare capacity in many existing kōhanga reo.<sup>165</sup> Claimant witnesses responded by pointing out that those listing with kōhanga reo would usually have it as their first preference and that ‘spare capacity’ usually indicates the maximum number licensed for a building’s floor area rather than the capacity supported by the property’s facilities or set by the responsible kōhanga reo whānau.<sup>166</sup>

The evidence before us was not sufficiently detailed to enable us to arrive at a definitive conclusion. We consider nevertheless that the evidence paints a reasonably clear picture. It is plausible that licensed space may commonly exceed actual kōhanga reo capacity, particularly in non-specialised buildings such as wharehau and halls. Some children on waiting lists may end up in a different type of ECE service, but the total number would still indicate a substantial unmet demand for kōhanga reo places.

It is clear from the summary of individual kōhanga reo submitted by the claimants that the distribution of demand for places is distinctly uneven.<sup>167</sup> Given the vulnerable state of te reo Māori and the relentlessly declining proportion of Māori preschool children in te reo immersion, we consider that any evidence of significant unsatisfied demand for childhood

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163. Trust data indicate a combined waiting list of 708 at 66 kōhanga reo in late 2011, and a total waiting list of 1,327. If this number is the sum of individual waiting lists, it is possible that some names appeared on more than one list: doc B5 (Te Kōhanga Reo National Trust, ‘Waiting Lists for Te Kōhanga Reo National Trust’, not dated); see also Dame Iritana Tāwhiwhirangi, under questioning by the Tribunal, first week of hearing, 14 March 2012 (transcript 4.1.3, p 237). According to the Trust’s annual report for 2010, the national total of waiting lists, based on information provided by about a quarter of kōhanga reo, was 1081: doc B3 (Te Kōhanga Reo National Trust, ‘Provision of Services in Support of Te Kōhanga Reo: Annual Report – 1 January to 31 December 2010: Report to the Ministry of Education’, 2011), p 64.

164. Titoki Black, under questioning by claimant counsel, first week of hearing, 15 March 2012 (transcript 4.1.3, p 434)

165. Richard Walley, under questioning by Crown counsel, second week of hearing, 20 March 2012 (transcript 4.1.4, pp 229–230)

166. Dame Iritana Tāwhiwhirangi, under questioning by Tribunal, and Titoki Black, under questioning by claimant counsel, first week of hearing, 14–15 March 2012 (transcript 4.1.3, pp 237–238, 434)

167. Document B5 (Te Kōhanga Reo National Trust, ‘Waiting Lists for Te Kōhanga Reo National Trust’, undated); doc B3 (Te Kōhanga Reo National Trust, ‘Provision of Services in Support of Te Kōhanga Reo: Annual Report – 1 January to 31 December 2010: Report to the Ministry of Education’, 2011), p 65



te reo learning is a matter for the serious attention of the Crown in performing its duty of active protection.

#### **(4) *The Targeted Assistance for Participation Scheme***

In June 2010, the Minister of Education announced a major policy change in capital funding for the ECE sector, replacing the Discretionary Grant Scheme with the Targeted Assistance for Participation Scheme (TAPS).<sup>168</sup> As its title suggests, TAPS was focused on improving ECE uptake amongst ‘priority communities’, including Māori, by building new ECE capacity in precisely specified areas of low ECE participation. Grants were conditional on enrolling additional children from those priority communities.<sup>169</sup> The Ministry also allocated \$10 million over two years to build its own centres in high priority areas.<sup>170</sup> Once again, there was no explicit provision for kōhanga reo or, more generally, for te reo immersion.

TAPS funding was organised under three streams:

- ▶ full funding for new capacity, limited to a few very high priority areas;
- ▶ part funding for partnerships and new centres in a wider range of high priority areas; and
- ▶ small grants for new capacity in a broad range of areas with pockets of low ECE participation.<sup>171</sup>

The TAPS favoured partial over full funding applications, so as to maximise the gains from public investment in ECE. Moreover, unlike the Discretionary Grant Scheme, TAPS was open to private as well as community-based ECE centres.<sup>172</sup> This pitched existing and proposed kōhanga reo that fell within the priority areas into competition with commercial investors in new ECE premises and advantaged those able to raise finance of their own, in particular from expanding and increasingly corporatised education and care service providers. Neither the Trust nor individual kōhanga reo have been in a financial position to compete with corporate ECE centre businesses as partial capital providers.<sup>173</sup>

The evidence was that most kōhanga reo could not expect to obtain TAPS assistance for rebuilds or upgrades, either because they were not within the TAPS grid of ‘very high’ and ‘high’ priority areas or because they were providing for their existing roll rather than

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168. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 50

169. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 50–51; Nikorima Broughton, under questioning by Tribunal, first week of hearing, 16 March 2012 (transcript 4.1.3, pp 558–559)

170. Document A23(e) (Ministry of Education, ‘ECE Participation Programme: Targeted Assistance for Participation’, Ministry of Education, undated), p 23

171. Document A23(e) (Ministry of Education, ‘ECE Participation Programme: Targeted Assistance for Participation’, undated), p 23

172. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 50–51; doc A23(e) (Ministry of Education, ‘ECE Participation Programme: Targeted Assistance for Participation’, undated), p 23

173. Document A93 (Nikorima Broughton, brief of evidence, 7 March 2012), pp 3; doc A93 (Oralee Hetariki, senior adviser participation, Ministry of Education to Tahuri Mai Te Kōhanga Reo, letter, 16 June 2011), p 8; doc A89 (Andrew Hema, second brief of evidence, 7 March 2012), pp 7–8; doc A75 (Andrew Hema, brief of evidence, 22 December 2012), p 8

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additional participants.<sup>174</sup> The response to the Trust's 2009 property proposal illustrated the implausibility of the TAPS as a practical solution. Of the 27 kōhanga reo properties listed by the Trust in 2009 in its highest risk category as requiring early and complete replacement, only five made it into Mr Walley's starting list of 40 kōhanga reo potentially eligible for TAPS grants.<sup>175</sup> Thus, even if all five succeeded in gaining TAPS funding, more than 80 per cent of a large and urgent problem remained to be addressed.

The TAPS has to date delivered very little capital funding for kōhanga reo. Kōhanga reo submitted only one application in 2010–11, which was unsuccessful, and six during the first nine months of 2011–12.<sup>176</sup> The investment of time and effort required to prepare an application which had only a slim chance of success was a major deterrent for kōhanga reo whānau.<sup>177</sup>

We conclude that by the time of our hearing, the TAPS, in the absence of direct Ministry intervention and as presently configured, had made at best a marginal impact either on the upgrading of kōhanga reo property or on expanding kōhanga reo capacity.

**(5) The state of kōhanga reo building stock**

The exclusion of existing kōhanga reo property from the scope of Discretionary Grant Scheme and TAPS capital grants in recent years has highlighted the predicament of a large number of premises in the ownership of kōhanga reo whānau or hosting marae that must now be relicensed under the 2008 regulations.

Although building maintenance had long been built into the calculation of ECE subsidy rates, the cost pressures on kōhanga reo, we have been told, has precluded many from setting aside part of their operational funding to maintain and upgrade their premises.<sup>178</sup>

This capital deficit was exposed when, in December 2008, the 1998 regulations were replaced with new regulations that set a deadline of November 2014 for all existing services to be relicensed. Those unable to meet all requirements when inspected would be allowed a

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174. Harata Gibson, under questioning by Tribunal, first week of hearing, 16 March 2012 (transcript 4.1.3, pp 508–509); document A93 (Nikorima Broughton, brief of evidence, 7 March 2012), p 2;

175. Document A93 (Richard Walley, senior policy manager, Early Childhood Education, to Nikorima Broughton, Te Kohanga Reo National Trust Board, 'Property List', email, 23 June 2011), pp 53–54; doc A93 (Te Kōhanga Reo National Trust Board, Kohanga Reo Property Assessment, table, 2009), pp 62–82; Richard Walley, under questioning by Tribunal, second week of hearing, 20 March 2012 (transcript 4.1.4, pp 266–268); Richard Walley, under questioning by claimant counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, p 312). The statistics are based on the Trust's filed list of 179 properties. Its property proposal was stated to include 27 kōhanga reo properties in need of full replacement out of a total of 172: doc A93 (Nikorima Broughton, brief of evidence, 7 March 2012), pp 4–5; Richard Walley, under questioning by claimant counsel, second week of hearing, 20 March 2012 (transcript 4.1.4, p 257).

176. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 51

177. Claimant counsel, oral submission, first week of hearing, 12 March 2012 (transcript 4.1.3, p 84)

178. Angus Hartley, under questioning by claimant counsel, first week of hearing, 14 March 2012 (transcript 4.1.3, pp 307–308); doc A8, app C (Te Kōhanga Reo National Trust, 'Kōhanga Reo Meeting MOE Re-licensing Requirements: Proposal', 2010), p 11

maximum of 18 months to comply, failing which they would not obtain a licence and would have to cease operating.<sup>179</sup>

The relicensing threshold has created an imminent crisis for the many kōhanga reo that have not been able to maintain their premises in full regulatory compliance. That it has been allowed to get to this point, despite the many licensing and ERO reviews of kōhanga reo premises, is a matter of concern.

**(6) *The Crown's reaction to the Trust's property proposal***

Ministry of Education officials initially responded quickly to the Trust's 2010 property proposal, by including its full cost in a ministerial briefing on operating pressures in November that year, early in the preparation of the 2011–12 budget.<sup>180</sup>

An analysis of various sums requiring specific funding within Vote: Education listed the full sum of \$20 million spread over three years.<sup>181</sup> For the Ministry, Apryll Parata stressed that its inclusion meant that it had been accorded 'pretty high priority'.<sup>182</sup> It fell, however, within the category of 'discretionary pressures', was not prioritised further, and did not survive for inclusion in the Ministry's budget.<sup>183</sup>

We note that the alternative category, 'unavoidable pressures', was defined as including only 'contractual obligations or legislative requirements'.<sup>184</sup> In our view, the urgent Treaty obligations of the Crown, such as avoiding the possible closure by Crown regulation of a third of kōhanga reo, should not be regarded as having lesser priority status than private contractual obligations that the Crown may owe to individual persons or commercial enterprises.

Following the budget bid failure, Ministry officials were left to attempt to squeeze resources out of a capital funding scheme (TAPS) geared to very different objectives. As

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179. Education Act 1989, s 319K; document A64 (Ministry of Education and Te Kohanga Reo National Trust, 'Early Childhood Education 2008 Regulatory System Implementation Re-licensing Protocol', 11 November 2009), pp 650–654

180. Document D1 (Stephen Glover, acting senior manager, Education System Strategy, Ministry of Education to Minister of Education, 'Education Report: Budget 2011 – Process Information and Assessment of Pressures', 5 November 2010), pp 66–73; Richard Walley under questioning by claimant counsel and Tribunal, and Karl Le Quesne under questioning by claimant counsel, second week of hearing, 22 March 2012 (transcript 4.1.4, pp 445, 447, 561–562)

181. Document D1 (Stephen Glover, acting senior manager, Education System Strategy, Ministry of Education to Minister of Education, 'Education Report: Budget 2011 – Process Information and Assessment of Pressures', prepared for the Minister of Education, 5 November 2010), p 69

182. Apryll Parata, under questioning by claimant counsel, second week of hearing, 22 March 2012 (transcript 4.1.4, p 507)

183. Richard Walley, under questioning by Tribunal and claimant counsel, second week of hearing, 20 and 22 March 2012 (transcript 4.1.4, pp 266, 442–445)

184. Document D1 (Stephen Glover, acting senior manager, Education System Strategy, Ministry of Education to Minister of Education, 'Education Report: Budget 2011 – Process Information and Assessment of Pressures', 5 November 2010), p 69

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we saw above, according to the Ministry's initial listing in mid-2011 few of even the most urgent cases appeared to be eligible for TAPS funding.

Clearly, the TAPS's programme focus on creating additional or new ECE capacity in areas of low participation is unable to accommodate the upgrading of all kōhanga reo identified by the Trust so as to meet the minimum building standards for relicensing.<sup>185</sup>

The Ministry officials did, at least, identify \$2 million for negotiation in early 2012.<sup>186</sup> While of some assistance, this funding source was clearly only the beginning of what is required, and we saw no certainty of any other Government assistance being provided.

Progress to date appears to have been slow, piecemeal, and some distance below the level required. More than halfway through the six-year relicensing period, we fail to detect the sense of urgency required to avert the potential relicensing crisis we have described.

The prospect is that a substantial number of kōhanga reo operations will have to close within a short period, displacing some 3,000 mokopuna. This would not only defeat the general goal of increased ECE participation but would also, given the lack of a viable alternative, drastically reduce the output of mokopuna skilled in te reo me ngā tikanga, reducing also the intake into Māori-medium school streams.

At a fundamental level, there is a need for a more coherent funding policy which integrates capital and current requirements and takes into consideration the uniqueness of kōhanga reo. Otherwise, there is a danger that after the current premises crisis is resolved, it will be repeated.

**8.3.4 Research funding issues**

A sense of frustration was evident, throughout the presentation of the claimants' case, that kōhanga reo and the Trust feel that they must continually demonstrate their value and explain their kaupapa to the ever-changing personnel they have to deal with both at Crown official and at ministerial level.<sup>187</sup> They also pointed to a lack of research to inform policy formation and operational decisions. In particular, they highlighted a lack of detailed research on the long-term educational, vocational, social, cultural, community health, and justice outcomes for Māori children attending kōhanga reo.<sup>188</sup>

Crown witnesses drew our attention to particular research projects that were relevant to kōhanga reo issues or in which Trust staff or experts participated, in particular the

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185. Document A93 (Nikorima Broughton, brief of evidence, 7 March 2012), p 5; doc A93 (Richard Walley, Senior Policy Manager, Early Childhood Education, Ministry of Education to Nikorima Broughton, Te Kōhanga Reo National Trust Board, 'Property List', email, 23 June 2011), p 53

186. Document E8 (Ministry of Education, 'Targeted Assistance for Participation Funding Opportunities Hui – Poneke/Wellington Central: Minutes', 18 April 2012), pp 1–2

187. Document A8 (Titoki Black, brief of evidence, 16 August 2011), pp 10–11; doc A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), pp 9, 12–14

188. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), p 8

Ministry-funded research jointly undertaken by the Trust and the New Zealand Council for Educational Research on what constitutes quality in parent/whānau-led services.<sup>189</sup> Occasional problem-focused investigations have achieved success, notably Te Puni Kōkiri's grant of about \$265,000 for the Trust's building stock research carried out in 2010.<sup>190</sup>

We were surprised, nevertheless, to learn from Mr Le Quesne that after more than two decades of the modern ECE regime the Ministry has no means of tracking ECE students, including those from kōhanga reo, through the school system. It is consequently unable to assess the contribution made by the different types of ECE service to educational success. Nor, it seems, has targeted research been undertaken using other methodologies, such as surveys.<sup>191</sup>

The Crown, therefore, has limited information on the contribution kōhanga reo make to achieving Government objectives, on fulfilling Treaty responsibilities, and on meeting goals it shares with Māori for the retention of te reo me ngā tikanga. Plainly, it was always going to be necessary for data and research on te reo immersion to be available to inform Crown agencies and the Trust as kaitiaki. Indeed, more than 10 years ago the Gallen report recommended that such research be undertaken, in particular by the Trust, and for it to be adequately funded.<sup>192</sup> With the exception noted above, this recommendation was not taken up.

The Ministry has a direct stake in ensuring that its policy development is evidence-based and might have been expected to commission its own targeted research, given the range of difficulties it has encountered in accommodating kōhanga reo within a major reform of the ECE sector.

The lack of research, which has also affected this inquiry, is relevant to three of the Crown's Treaty obligations: the development of fluent speakers (the duty of protection); achieving Māori educational success as Māori (protection and equity); and outcomes for Māori in other areas, such as whānau development and the employment of women (equity).

We were surprised and disappointed to hear that no significant research has been done to evaluate and measure the success or otherwise of the Crown's investment in kōhanga reo. More analysis and published research would assist the Crown and the claimants to better understand their respective Treaty rights and obligations.

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189. Document A60 (Karl Le Quesne, brief of evidence, 15 February 2012), pp 13–14

190. Document A68 (Geoff Short, brief of evidence, 15 February 2012), p 8

191. Karl Le Quesne, under questioning by Tribunal, second week of hearing, 22 March 2012 (transcript 4.1.4, pp 580–581)

192. Document A24(h) (Crown/Kohanga Reo National Trust Joint Working Group, Report to the Ministers of Education and Maori Affairs, Review of the Relationship between the Crown and Te Kohanga Reo National Trust (Wellington: Crown/Kohanga Reo National Trust Joint Working Group, 2001)), p 34

**8.4 CONCLUSION**

The Crown's clear Treaty duty to actively protect te reo and its transmission by the most successful immersion system available to it, the kōhanga reo movement, has been breached in several respects concerning operational funding.

In the new ECE funding regime it introduced in 2005, the Crown failed to ensure that the subsidy rates for kōhanga reo were reformed so as to provide adequately for their service and cost configuration. By classifying them as 'parent/whānau-led' and not providing access to a graduated 'quality' recognition framework, kōhanga reo were disadvantaged compared to 'teacher-led' ECE services. The only mechanisms for kōhanga reo to receive higher levels of quality funding were either to employ registered teachers, contrary to the movement's kaupapa, or for the Trust to seek Teachers Council recognition of the Tohu Whakapakari qualification for teacher registration purposes. These barriers were unfair and are likely to have led to inequitable outcomes in terms of available funding and service reputation.

That inequity was highlighted when Mr Walley stated:

And the conclusion that we came to was that, with a blank piece of paper, if you are thinking about the way to fund kōhanga reo you wouldn't start by looking at the teacher-led model and thinking about bits of it that you would bring across and apply. You would start by recognising whānau contributions to learning and you would recognise the quality of reo in the kōhanga reo and a number of those factors, rather than thinking about qualifications.<sup>193</sup>

We could not agree more. From 2001 to 2005 the Crown had a blank piece of paper, but it did not do what Mr Walley recognised could be done.

Resources specifically targeted for te reo transmission through early childhood immersion were minimal. In particular, the amount of equity funding specific to retention of te reo was too small to have a significant impact.

The Crown's funding of the Trust has made a valuable contribution to supporting its work as kaitiaki of the kōhanga reo movement and to sustaining the movement as a whole. However, the Crown's failures to, first, maintain the purchasing power of its funding to the Trust, and then raise it to a level sufficient to perform the Trust's core functions fully, as recommended by two reviews, has reduced the capability of the Trust to fulfil its mission and the kōhanga reo kaupapa.

More broadly, the general outcomes of Crown policy over the last 15 years have been a decline in kōhanga reo enrolments and student output and a large increase in mokopuna attending non-immersion ECE services that are unlikely to deliver fluent te reo speakers. Funding inequity, a lack of specific support for the te reo immersion pathway and neutrality regarding parental choice have left Crown funding to follow mokopuna into non-immersion

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<sup>193</sup>. Richard Walley, under questioning by Tribunal, second week of hearing, 20 March 2012 (transcript 4.1.4, p265)

streams. Given that early childhood immersion in kōhanga reo is a prime generator of fluent te reo speakers, and that their share of the total Māori enrolment in ECE has steadily declined, the outcomes of Crown ECE sector policy are radically at odds with its duty to promote and protect te reo.

We consider that the lack of efficient and effective policy and the absence of a funding regime attuned to and specifically targeted at kōhanga reo are significant factors in the Crown's failure to adequately fulfil its Treaty duty of active protection.

In relation to capital funding, we are of the view that the Crown has failed in its duty of active protection to ensure that kōhanga reo have adequate opportunity and resources to maintain, upgrade, and replace their building stock to comply with the Crown's regulatory framework and relicensing criteria.

Finally, we consider that the absence of relevant research is in substantial part attributable to a failure by the Crown to take steps to ensure that it and its partner, the Trust, are provided with robust information relevant to evidence-based policy formation and operational decision-making. In particular, the lack of research on the educational outcomes of kōhanga reo students has left the Ministry and the Trust without salient information on how best to assist Māori to achieve educational success as Māori and achieve intergenerational transmission of te reo.



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KR	ECE subsidy rate	Teacher-led funding \$	At previous kōhanga reo rate \$	Difference \$	Per cent
1	25-49 per cent	87,374	77,217	10,157	13
2	50-79 per cent	84,994	67,650	17,344	26
3	100 per cent	53,173	34,372	18,801	55

**Table 8.1: Comparison of teacher-led and parent/whānau-led rates for three teacher-led kōhanga reo, October 2007 to January 2008**

Source: Document A78 (Karl Le Quesne, senior manager, Early Childhood and Regional Education, Ministry of Education to Minister of Education and Associate Minister of Education, 'Education Report: Kōhanga Reo Comprehensive Overview', 8 April 2008), p 201

2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
49.0	51.3	50.5	44.6	43.5	52.1	62.1	68.0	71.9	76

**Table 8.2: ECE subsidy payments to kōhanga reo, 2002–2010 (\$ million)**

Sources: Document A61 (Karen Sewell, brief of evidence, 15 February 2012), attachment B; doc A65 (Julian King, brief of evidence, 15 February 2012), p 41, fig 25

Category	Total revenue \$m			Per cent		
	Kōhanga reo	Rest of ECE	Total	Kōhanga reo	Rest of ECE	Total
ECE subsidy	48.9	546.8	595.6	55.5%	29.1%	30.3%
20 hours ECE	17.5	796.1	813.6	19.9%	42.3%	41.3%
Equity funding	6.0	8.0	14.0	6.8%	0.4%	0.7%
Childcare subsidy	11.3	123.0	134.3	12.8%	6.5%	6.8%
Other	0.0	17.5	17.5	0.0%	0.9%	0.9%
Total government contribution	83.7	1491.4	1575.0	95.0%	79.3%	80.0%
Fees	4.4	389.3	393.8	5.0%	20.7%	20.0%
Total revenue	88.0	1880.7	1968.8	100.0%	100.0%	100.0%

**Table 8.3: Main sources of income for ECE services, 2010–11 (\$ million). The total amounts for fees have been calculated on the basis of their stated approximate average proportion of total revenue (5 per cent for kōhanga reo, 20 per cent for ECE services as a whole).**

Sources: Document A83 (Angus Hartley, second brief of evidence, 7 March 2012), p 23; document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 23, 26

Category	Revenue per student (\$)		
	Kōhanga reo	Rest of ECE	Total
1 ECE subsidy	507	296	307
2 20 hours fee ECE	182	432	419
3 Equity funding	62	4	7
4 Childcare subsidy	117	67	69
5 Other	0	10	9
6 Total Government contribution	868	809	811
7 Fees	46	211	203
8 Total revenue	914	1020	1,014
9 Number of students	9,631	184,470	194,101

**Table 8.4: ECE income per child, 2010–11**

Source: Calculated from table 8.3 and Education Counts, 'Annual ECE Census Summary Report 2011', Ministry of Education, <http://www.educationcounts.govt.nz/statistics/ece2/annual-ece-summary-reports>, accessed 5 October 2012

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	Te reo level	Enrolment 2002	Enrolment 2011	Change
Education and care, kindergartens and playcentres	0-11%	15,360	19,350	3,990
	12-20%	1,913	5,024	3,111
	21-50%	1,691	3,462	1,771
	51-80%	223	594	371
	81-100%	243	233	-10
Kōhanga reo	81-100%	10,365	9,142	-1,223
		29,795	37,805	8,010
Immersion	81-100%	10,608	9,375	-1,233
Below bilingual/immersion threshold	0-50%	18,964	27,836	8,872

Table 8.5: Enrolment in licensed ECE centres by level of te reo contact time, 2002 and 2011

Source: Education Counts: Statistics, 'Māori in ECE', spreadsheet, tab MAO16, Ministry of Education, <http://www.educationcounts.govt.nz/statistics/ece2/mori-in-ece>, accessed 11 September 2012

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\$	Jul 2004	Apr 2005	Jul 2005	Jul 2006	Jul 2007	Jul 2008	Jul 2009	Jul 2010	Jul 2011
<i>Under 2:</i>									
Playcentres: standard	5.70	5.70	5.86	6.38	6.89	7.29	7.35	7.56	7.62
Playcentres: quality	6.51	6.51	6.69	7.27	7.86	8.33	8.40	8.63	8.70
Kohanga reo: standard	5.70	5.70	5.86	6.08	6.89	7.29	7.35	7.56	7.62
Kohanga reo: quality	6.51	6.51	6.69	6.90	7.86	8.33	8.40	8.63	8.70
Teacher-led: 0-24%	5.70	6.25	6.46	6.69	6.89	7.03	7.14	7.37	7.45
Teacher-led: 25-49%	5.70	6.68	7.11	7.46	7.84	8.08	8.35	8.62	8.72
Teacher-led: 50-79%	6.51	7.29	8.14	8.80	9.50	9.91	10.36	10.68	10.80
Teacher-led: 80%+	6.51	7.84	9.08	10.02	10.99	11.55	12.16	12.54	12.81
Teacher-led: 100%	6.51	8.08	9.48	10.54	11.64	12.28	12.94	13.35	12.81
<i>2 &amp; over:</i>									
Playcentres: standard	2.86	2.86	2.94	3.20	3.47	3.66	3.70	3.80	3.83
Playcentres: quality	3.26	3.26	3.35	3.65	3.94	4.18	4.22	4.34	4.37
Kohanga reo: standard	2.86	2.86	2.94	3.05	3.47	3.66	3.70	3.80	3.83
Kohanga reo: quality	3.26	3.26	3.35	3.48	3.94	4.18	4.22	4.34	4.37
Teacher-led: 0-24%	2.86	3.14	3.24	3.36	3.43	3.60	3.62	3.73	3.77
Teacher-led: 25-49%	2.86	3.25	3.57	3.74	3.86	4.32	4.35	4.49	4.54
Teacher-led: 50-79%	3.26	3.66	4.08	4.41	4.62	5.41	5.46	5.63	5.69
Teacher-led: 80%+	3.26	4.10	4.84	5.40	5.70	6.85	6.91	7.13	6.60
Teacher-led: 100%	3.26	4.63	5.30	6.00	6.41	7.72	7.79	8.03	6.60
<i>Other:</i>									
Kōhanga reo licence-exempt	1.18	1.18	1.21	1.25	1.31	1.36	1.37	1.40	1.40

Table 8.6: Rates of subsidy per child hour for all-day ECE teacher-led, kōhanga reo and playcentre services, 2004–2011

Sources: Document A43 (Angus Hartley, Early Childhood Education Funding Rates, table, 1995–2011), pp 8–13

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Teacher-led band	April 2005	July 2005	July 2006	July 2007	July 2008	July 2009	July 2010	July 2011
<i>Under-two:</i>								
0–24%	100	100	100	100	100	100	100	100
25–49%	107	110	112	114	115	117	117	117
50–79%	117	126	132	138	141	145	145	145
80%+	125	141	150	160	164	170	160	160
100%	129	147	158	169	175	181	181	160
<i>Two-and-over:</i>								
0–24%	100	100	100	100	100	100	100	100
25–49%	104	110	111	113	120	120	120	120
50–79%	117	126	131	135	150	151	151	151
80%+	131	149	161	166	190	191	175	175
100%	147	164	179	187	214	215	215	175

(a) All-day ECE teacher-led services (0–24 per cent band = 100)

	April 2005	July 2005	July 2006	July 2007	July 2008	July 2009	July 2010	July 2011
Under-two	114	114	113	114	114	114	114	114
Two-and-over	114	114	114	114	114	114	114	114

(b) Kōhanga reo quality rate (standard rate = 100)

Table 8.7: Ratio of subsidy rates per child hour to the lowest rate band, 2005–2011. The tables show, for each year, the ratio of each band to the lowest band. For teacher-led services this is the 0–24 per cent band (qualified teachers comprise up to 24 per cent of staff). For kōhanga reo it is the standard rate. In each year, the lowest rate is set at 100. The charts illustrate the structure of the rates in each year. See figure 8.4.

Source: Document A43 (Angus Hartley, Early Childhood Education Funding Rates, table, 1995–2011), pp 8–13

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	July 2004	April 2005	July 2005	July 2006	July 2007	July 2008	July 2009	July 2010	July 2011
<i>Under 2:</i>									
Kohanga reo: standard	100	98	100	100	112	114	113	115	110
Kohanga reo: quality	100	98	100	99	112	114	113	115	110
Teacher-led: 0-24%	100	108	110	110	112	110	110	112	107
Teacher-led: 25-49%	100	115	122	124	128	128	131	134	129
Teacher-led: 50-79%	100	110	122	128	137	139	144	147	142
Teacher-led: 80%+	100	118	137	147	160	164	171	175	173
Teacher-led: 100%	100	122	143	155	170	175	183	188	173
<i>2 &amp; over:</i>									
Kohanga reo: standard	100	98	100	100	112	115	114	115	110
Kohanga reo: quality	100	98	100	100	112	115	114	116	110
Teacher-led: 0-24%	100	108	110	111	111	112	111	113	108
Teacher-led: 25-49%	100	112	122	124	126	138	136	139	135
Teacher-led: 50-79%	100	110	122	128	133	152	152	155	151
Teacher-led: 80%+	100	124	146	159	166	197	196	201	179
Teacher-led: 100%	100	140	160	177	188	223	223	229	179
<i>Other:</i>									
Kōhanga reo licence-exempt	100	98	100	99	102	102	101	101	95

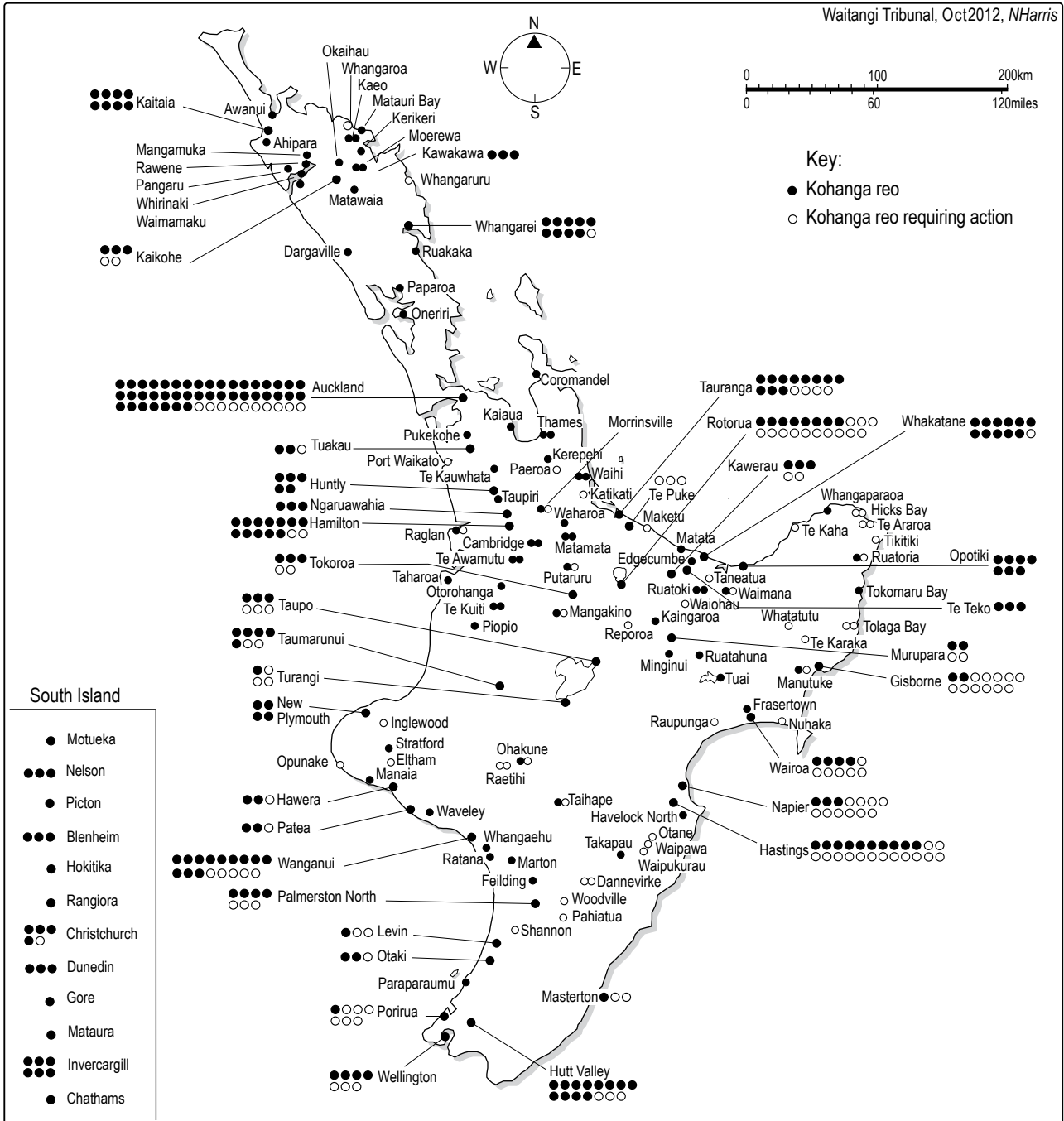
**Table 8.8: Index of subsidy rates per child hour for all-day ECE teacher-led and kōhanga reo services, adjusted for inflation (2004 = 100), 2004–2011**

Sources: Document A43 (Angus Hartley, Early Childhood Education Funding Rates, table, 1995–2011), pp 8-13; Reserve Bank, 'Economic indicators', spreadsheet ha3.xls, <http://www.rbnz.govt.nz/statistics/econind/a3>, accessed 13 July 2012

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Map 8.1: Kōhanga reo properties requiring upgrade action for relicensing. The map gives the location of the 172 kōhanga reo identified in the Trust’s property review as requiring action to bring their physical condition to the standard required for relicensing under the 2008 regulations. It includes the 27 graded 6 (full replacement), the 52 graded 5 (immediate repairs within 6 months), and the 93 graded 4 (plan to repair in 12 months).

Sources: Memorandum 3.4.13 (claimant counsel, memorandum providing additional information, 1 August 2012); doc E15 (table attached to memo 3.4.13); document A93 (Nikorima Broughton, brief of evidence, 7 March 2012, exhibit NCB7), pp 62–82



CHAPTER 9

NGĀ TIKANGA TŪTOHU O TE TAHA AURAKI  
THE ECE REGULATORY FRAMEWORK



In 2002, the Crown announced that in order to give effect to its new ECE policies – articulated in *Pathways to the Future: Ngā Huarahi Arataki* – there would be a review of the ECE regulatory regime.<sup>1</sup> As we have noted in previous chapters, that review was completed and ECE currently operates under a framework set out in part 26 and section 317 of the Education Act 1989 and the Education (Early Childhood Services) Regulations 2008. However, the regime is complicated by the fact that there are still transitioning arrangements in place for some ECE services. These services are administered under the regulations in force prior to 2008. The majority of kōhanga reo services are still in the process of transitioning to the new regime, which requires that they re-license by 2014.<sup>2</sup>

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1. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p10

2. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 4–5, 10; doc A64 (Ministry of Education and Te Kōhanga Reo National Trust, ‘Early Childhood Education 2008 Regulatory System Implementation Re-licensing Protocol’, November 2009), pp 650–654

Painting by Robyn Kahukiwa reproduced by permission of Te Kōhanga Reo National Trust Board

In this chapter, we consider the regulatory regime within which kōhanga reo must operate. We traverse the issues identified in the Statement of Issues regarding the regulations, and determine whether the Crown has fulfilled its Treaty responsibilities in:

- ▶ the development, from 2006 to 2008, of the new statutory and regulatory regime;
- ▶ the design and prescription of the Licensing Criteria for Kōhanga Reo affiliated with Te Kōhanga Reo National Trust 2008;
- ▶ the development, implementation and enforcement of the regulations and licensing criteria;
- ▶ impacts on kōhanga reo of the regulatory regime and licensing criteria; and
- ▶ the introduction of the Education (Early Childhood Education Curriculum Framework) Notice 2008.

### 9.1 REGULATORY COMPLIANCE

In common with other ECE services, kōhanga reo are required by law to be licensed and must comply with the Government regulations. In order to become licensed providers, ECE services must demonstrate that they comply with the regulations applicable to their service type. These cover a wide range of requirements and standards in the fields of teaching qualifications, staff to children ratios, curriculum, premises and facilities, health and safety practices, and governance, management and administration.<sup>3</sup>

Licensing officers employed by the Ministry of Education process pre-licence or re-licensing checks. ERO officers conduct compliance reviews.

#### 9.1.1 The claimants' position

The claimants were concerned that the Crown's regulatory regime has 'taken away the joy and enthusiasm of what was a strong Māori grassroots movement'.<sup>4</sup> Ms Chen submitted that the Crown's regulation of kōhanga reo has failed to uphold its Treaty duties to actively protect them.<sup>5</sup> The Crown has failed, in her view, to adhere to its Treaty responsibilities given the manner in which it has imposed its regulatory framework upon them.<sup>6</sup> The claimants allege that despite its well-meaning intentions to protect children, the Crown's regulatory regime inhibits kōhanga reo operating in accordance with their own kaupapa.<sup>7</sup> The claimants argue that the imposition of this regulatory regime has also had a number of negative effects.

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3. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 7–9

4. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 138

5. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 135

6. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 128–129

7. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 128

The claimants say the Crown has failed to adequately address such issues when they have been raised by the Trust.<sup>8</sup> Furthermore, they allege the Crown has shown no willingness to do anything about it.<sup>9</sup> They considered that conforming with the ECE regulations and licensing criteria imposed a heavy and unreasonable burden on kōhanga reo.<sup>10</sup>

The regulations and licensing criteria, they said, do not reflect the kōhanga reo kaupapa and the ways in which kōhanga reo observe tikanga Māori.<sup>11</sup> Professor Wharehuia Milroy asserted that:

The regulations that are being imposed on the movement are killing the movement. It's making kōhanga work difficult. The spirits of these elders would be lifted if they were able to revert to the way they used to run things, where they weren't stifled by regulations.<sup>12</sup>

Taina Ngarimu asserted that:

It is a compromise to our tikanga and the kaupapa of kōhanga reo to comply with these regulations and requirements. These compromises weigh very heavily on me and it is a spiritual burden that I carry. This is very hard for me to talk about. But it is something which is very important for me to draw to the Tribunal's attention. As a kaumatua, and as pakeke at Te Kōhanga Reo, it is my duty to protect and uphold tikanga and te reo. I must make sure that things are done correctly and that the values of our tipuna are passed down from generation to generation. I have had to water down the tikanga of my ancestors in order to meet the Ministry's licensing criteria. This makes me feel that I am failing in my duty. This causes me great anguish and distress. It is made worse knowing that I must seek the permission of the Ministry of Education in order to teach tikanga to my own whānau in this way.<sup>13</sup>

Harata Gibson argued that, over the years, the regulations and licensing criteria for kōhanga reo, have created uncertainty for whānau, as they have been interpreted in different ways by different licensing officers.<sup>14</sup> In fact, to effectively interpret the 2008 licensing criteria for kōhanga reo, one must review the guidance notes published on the Ministry's website (if any). These are intended to assist people so that they know what is required of them to comply with the criteria or understand how to obtain or renew a licence. The claimants consider that if there is no guidance on how to interpret any particular aspect of the criteria, kōhanga reo whānau may read the regulations and licensing criteria one way, while licensing or ERO officers may read them differently. The claimants argued that kōhanga reo

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8. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 132

9. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 115

10. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 134

11. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 129

12. Wharehuia Milroy, under questioning by claimant counsel, first week of hearing, 13 March 2012 (transcript 4.2.1, pp 23–24, translated)

13. Document A38 (Taina Ngarimu, brief of evidence, 18 January 2012), p 5

14. Harata Gibson, under questioning by claimant counsel, second week of hearing, 16 March 2012 (transcript 4.1.3, pp 484–485)

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whānau are not clear about what interpretations of these rules they are supposed to comply with, and they are fearful that they will lose their licenses if they do not comply.<sup>15</sup>

Ministry licensing and ERO officers often, according to the claimants, ‘interpret the regulations and licensing criteria in a culturally inappropriate way.’<sup>16</sup> The claimants prefer to maintain their own tikanga as a means to ensure curriculum and health and safety issues. They also consider such an approach appropriate and more consistent with the kaupapa of the kōhanga reo movement. The claimants are also concerned that cultural and spiritual issues have not been appropriately considered as an aspect of safety by the Ministry of Education.<sup>17</sup>

Professor Milroy told us that ‘[f]or Māori, our tikanga and kaupapa are our regulations. Whānau and kaumatua provide our quality assurance.’<sup>18</sup> It was considered that the ECE regulations introduced a regime with practices that ‘chip away at these very things that make Māori unique.’<sup>19</sup> On safety and the regulatory framework, Ms Gibson, for example, stated:

The framework completely fails to take into account the cultural and spiritual dimensions when it comes to health and safety. For kōhanga whānau, the idea of ‘health and safety’ covers all aspects of mokopunas’ wellbeing. The physical side, as seems to be what is meant by the Ministry, is only one aspect of this.

For example, the framework does not recognise that everything about kōhanga reo comes back to whānau, and that if the whānau is present, then mokopuna will be safe as whānau exercise collective responsibility for the safety of mokopuna. It also does not recognise the importance of spiritual ‘safety’ such as that acquired through karakia (I refer to the third brief of evidence of Titoki Black). The collective cultural and spiritual ‘safety’ of the kōhanga or marae is not measured as an aspect of safety by ERO or the Ministry of Education.<sup>20</sup>

The claimants contend that ‘the purpose of the kōhanga reo kaupapa is the health, safety, wellbeing and learning of mokopuna, but that this is achieved in ways that are different to what the Crown requires in its regulations and licensing criteria.’<sup>21</sup> They state that the Crown has provided insufficient recognition of Māori rangatiratanga over their own tikanga and taonga in kōhanga reo.<sup>22</sup>

The claimants gave examples of regulatory requirements imposed on kōhanga reo that they considered were contrary to tikanga Māori and the kōhanga reo kaupapa. Titoki Black, for example, recalled:

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15. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 130–133; doc A36 (Harata Gibson, brief of evidence, 22 December 2011), pp 12–13

16. Submission 3.3.1 (claimant counsel, closing submissions, 23 April 2012), p 129

17. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 116

18. Document A34 (Wharehuia Milroy, brief of evidence, 22 December 2011), p 12

19. Document A34 (Wharehuia Milroy, brief of evidence, 22 December 2011), p 12

20. Document A86 (Harata Gibson, second brief of evidence, 7 March 2012), p 6

21. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 130

22. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 135

I remember one of our first marae-based kōhanga in Waiariki at Mangaweka. By the time I got there the koroua were there, about five of them were holding the door of the Mangaweka marae whareniui. They'd cut a hole in the side of the back of the marae so that they could put a door in and the kōhanga could get licensed. I never saw so much pain in those kuias' faces but they wanted their kōhanga to get some putea to buy some things for their mokopuna.<sup>23</sup>

The claimants raised specific concerns about the licensing criteria. These concerns related to issues such as: fencing; restricting access to the kitchen; sleeping arrangements; changing nappies; displaying written policies, licences and qualifications; excursion ratios; human resources; and the provision of toys and play equipment.<sup>24</sup>

The claimants further alleged that the interpretation of the regulations and licensing criteria by licensing and ERO officers had exacerbated the adverse impact on kōhanga reo. They point to the building requirements, for example, as having played a major role in forcing many kōhanga reo off marae. They consider the movement away from marae and the focus on qualified teachers have reduced the participation of kaumātua, whānau, and whānau whānui in kōhanga reo teaching.<sup>25</sup>

The regulatory requirements, they say, imposed on kōhanga reo by the Crown (as well as the impacts of funding) have had the strongest impact on whānau participation.<sup>26</sup> The multiple compliance obligations that kōhanga reo must meet have also acted as a barrier to such participation. They were particularly concerned about the effect on kaumātua.<sup>27</sup>

There was, all the same, a measure of agreement between the claimants and the Crown that improvement was achievable.<sup>28</sup>

### 9.1.2 The Crown's position

Since the transfer to the Ministry of Education in 1990, kōhanga reo have been regulated and funded alongside other early childhood providers.<sup>29</sup> The Crown recognises 'that kōhanga reo have a broader and different focus.'<sup>30</sup> However, in the Crown's view, the service provided by kōhanga reo aligns with the 'Crown's objectives of providing education for all that is of good quality, diverse, and responsive to whānau choice.'<sup>31</sup>

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23. Titoki Black, under questioning by claimant counsel, first week of hearing, 15 March 2012 (transcript 4.1.3, p 454)

24. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), pp 117–126

25. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 128–129

26. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), pp 130–132

27. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), pp 128–130

28. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 130

29. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 56

30. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 56

31. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 56

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The Crown's rationale for regulating early childhood education services is to ensure a minimum guarantee of health, safety, wellbeing and educational outcomes as part of its kāwanatanga duties.<sup>32</sup> The Crown both funds and regulates early childhood education services to provide education and care services.<sup>33</sup> The Crown has provided for the 'distinct kaupapa of kōhanga reo' through recognition of *Te Whāriki* and *Te Korowai* in the curriculum.<sup>34</sup>

Ministry of Education witnesses maintained that the licensing criteria 'that apply to all centre-based services are broad enough to enable kōhanga reo to operate consistently with their kaupapa'.<sup>35</sup> These standards were minimum standards and may be supplemented as a provider thinks fit.<sup>36</sup>

The Crown submitted that the disagreement between the Trust and the Crown over regulatory requirements reflects the Crown's need to have some 'objective or material assurance' that the safety of children will not be compromised.<sup>37</sup> The Crown cited the criticisms it had received over the regulatory requirements to fence play areas from roads or rivers. It noted, for example, the accusation in the evidence that 'these undermine . . . the proper reliance upon rāhui and whakatūpatotanga'.<sup>38</sup> For the Crown, however, a physical barrier is the necessary form of 'assurance' that mokopuna are safe when in the care of others.<sup>39</sup>

The Crown acknowledged that for kōhanga reo, the experience of the regulatory regime has been mixed.<sup>40</sup> It also recognised that since 2008 it has recognised in its work with the Trust that there is 'scope to attempt to develop new structures that could be better suited to kōhanga reo'.<sup>41</sup> The Crown did not dispute that some aspects of the licensing criteria were imposed following a 'rule of thumb' approach for all ECE services, when it could have taken a more flexible approach.<sup>42</sup> The Crown emphasised that it is 'now committed to taking a renewed and more robust approach to efforts to improve the regulatory framework for kōhanga reo'.<sup>43</sup>

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32. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), p 6

33. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 56

34. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 58–59

35. Document A60 (Karl Le Quesne, brief of evidence, 15 February 2012), p 12

36. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 5

37. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 59

38. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 59

39. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 59

40. Submission 3.3.2 (Crown counsel, opening submissions, 19 March 2012), p 13; submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 57

41. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 58

42. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 59

43. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 58

**9.2 THE REGULATORY REGIME**

The ECE legislative regime governing the ECE sector and defining the extent and powers of Crown officials, is organised into a hierarchy of tiers:

- ▶ the Education Act 1989 and its amendments;
- ▶ the Education (Early Childhood Centres) Regulations 2008; and
- ▶ licensing criteria that are used to assess compliance against set standards.

A fourth tier, entitled 'guidance', does not form part of the legislative regime but involves Ministry of Education staff and includes the provision of templates, suggestions of things to consider, and other useful information.<sup>44</sup>

The Education (Early Childhood Centres) Regulations 2008 prescribe minimum standards in five areas:

- ▶ curriculum;
- ▶ premises and facilities;
- ▶ health and safety;
- ▶ staffing and service size; and
- ▶ governance, directed at community, public, and financial accountability.

Two sets of licensing criteria have been promulgated. One is for education and care centres, kindergartens, home-based services, and playgroups. The other comprises specific licensing criteria for *kōhanga reo*. However, other than on points of detail they differ only in terms of the curriculum.<sup>45</sup> The Crown considers the ECE regulatory framework to be an integrated system. Mr Walley claimed it was the result of a deliberate Crown-led sector shift designed to ensure that education and care, prior to school entry, are not dealt with as separate sets of policies. Mr Walley told us that under this system 'providers are unable to deliver care [services] without delivering education [services], and vice versa.'<sup>46</sup> The process of implementation to achieve this result was staged with an amendment to the Education Act 1989, followed by regulatory reforms. We summarise the current structure of the regulatory regime below.

**9.2.1 ECE policy reform**

The current ECE framework has emerged from a review of the legislative and regulatory regime approved by Cabinet in 2002 to complement the aims of *Pathways to the Future: Ngā Huarahi Arataki*.<sup>47</sup> The review process included four consultation phases:

1. In 2002, working papers on the overall regulatory framework were prepared by the Ministry of Education. It then consulted with the ECE sector on those papers, holding

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44. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 10 and annexure RW1

45. Submission 3.3.2 (Crown counsel, opening submissions, 19 March 2012), p 13

46. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 1

47. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 10



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more than 20 meetings with sector representatives and 40 national meetings. The papers were published on the Ministry's website. A Technical Advisory Group, better known as TAG, was established, which included Trust representatives. A number of regulatory review meetings were held with the Trust during 2004 and 2005.

2. Formal consultation on the draft criteria occurred in 2006.
3. The consultation process on the proposed criteria took place during 2007.
4. A further review was conducted in 2009.<sup>48</sup>

We were told that the review was underpinned by three key principles. These were, first, that 'the new regulations should not increase minimum standards', secondly, that the 'new system should improve transparency and predictability' and thirdly that 'the system should, as a result, become more consistent'.<sup>49</sup> The review between 2003 and 2008 led to changes in the funding regime in 2005, and to requirements regarding the number of people who must hold a recognised ECE qualification. Kōhanga reo are exempt from these requirements.<sup>50</sup>

**9.2.2 The Education Act 1989**

Part 26 of the Education Act 1989 has governed the administration of ECE centres since 1990. It originally covered funding, charters, licensing requirements, and codes of practice. As amended by the Education Amendment Act 2006, part 26 now provides for the funding of licensed early childhood services and certified playgroups.

Now entitled 'Early childhood education and care', part 26 defines different ECE service types, provides for the making of regulations and licensing criteria, and enables the Minister of Education to promulgate (by notice in the *Gazette*) a national ECE curriculum framework. New provisions include: section 314(1) to (4), dealing with the curriculum framework; section 317 regarding licensing regulations; and section 319 covering certification of playgroups. These particular provisions came into force in May 2006.<sup>51</sup> The rest of part 26, including further measures concerning ECE services, came into force in 2008.<sup>52</sup>

**9.2.3 ECE regulations**

Kōhanga reo have been subject to some form of regulation and licensing since the inception of the movement in the 1980s.

The Child Care Centre Regulations 1985, for example, defined kōhanga reo as 'special-purpose centres' under the oversight of the Trust. Kōhanga reo were granted special purpose

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48. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 10–12

49. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 11

50. Education (Early Childhood Centres) Amendment Regulations 2007, reg 36A

51. Education Amendment Act 2006, s 2(3)

52. Education Amendment Act 2006, s 2(3). The rest of the new part 26 came into force on 1 December 2008.

child care licences.<sup>53</sup> The 1985 regulations were in force during what the claimants regard as the golden age of kōhanga reo, before mainstreaming into the ECE sector in 1990. We note that in 1984 the Trust was afforded the opportunity to review the draft regulations ‘to ensure Whanau Maori cultural values are acknowledged in the revised Regulations.’<sup>54</sup>

The regulations made provision for the Trust to approve the educational programme of kōhanga reo and the training of kōhanga reo kaiako.<sup>55</sup> Under these regulations, kōhanga reo were considered ‘child care centres’ and they were required to apply for a licence to operate from the Director-General of Social Welfare.<sup>56</sup>

Once childcare centres were brought under the auspices of the Department of Education, in 1986, applications had to be made to the Director-General of Education.<sup>57</sup> To retain a childcare centre licence under the 1985 regulations, all childcare centres had to meet a set of standards related to, among other things, premises, sanitary facilities, lighting, heating, and ventilation, fire protection, play and other equipment for use by children, safety and hygiene, first aid, and food provision.<sup>58</sup> Ms Gibson told us the regulations ‘had few practical implications for kōhanga reo’ because ‘licensing was not linked to funding’. She also told us that the regulations were seen as recommendations rather than requirements, and that ‘[m] any kōhanga reo were not licensed at all, but continued to operate without any problems.’<sup>59</sup>

Overall, the 1985 regime seems, on its face, to have been somewhat less prescriptive and more responsive to rangatiratanga and the initial purpose of the kōhanga reo movement. Clearly, the early regulatory environment did not inhibit the growth of the movement, as it rose to its greatest heights prior to mainstreaming under the Ministry of Education.

But then, kōhanga reo were brought under the Education (Early Childhood Centres) Regulations 1990. These provided for the management, operation, and control of early childhood services, and imposed duties on service providers. The incorporation of the kōhanga reo movement into the ECE sector brought the operations of kōhanga reo and the Trust under the scrutiny of the Ministry and ERO.<sup>60</sup>

There were amendments to the Education (Early Childhood Centres) Regulations in 1991, 1992, and 1993.<sup>61</sup> The 1990 regulations were revoked when new early childhood regulations

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53. Child Care Centre Regulations 1985, reg 10

54. Document A78 (Department of Māori Affairs, ‘OĒCD: TEĒCO: Partnership Project, Department of Māori Affairs in Partnership with the Māori Community Through its National Te Kohanga Reo Trust in Support of Te Kohanga Reo’, 1984, case study), p 260

55. Child Care Centre Regulations 1985, reg 10

56. Child Care Centre Regulations 1985, reg 3

57. The schedule of the Education Amendment Act 1986, amending regulation 2 of the Child Care Centre Regulations 1985.

58. Child Care Centre Regulations 1985, pt III

59. Document A36 (Harata Gibson, brief of evidence, 22 December 2011), p 5

60. Education (Early Childhood Centres) Regulations, 1990; Education Amendment Act 1990, s 318(2)(b); doc A56 (Graham Stoop, brief of evidence, 15 February 2012), pp 2–3

61. Education (Early Childhood Centres) Regulations Amendment 1 1991, Education (Early Childhood Centres) Regulations Amendment 2 1992, Education (Early Childhood Centres) Regulations Amendment 3 1993

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were introduced in 1998.<sup>62</sup> However, there was substantial continuity from the 1985 regulations through to the 1990 and 1998 versions. Most of the changes were not in the wording of the matters to be addressed but rather, in the grouping and setting out of the material. We attach as appendix II a table comparing the provisions of the three previous sets of ECE regulations with the 2008 licensing criteria in respect of the premises and facilities and the health and safety standards.

In 2000, a notice was published under regulation 38(1) of the 1998 ECE regulations, requiring that persons responsible for an ECE service must hold certain recognised qualifications, but exempted kōhanga reo from the requirement.<sup>63</sup> In 2007, a 50 per cent qualification requirement was introduced for teacher-led early childhood centres, and kōhanga reo were also exempted from that.<sup>64</sup>

The 1998 regulations were amended in 2004, 2005, and 2007, before new regulations were introduced in 2008 to finalise the implementation of the ECE regime that was developed to complement *Pathways to the Future: Ngā Huarahi Arataki*.<sup>65</sup> Due to the transitioning arrangements under the new ECE regime, the regulations governing education and care services presently comprise two overlapping sets: the Education (Early Childhood Centres) Regulations 1998 and the Education (Early Childhood Services) Regulations 2008.

The Education (Early Childhood Services) Regulations 2008 came into force on 1 December 2008 (along with the licensing criteria – see below) and have already been amended since then. The 2008 regulations repeat the requirement that the person responsible for an ECE service hold a recognised qualification. However, kōhanga reo affiliated to the Trust are exempt from this requirement, as they are an ‘excluded service’.<sup>66</sup> The 2008 regulations provide for the five minimum standards we referred to above.<sup>67</sup>

#### 9.2.4 Licensing criteria for kōhanga reo

According to the Crown, the Trust and the Ministry worked together during the reforms to develop licensing criteria appropriate to kōhanga reo.<sup>68</sup> However, the Trust witnesses claim

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62. Education (Early Childhood Centres) Regulations 1998

63. ‘Early Childhood Centres (Recognised Qualifications) Notice 2000’, 4 December 2000, *New Zealand Gazette*, 7 December 2000, no164, p 4254

64. Regulation 36A of the Education (Early Childhood Centres) Regulations 1998 was inserted, as from 31 December 2007, by regulation 4 Education (Early Childhood Centres) Amendment Regulations 2007.

65. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p10; Education (Early Childhood Centres) Regulations 1998, as amended by Education (Early Childhood Centres) Amendment Regulations 2004, Education (Early Childhood Centres) Amendment Regulations 2005, and Education (Early Childhood Centres) Amendment Regulations 2007

66. Education (Early Childhood Services) Regulations 2008, reg 44(4)(a)

67. Education (Early Childhood Services) Regulations 2008. They are the ‘curriculum standard: general’ (regulation 43); the ‘qualifications, ratios, and service-size standard: general’ (regulation 44); the ‘premises and facilities standard: general’ (regulation 45); the ‘health and safety practices standard: general’ (regulation 46); and the ‘governance, management, and administration standard: general’ (regulation 47).

68. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), pp 1718

they were allowed only limited input.<sup>69</sup> On 8 July 2008, ‘the Minister of Education agreed to the development of a separate set of licensing criteria for kōhanga reo.’<sup>70</sup>

The Licensing Criteria for Kōhanga Reo affiliated with Te Kōhanga Reo National Trust 2008 were developed and gazetted under regulation 41 of the Education (Early Childhood Services) Regulations 2008.<sup>71</sup> This regime for kōhanga reo came into force on 1 December 2008, and amendments came into force on 30 July 2010 and 21 July 2011.

The criteria cover in considerable detail a broad range of standards for food preparation, sanitary facilities and hygiene, health and safety, emergency equipment and procedures, building facilities, and outdoor space requirements. Compliance is required in order to gain and maintain a licence to operate an ECE service. In practice, however, this set of licensing criteria differs very little from the standards in the 1990 and 1998 regulations. While some irritants (such as the impact of the two-door requirement on wharehenui) were eased, other topics (such as nappy changing) became subject to much more detailed regulation.

In 2006, the Ministry consulted kōhanga reo on its draft criteria. The Trust’s evidence was that a number of kōhanga reo provided feedback to the Ministry of Education on the criteria but not the Trust.<sup>72</sup> The Trust wanted the criteria translated into Māori. The Ministry of Education ‘sought the Trust’s understanding that the English version . . . prescribed by the Minister would take precedence in the event of any conflicts between the two versions.’<sup>73</sup> The Trust’s representatives, however, indicated that they wanted the Māori and English versions to have equal status in law.<sup>74</sup> The matter was referred to the Associate Minister of Education, the Hon Parekura Horomia, whose decision was to agree in principle to recognise the te reo version as equal, subject to Cabinet approval.<sup>75</sup>

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69. Document A79 (Tina Olsen-Ratana, fourth brief of evidence, 22 December 2011) p 4

70. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 12

71. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 12. Regulation 41 enables the Minister, after consultation ‘with those organisations that appear to the Minister to be substantially affected’, to ‘prescribe criteria to be used by the Secretary of Education to assess compliance with the minimum standards’ prescribed under regulations 43 to 47.

72. Document A78 (Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), pp 18–21

73. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 13–14. Mr Walley referred to the ‘curriculum criteria; in fact, all the licensing criteria were translated, although only the curriculum section differed in substance between the English versions of the general ECE and kōhanga reo licensing criteria: doc A79 (Karl Le Quesne, Group Manager, Early Childhood Education, Ministry of Education to Minister of Education and Associate Minister of Education, ‘Education Report: Status of Māori Translation of Kōhanga Reo Criteria’, 2 October 2008), pp 171–173.

74. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 13–14; doc A79 (Karl Le Quesne, Group Manager, Early Childhood Education, Ministry of Education to Minister of Education and Associate Minister of Education, ‘Education Report: Status of Māori Translation of Kōhanga Reo Criteria’, 2 October 2008), pp 171–174

75. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 14; doc A79 (Karl Le Quesne, Group Manager, Early Childhood Education, Ministry of Education to Minister of Education and Associate Minister of Education, ‘Education Report: Status of Māori Translation of Kōhanga Reo Criteria’, 2 October 2008), pp 171–174

The Ministry had the full set of criteria translated into te reo Māori by an individual certified under the Māori Language Act 1987, and sent to the Trust for consideration.<sup>76</sup> Professor Milroy deposed that the Ministry's Māori version was 'deficient in all respects'.<sup>77</sup>

Professor Milroy and Dr Timoti Kāretu then translated the English version into Māori. This translation was sent to the Ministry.<sup>78</sup> Mr Walley stated that the Ministry sought to have the Trust's version translated back into English so as 'to ensure it had a full understanding of what would be put into law'.<sup>79</sup>

Professor Milroy, as a recognised expert in te reo Māori, was clearly upset by this. He stated: 'This is nonsense. The Trust's version was a translation of the English version, taking into account kaupapa, tikanga, and Maori world view'.<sup>80</sup>

However, according to Mr Walley, the Ministry was concerned that 'there were a number of matters in the Trust's rendition for which the Ministry sought further clarification from the Trust'. The resolution of this matter has not been achieved and the claimants contended that this is yet another example of the Ministry acting in a manner inconsistent with Treaty guarantees. The Ministry, on the other hand, has expressed a willingness to try to resolve the matter.<sup>81</sup> It is clear to us that the formulation of the licensing criteria for kōhanga reo was never concluded to the satisfaction of either the Ministry or the Trust.

In 2009 there was a review of the 2008 regulations, and a consultation round with the ECE sector was conducted. A five-member ECE Sector Working Group was established, with one Trust representative, to consider the feedback from the ECE sector. According to Mr Walley, 'a number of the working group's recommendations . . . were adopted'. The review resulted in some changes being made to the criteria for education and care services, for example to premises and facilities standard 37 (labelled PF37 within the licensing criteria). These changes 'were not applied to kōhanga reo immediately as the Trust did not want to progress changes until the te reo Māori version of the criteria had been agreed and gazetted, and had equal legal status'. In May 2010, the kōhanga reo licensing criteria were amended to include the changes arising from the 2009 review.<sup>82</sup>

#### 9.2.5 The relicensing protocol for kōhanga reo

In November 2009, the 'Early Childhood Education 2008 Regulatory System Implementation Re-licensing Protocol' was signed by the Ministry and the Trust. The purpose of the

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76. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 14

77. Document A90 (Wharehuia Milroy, second brief of evidence, 7 March 2012), p 2

78. Document A90 (Wharehuia Milroy, second brief of evidence, 7 March 2012), pp 2, 3-71

79. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 14

80. Document A90 (Wharehuia Milroy, second brief of evidence, 7 March 2012), p 2

81. Submission 3.3.1 (claimant counsel, closing submissions, 23 April 2012), p 44; doc A62 (Richard Walley, brief of evidence, 15 February 2012), p 14

82. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 14-15

paper was to outline relicensing protocols between the Ministry and the Trust and to recognise the ‘unique relationship’ between them.<sup>83</sup>

Under paragraph 3, the parties agreed that the licensing criteria for kōhanga reo will ‘acknowledge the uniqueness of the curriculum of kōhanga reo’. Paragraph 4 provides that all new kōhanga reo licensed since 1 December 2008 will need to be licensed under the Education (Early Childhood Services) Regulations 2008 and the Licensing Criteria for Kōhanga Reo 2008. Under paragraph 5, the parties note that ‘a key aspect of implementing the new ECE regulatory system is . . . a five year transition period during which all licensed services – including kōhanga reo – will be re-licensed under the 2008 regulatory system’. Paragraph 6 notes that all kōhanga reo ‘licensed under the 1998 regulations will be covered by the 1998 regulations until they have been re-licensed’ under the 2008 Regulations and Licensing Criteria for Kōhanga Reo. Under paragraph 7, all kōhanga reo licensed under the 1998 regulations will need to be relicensed by 30 November 2014. Special provision is made in paragraphs 8 to 10 to continue funding for licence-exempt kōhanga reo until that date.<sup>84</sup>

Under paragraph 11, the Trust is the recognised service provider to the Ministry.<sup>85</sup> In this respect, the Trust works with the Ministry on relicensing issues. This benefits all kōhanga reo affiliated to the Trust, as they will be assessed for compliance under the kōhanga reo licensing criteria. In other words, it is not kōhanga reo in general that are subject to specially developed and negotiated criteria, but only those affiliated to the Trust. According to Mr Walley, this strengthens the Trust’s role as kaitiaki of the movement, and is indicative of the Crown’s ‘support to recognise this in practical ways’.<sup>86</sup> It allows the Trust to assume the role of service provider for all kōhanga reo affiliated to it as they are re-licensed (under the new criteria during the transition period ending in 2014). This, in turn, means the Trust, rather than kōhanga reo whānau, can hold the licence for individual kōhanga reo. He advised that the Trust was pleased with this development.<sup>87</sup>

The principles in the protocol, which ‘are to guide the re-licensing processes’, can only be regarded positively. They are as follows:

- ▶ The Ministry of Education is responsible for licensing Kōhanga Reo [although Te Kōhanga Reo National Trust Board is responsible for opening and closing kōhanga reo].
- ▶ The Ministry of Education acknowledges the autonomy and independence of Te Kōhanga Reo National movement and their Māori whānau development kaupapa.

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83. Document A64 (Ministry of Education and Te Kōhanga Reo National Trust, ‘Early Childhood Education 2008 Regulatory System Implementation Re-licensing Protocol’, November 2009), p 650

84. Document A64 (Ministry of Education and Te Kōhanga Reo National Trust, ‘Early Childhood Education 2008 Regulatory System Implementation Re-licensing Protocol’, November 2009), p 650

85. Document A64 (Ministry of Education and Te Kōhanga Reo National Trust, ‘Early Childhood Education 2008 Regulatory System Implementation Re-licensing Protocol’, November 2009), p 651

86. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 13

87. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 13



- ▶ The Ministry of Education and the National Trust are both responsible for monitoring progress, and for resolving matters of concerns if escalated to national level.
- ▶ The Ministry of Education will use best endeavours to ensure the Licensing staff visiting Kōhanga Reo have a level of Te Reo me ona tikanga or are accompanied by a fellow staff member with that level of proficiency to ensure that re-licensing assessments are fully informed.
- ▶ The Ministry of Education will work with District Managers to ensure culturally appropriate ways of working.<sup>88</sup>

We received limited evidence relating to the experience, good or bad, of the parties to this protocol. Given that it has been in force for well over two years, and that a significant number of kōhanga reo have been relicensed under the 2008 regulations, we expected some detailed comment. On its face it appears to have, at least, the potential for an improvement in the relationship between the Ministry and the Trust. This is because the protocol requires that representatives of the Ministry and the Trust meet where matters concerning re-licensing cannot be resolved at the district or regional level.<sup>89</sup> For the Ministry, Rawiri Brell did, at least, advise that relicensing of kōhanga reo started in 2011 and that, from the Ministry's point of view, relicensing has been 'proceeding reasonably well'.<sup>90</sup> He did not address how the process would work for those kōhanga reo whose premises were not compliant with the new licensing criteria by the end of 2014.

### 9.3 COMPLIANCE ISSUES

#### 9.3.1 Compliance in practice: approaches to interpretation

Compliance with the regulatory framework and its licensing criteria was one of the areas which caused the most distress to kōhanga reo whānau at our hearings. We were told that kōhanga reo have found it hard to comply with the regulations and licensing criteria as they do not reflect how kōhanga reo operate. Whānau, we were told, are forced to depart from tikanga as a necessary step to obtaining funding.

In the following section we address specifically the examples highlighted by the claimants concerning matters such as curriculum issues, property issues, nappy-changing facilities, fencing, access to food preparation areas and the provision of play equipment.

We broadly agree that some of the regulations in the past, and the licensing criteria under the current framework, are ambiguous or are open to varying interpretations, thereby

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88. Document A64 (Ministry of Education and Te Kōhanga Reo National Trust, 'Early Childhood Education 2008 Regulatory System Implementation Re-licensing Protocol', November 2009), p 651

89. Document A64 (Ministry of Education and Te Kōhanga Reo National Trust, 'Early Childhood Education 2008 Regulatory System Implementation Re-licensing Protocol', November 2009), p 653

90. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), p 19



investing a large amount of discretion in licensing and ERO officers. To some degree this effect may be tempered by the 2009 re-licensing protocol with the Ministry, as regards disputes over relicensing. However, that document will not help in other situations, such as an ERO review, where there may be a conflict over the interpretation of the regulations or licensing criteria.

### 9.3.2 Compliance in practice: *Te Whāriki*

Part 26 of the Education Act 1989 provided that the Governor-General could from time to time, issue codes of practice.<sup>91</sup> In addition, the 1990 early childhood regulations stated under the heading ‘curriculum, management, and staffing standards’, that early childhood centres were to have an appropriate programme of activities.<sup>92</sup> This was repeated in the 1998 regulations.<sup>93</sup>

Section 312 of the Education Act 1989, from 23 July 1990 to 30 November 2008, provided that the Minister could from time to time, by notice in the *Gazette*, ‘make a statement of desirable objectives and practices for chartered services.’<sup>94</sup> A revised statement of desirable objectives and practices was gazetted in October 1996 and mentioned *Te Whāriki*. The *Gazette* notice stated:

Under section 312 of the Education Act 1989, the Statement of Desirable Objectives and Practices (DOPs) is deemed to be a part of the charter of every chartered early childhood centre and chartered care arranger. The purpose of the DOPs is to establish national criteria for the provision of quality early childhood education and care. It is the responsibility of the management of chartered early childhood services to ensure that all the requirements of the DOPs are met, and it is the responsibility of the management and educators to determine how they are met. A supporting document for the DOPs will provide examples of standards of quality which demonstrate achievement of the requirements. Management and educators should be able to demonstrate achievement of the requirements to a standard consistent with the examples of standards in the supporting document and consistent with the example of quality curriculum set out in *Te Whāriki: He Whāriki Mātauranga mō ngā Mokopuna o Aotearoa Early Childhood Curriculum (1996)*.<sup>95</sup>

The foreword to *Te Whāriki* lauded the document as not only ‘the first national curriculum statement for the early childhood sector’ but also the ‘first bicultural curriculum statement developed in New Zealand’. Four principles and five strands (and 18 subsidiary goals),

91. Education Act 1989, s 314 as it was 23 July 1990 to 16 May 2006

92. Education (Early Childhood Centres) Regulations 1990, reg 34

93. Education (Early Childhood Centres) Regulations 1998, reg 32

94. Education Act 1989, s 312, as it was from 23 July 1990 to 30 November 2008.

95. ‘Early Childhood Education Charter Guidelines: Statement of Desirable Objectives and Practices’, 1 April 1998, *New Zealand Gazette*, 3 October 1996, no 139, p 3349

set out in English and in Māori, guided *Te Whāriki*. The English and Māori texts were to ‘parallel and complement each other’, while also providing ‘a basis for appropriate practice in kōhanga reo’. *Te Whāriki* was also said to recognise the ‘distinctive role of an identifiable Māori curriculum that protects Māori language and tikanga, Māori pedagogy, and the transmitting of Māori knowledge, skills, and attitudes through using Māori language.’<sup>96</sup>

All was well on this front until 2008, when a curriculum framework for ECE was prescribed by gazette notice under section 314 of the Education Act 1989.<sup>97</sup> The curriculum framework incorporated the principles and strands from *Te Whāriki*.<sup>98</sup> Ministry officials summarised its purpose as being to ‘bring government expectations about what is most important for teaching and learning in early childhood education into the new regulatory framework . . . The curriculum framework will be principles based and provide context for specific curriculum regulatory requirements in the new standards and curriculum criteria.’<sup>99</sup> The curriculum framework contains the English and Māori versions of the principles from the early childhood curriculum *Te Whāriki*, together with the strands in English and Ngā Taumata Whakahirahira in Māori, which formed part of a section of *Te Whāriki* described as being ‘to provide guidelines for kōhanga reo and other Māori immersion programmes.’<sup>100</sup> The Ministry and the Trust disagreed initially on the content of the national curriculum framework. Finally, a compromise saw a kaupapa-specific version in te reo agreed between the Ministry and the Trust and included in a dedicated kōhanga reo section of the curriculum framework.<sup>101</sup>

### 9.3.3 Compliance in practice: upgrading kōhanga reo property

Regulations relating to building requirements, we were told by the claimants, have contributed to kōhanga reo moving off marae and out of homes. It was claimed that the regulatory

96. Document A64 (Ministry of Education, *Te Whāriki Mātauranga mō ngā Mokopuna o Aotearoa; Early Childhood Curriculum* (Wellington: Learning Media, 1996)), pp 663, 666, 668, 671–672

97. Document A64 (‘Education (Early Childhood Education Curriculum Framework) Notice 2008’, *New Zealand Gazette*, 4 September 2008, no 136), pp 817–819

98. Document A64 (Ministry of Education, *Te Whāriki Mātauranga mō ngā Mokopuna o Aotearoa; Early Childhood Curriculum* (Wellington: Learning Media, 1996)), pp 657–755

99. Document A64 (Karl Le Quesne, senior manager, Early Childhood Education, Ministry of Education to Minister of Education and Associate Minister of Education, ‘Education Report: A Curriculum Framework for Early Childhood Education’, 4 July 2008), p 760

100. Document A64 (Ministry of Education, *Te Whāriki Mātauranga mō ngā Mokopuna o Aotearoa; Early Childhood Curriculum* (Wellington: Ministry of Education, 1996)), pp 660, 691–693; ‘Education (Early Childhood Education Curriculum Framework) Notice, 3 September 2008’, *New Zealand Gazette*, 4 September 2008, no 136, pp 3617–3619

101. Document A48 (Te Kōhanga Reo National Trust, ‘Mandating or Legislating Te Whāriki’, 13 March 2007), pp 48–51; doc A84 (Te Kōhanga Reo National Trust, *Te Korowai*, (Wellington: Te Kōhanga Reo National Trust, 1995) pp 529–538; doc A64 (Karl Le Quesne, senior manager, Early Childhood Education to Minister of Education and Associate Minister of Education, ‘Education Report: A Curriculum Framework for Early Childhood Education’, 4 July 2008), p 762

framework was the reason for taking kōhanga reo out of the places where the language truly lives and into buildings that are less effective vehicles for the transmission of te reo me ngā tikanga Māori. Ms Gibson noted that in Tairāwhiti in the early 1990s there were 49 marae-based kōhanga reo. Today there are only three.<sup>102</sup> Mr Walley told us that ‘to the best of my knowledge, there is not now, nor ever has been, a policy to close marae-based kohanga reo’. He was of the view that kōhanga reo could operate from marae under the current regulatory framework, as there is no policy that they should not.<sup>103</sup> We note that, while there may be no formal policy, the Crown did not contest that the effect of the regulatory framework in Tairāwhiti was as Ms Gibson related.

Several claimant witnesses expressed a desire to return to the marae, as a way to become more connected to the marae and events revolving around it.<sup>104</sup> While we believe this should be encouraged, there should not be an active policy of pursuing such a result at this late stage. The 2008 regulations set a deadline of 2014 for all existing services to be relicensed. Those unable to meet all requirements when inspected may be allowed up to 18 months to comply, but thereafter non-compliance will result in no licence to operate and closure will be the inevitable result. It is unlikely that many marae will be able to accommodate the changes that have been demanded of ECE service providers in the last decade.<sup>105</sup>

As we have said in chapter 8, this relicensing threshold has created a looming crisis for a number of kōhanga reo that have not been able to maintain their premises to the standard needed to achieve full regulatory and licensing criteria compliance. We were told that, after undertaking a full property survey funded by Te Puni Kōkiri, the Trust has identified 172 kōhanga reo whose premises needed upgrading at an estimated cost of \$20 million in order to satisfy the licensing criteria. The claimants have raised the issue of whether officials sufficiently alerted their Ministers to the serious situation that will result if the affected kōhanga reo cannot meet the licensing criteria standards, namely that a large number of kōhanga reo will fail to achieve re-licensing and be forced to close. We consider the real issue is how the Crown is addressing this looming crisis. As a matter of logic, any further closures will have an inevitable impact of the number of enrolments. The ripple effect of that would be fewer children learning te reo Māori. We heard little evidence from the Crown on how it intends to deal with this problem, so we suggest a way forward to address the matter in chapter 11.

### 9.3.4 Compliance in practice: nappy changing and visibility into wharepaku

One of the more vexed issues presented to us around regulatory compliance was that concerning nappy-changing facilities. For Māori, we were told, ‘to place a child on a table to

102. Document A36 (Harata Gibson, brief of evidence, 22 December 2011), pp 4–5

103. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 22–23

104. Submission 3.3.1 (claimant counsel, submission, 12 March 2012), pp 133–134; transcript 4.1.3, p 586.

105. On the current situation of marae, see Te Puni Kōkiri, *The Status of Marae* (Wellington: Te Puni Kōkiri, 2012), pp 26–34.

change a nappy is in direct conflict with tikanga' and the regulations proved particularly distressing for kōhanga reo pakeke.<sup>106</sup>

The 1985 regulations dealt with the matter under regulation 21, 'Sanitary facilities.' The overall standard in those regulations was that every centre was to provide, to the satisfaction of the Director-General, 'adequate sanitary facilities which are conveniently accessible, safe, and comfortable for use by children.' Any centre which had 'suitable arrangements' for changing nappies would be compliant with the regulation.<sup>107</sup> The 1990 and 1998 regulations both dealt with nappy changing in identical terms, requiring that ECE centres were to have 'suitable arrangements for changing nappies if children likely to wear napkins' were expected to attend.<sup>108</sup>

The 2008 licensing criteria for kōhanga reo address nappy changing under criteria to assess health and safety practices standard 3 (HS3), and premises and facilities standard 25 (PF25).<sup>109</sup>

HS3 provides that all centres must have a procedure for nappy changing (and disposal, if appropriate), that a description of the procedure must be displayed near the nappy changing facilities, and that it be consistently implemented. Documentation is required, setting out what the procedure for the changing (and disposal, if appropriate) of nappies will be. The procedure must aim to ensure 'safe and hygienic practices', and 'that children are treated with dignity and respect'.<sup>110</sup>

In the Ministry's website guidance section for kōhanga reo, under the HS3 nappy-changing procedure the 'Rationale/intent' states:

Displaying the procedure ensures that every person using the facilities is made aware of the procedure to maintain general hygiene and children's safety and wellbeing.<sup>111</sup>

The guidance page which follows starts with a disclaimer:

Any examples in the guidance are provided as a starting point to show how services can meet (or exceed) the requirement. Services may choose to use other approaches better suited to their needs as long as they comply with the criteria.<sup>112</sup>

It then sets out the guidance, which is identical to that provided for 'centre-based ECE services', as follows:

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106. Document A36 (Harata Gibson, brief of evidence, 22 December 2011), p 6

107. Child Care Regulations 1985, reg 21, sch 2

108. Education (Early Childhood Centres) Regulations 1990, sch 2; Education (Early Childhood Centres) Regulations 1998, sch 2

109. *Licensing Criteria for Kōhanga Reo affiliated with the Te Kōhanga Reo National Trust 2008*, pp 9, 11

110. *Licensing Criteria for Kōhanga Reo affiliated with the Te Kōhanga Reo National Trust 2008*, p 11

111. Ministry of Education, 'Licensing Criteria for Services: Nga Kohanga Reo; HS3 Nappy Changing Procedure', Ministry of Education, <http://www.lead.ece.govt.nz>, accessed 4 September 2012

112. Ministry of Education, 'Licensing Criteria for Services: Nga Kohanga Reo; HS3 Nappy Changing Procedure – Guidance', Ministry of Education, <http://www.lead.ece.govt.nz>, accessed 4 September 2012

A nappy changing procedure helps communicate your service's expectations about this important routine to everyone using the area.

Some things to think about when developing your service's nappy changing procedure:

- ▶ Who changes/can change children's nappies?
- ▶ When/how often are children's nappies checked/changed?
- ▶ What handwashing practices are used? If relevant, what practices are used when wearing disposable gloves?
- ▶ How is the nappy changing area cleaned/disinfected? When/how often? By whom?
- ▶ How do adults interact with children when changing nappies?
- ▶ How are children kept safe from falls or other hazards?
- ▶ How is 'solid waste' disposed of?
- ▶ How are soiled nappies stored and disposed of?
- ▶ If relevant, how are potties stored, used, and cleaned?<sup>113</sup>

We consider the licensing criterion and website guidance provided for HS3 to be readily understandable. But the position for the PF25 criterion is different. The licensing criteria for kōhanga reo require that:

There are nappy changing facilities of rigid and stable construction that can be kept hygienically clean. These facilities are located in a designated area near to handwashing facilities, and are adequately separated from areas of the service used for play or food preparation to prevent the spread of infection. The design, construction, and location of the facilities ensure that:

- ▶ they are safe and appropriate for the age/weight and number of children needing to use them;
- ▶ children's independence can be fostered as appropriate;
- ▶ children's dignity and right to privacy is respected;
- ▶ some visibility from another area of the service is possible; and
- ▶ occupational health and safety of staff is maximised.<sup>114</sup>

The website 'rationale' published alongside the criteria, as Mr Walley notes in his brief of evidence, states that:

The criterion aims to uphold the health, safety, and wellbeing of children by ensuring that appropriate facilities are available for children wearing nappies. Nappy changing in an early childhood centre is a high risk activity from a number of perspectives, for example hygiene (as there can be large numbers of children using the facilities) and safety (risk of falls for the

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113. Ministry of Education, 'Licensing Criteria for Services: Nga Kohanga Reo; HS3 Nappy Changing Procedure – Guidance', Ministry of Education, <http://www.lead.ece.govt.nz>, accessed 4 September 2012

114. *Licensing Criteria for Kōhanga Reo Affiliated with the Te Kōhanga Reo National Trust 2008*, p 9

child, risk of back injury for adults). Nappy changing is also a personal care routine that by definition makes the young child vulnerable.<sup>115</sup>

The website provides a rationale but not a guidance note for PF25 in its kōhanga reo section. The 'Early Childhood Centres' section, however, does provide a guidance note, which, in the absence of one for kōhanga reo, we think both kōhanga reo whānau and Ministry officials may tend to assume to state the default position. The note contains a lengthy discussion focusing on the design, height, strength, and placement of nappy-changing tables and plinths – for older children, especially if they are wearing 'pull-up' nappies.<sup>116</sup> The extensive suggestions cover some two full A4 pages of information. The detail is almost overwhelming for such a basic activity – one that is attended to constantly in the home.

Clearly, PF25 and its guidance note do provide a degree of specificity regarding the nature of any structure used for nappy changing. Mr Walley, however, pointed out that the criterion for PF25 does 'not require any particular kind of change table' and leaves 'the possibility open that children may be changed on the floor (not least because some children may be too heavy for some staff to lift onto a table)'. He sees the absence of detailed guidance as to any particular structure to be an indication that the framework was designed to be flexible and that standards could be met in a number of ways.<sup>117</sup> However, in our view the PF25 criteria and the guidance combined may just as easily be interpreted by a licensing or ERO officer as a requirement and thus any failure to provide such a structure could be faulted.

The claimants' evidence was that a number of kōhanga reo were told or considered that they were required to have nappy-change structures but that they refused to accept the need for these change tables. Ms Gibson, for example, noted that some kōhanga reo continued to use traditional practices for changing nappies:

We would provide change tables, but most of the time, nappies would continue to be changed on mats on the floor, in accordance with practices we all grew up with – a sense of safety and security on the floor (that the pēpi wouldn't roll off and get seriously hurt) and more so that at the time of changing the nappy, kaiako would poipoi and mirimiri pēpi and talk to the older mokopuna about the care of a baby. This korero would be heard by the mokopuna in te reo Māori – they would see, feel and hear the aroha the Kaiako has for the pēpi . . .<sup>118</sup>

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115. Ministry of Education, 'Licensing Criteria for Services: Ngā Kōhanga Reo; Premises and Facilities; Other Sanitary Facilities, PF25 Nappy Change Facilities – Guidance', <http://www.lead.ece.govt.nz/ServiceTypes/NgaKohangaReo/>, accessed 4 September 2012; document A62 (Richard Walley, brief of evidence, 15 February 2012), p 16

116. 'Licensing Criteria for Services: Ngā Kōhanga Reo; Premises and Facilities; Other Sanitary Facilities, PF 25 Nappy Change Facilities – Guidance', Ministry of Education, <http://www.lead.ece.govt.nz/ServiceTypes/CentreBasedECEServices>, accessed 4 September 2012

117. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 16–17

118. Document A36 (Harata Gibson, brief of evidence, 22 December 2011), p 7

Vaine Daniels gave evidence of her long-running experience with the regulatory regime in her role as a kaiako of Te Ahuru Kōhanga Reo at Porirua. She recalled officials demanding change tables. During a review in 2011, her kōhanga reo made it clear that they would no longer comply. She understood from her discussions with officials that nappy change tables were no longer a Ministry requirement.<sup>119</sup> The problem for us from this evidence and the evidence of Ms Gibson is that we are unsure what period of time their evidence addresses and which criteria applied. However, we do note that few other topics provoked so much aggravation and comment before us as the nappy changing criteria.

In terms of visibility into wharepaku, Ms Gibson noted that kōhanga reo had been made to put windows into toilet areas based upon the criteria surrounding PF25 and nappy changing.<sup>120</sup> The Ministry's response, through Mr Walley, was that suggestions from licensing officers in this respect were made as one way of meeting the criteria that required some visibility from another area of service.<sup>121</sup>

The present situation, we think, leaves considerable room for uncertainty. On the one hand, because kōhanga reo fall under separate licensing criteria, formally the general 'early childhood centre' guidance information does not apply to them. On this view, kōhanga reo are left in a vacuum as regards interpreting the detail of licensing criterion PF25. On the other hand, if whānau and officials resort to the 'early childhood centre' guidance, the standard may be applied without adaptation to the different cultural environment of reo.

We consider that the licensing criteria with respect to nappy changing need to be redrafted so that they are more specific to the cultural and physical environment of kōhanga reo, and that this environment should be appropriately accommodated in guidance information designed specifically for kōhanga reo.

### **9.3.5 Compliance in practice: fencing, outdoor areas, provision of play equipment, and access to kitchens**

A number of claimant witnesses related to us various experiences with ERO and licensing officers in relation to these topics. The Tribunal also received the March 2008 ERO report 'The Quality of Education in Kōhanga Reo'. While it is historical, and predates the coming into force of the 2008 regulatory regime, it did record, among other things, common concerns in kōhanga reo reviews between January and May 2007 over inadequate fire and earthquake evacuation procedures, and outdoor safety issues such as insecure fences, gates, and grates.<sup>122</sup>

119. Document A80 (Vaine Daniels, brief of evidence, 18 January 2012), p 12

120. Document A36 (Harata Gibson, brief of evidence, 22 December 2011), p 7

121. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 17

122. Document A57 (Education Review Office, 'Early Childhood Monographs: The Quality of Education and Care in Kōhanga Reo', March 2008), pp 359–360



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We have examined the regulations and licensing criteria relating to fencing, outdoor areas, provision of play equipment and access to kitchens. There is little specifically written in them for kōhanga reo. We note again that the regulations and criteria are very vague in part and thus any reading of them requires reference to the guidance notes.

**(1) Fencing**

Concerns about fencing were raised by Matiu Kingi from Ahipara, who has devoted his life to supporting kōhanga reo. He recalled the early advent of regulations coming into force in Tai Tokerau, following the transfer to the Ministry of Education. He was told by his elder to put up a fence at his kōhanga reo so as to comply with the regulations. His response was: 'My friend, those fences, those fences are for animals, for stock, for holding stock. Who are they to say that our children should be penned like animals?'<sup>123</sup>

The problem with this approach is that it fails to recognise that in many instances fencing is necessary to ensure the safety of children. A particularly important example was provided of one kōhanga reo that was located in the wharekai of a marae bordering a river. The relevant official insisted that the river be fenced off or a fence be built right round the wharekai, or that the kōhanga reo be relocated or closed.<sup>124</sup>

The Crown, in such a situation, has a number of matters it must weigh up. It must ensure that safety measures be adopted, for if a child dies or is seriously injured at a kōhanga reo due to lack of fencing, or other failure to ensure adequate health and safety practices or equipment were in place, the Ministry of Education is accountable. It is simply not an answer for the Ministry of Education to rely on tikanga, or to rely on matters that were addressed by one witness as follows:

the hapu taught all its uri (and Kōhanga reo) and manuhiri about rahui and whakatupatanga. The mokopuna were taught to respect their environment and take care. In turn, the mokopuna will pass this tikanga on to manuhiri.

. . . the real loss is the reo me ngā tikanga associated with the river. The taniwha in the river had previously served as a metaphysical barrier for the children and gave prominence to our stories and legends. Children are being deprived of their own tikanga because they are fenced off from their environment. They do not learn about the environment, including its dangers, in accordance with our kaupapa because they are not part of it.<sup>125</sup>

The requirement to fence off such water bodies in close proximity to a marae where a kōhanga reo is operating may be perfectly justifiable. Recognising this as a legitimate

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123. Matiu Kingi, oral evidence on behalf of the claimants, first week of hearings, 16 March 2012 (transcript 4.1.3, p 519)

124. Document A36 (Harata Gibson, brief of evidence, 22 December 2011), p 9

125. Document A36 (Harata Gibson, brief of evidence, 22 December 2011), p 9

kāwanatanga interest of the Crown is not a case of authorising the compromise of Māori rangatiratanga and tikanga. Rather, it is recognising that in a modern society the Crown is responsible for the health and safety of the people and cannot escape from or delegate that responsibility – especially so with respect to the nation's young. But if there are circumstances where fencing was clearly not required to ensure the health and safety of children, the regulations and licensing criteria should be flexible enough to accommodate that.

**(2) Outdoor areas and play equipment**

One thing specified in the regulatory framework that has remained constant from 1985 to today is that five square metres of outdoor space is to be provided for each child attending an ECE centre. In cases where no child attends for more than two hours per day, the Secretary for Education may relax the requirement to the extent determined by the secretary or dispense with the outdoor space requirement altogether.<sup>126</sup> In 1985, the outdoor space had to be a 'suitably surfaced and drained space for a variety of activities in a safe play area closed in by secure fences and gates.'<sup>127</sup> In addition, regulation 24 required every centre to provide and maintain 'in good condition furniture, and indoor and outdoor play equipment of types and of a quantity and variety considered by the Director-General to be adequate and suitable for the needs of children'. Regulation 25 required the premises and all equipment to be maintained in a 'safe and hygienic condition.'<sup>128</sup> Similar regulations have been included in all subsequent regulations.

From 1985 and on through 1990 and 1998, any swimming pool had to be fenced. Paddling pools had to be supervised or emptied. In the 1990 and 1998 regulations, sandpits, barkpits, and the like had to be covered. If that was impracticable, they had to be 'raked and inspected for animal droppings and dangerous objects.'<sup>129</sup>

The 2008 criteria in respect of premises are outlined in PF1. The design and layout of premises must 'support the provision of different types of indoor and outdoor experiences'. PF4 requires that 'a sufficient quantity and variety of (indoor and outdoor) furniture, equipment, and materials is provided that is appropriate for the learning and abilities of the children attending.'<sup>130</sup> Licensing officers approve or disapprove the quantity of each, the variety of each and the range of furniture, equipment and materials that must be provided for the different learning and abilities of children attending. In addition, PF5 requires that 'all indoor and outdoor items and surfaces, furniture, equipment and materials are safe and

126. Education (Early Childhood Services) Regulations 2008, sch 4

127. Child Care Centre Regulations 1985, reg 20, sch 1

128. Child Care Centre Regulations 1985, regs 24, 25

129. Child Care Centre Regulations 1985, reg 20; Education (Early Childhood Centres) Regulations 1990, regs 26(1)(m), 26(1)(n), 26(1)(o); Education (Early Childhood Centres) Regulations 1998, regs 24(1)(m), 24(1)(n), 24(1)(o)

130. Document A64 (Licensing Criteria for Kōhanga Reo Affiliated with Te Kōhanga Reo National Trust, 2008 pursuant to regulation 41 of the Education (Early Childhood Services) Regulations 2008), p 622

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suitable for their intended use.<sup>131</sup> PF13 requires that outdoor activity space is (amongst other things) ‘connected to the indoor activity space’; is ‘safe, well-drained, and suitably surfaced for a variety of activities’; and is ‘enclosed by structures and/or fences and gates designed to ensure that children are not able to leave the premises without the knowledge of adults providing education and care.’<sup>132</sup>

Regulation 26(q) and (r) of the 1990 regulations prohibited the growing of plants, any part of which was or was capable of being poisonous to children. There was a like prohibition on planting poisonous plants any part of which might blow or fall into a centre or be reached by a child attending a centre. These two provisions were absent from the 1998 regulations.

These provisions are essentially carried forward by the 2008 regime, with but minor wording changes, from the 1985, 1990, and 1998 regulations. The claimants’ evidence was that these criteria are onerous and lead to unnecessary reviews. One kōhanga reo, it was noted, was criticised, amongst other things, under the heading of ‘Being sun smart’ because ‘There is very little shade in the outdoor area. The whanau and staff need to provide suitable sun shaded areas.’<sup>133</sup> Other witnesses for the claimants told us how they had been required to purchase ‘expensive outside play equipment like trikes, climbing frames, and sand pits.’ Amongst other things, native trees and plants such as harakeke have been removed from outdoor areas at kōhanga reo.<sup>134</sup> According to the claimants, the impact of these changes was to move children from learning based on the natural environment and children’s imaginations to a toy-oriented environment. The former, in the claimants’ view, was rich in the reo and tikanga, the latter barren of both.<sup>135</sup> They were also not happy about the criteria in respect of health and safety.

We note that the criteria generally cover the maintenance of premises, furniture, furnishings, fittings, equipment and materials so that they are kept safe, hygienic and maintained in good condition and that hazards are avoided.<sup>136</sup> We have no difficulty understanding the necessity for and object of these provisions. What is surprising is that there is little or no useful or practical explanation or guidance for kōhanga reo on managing these core responsibilities. PF13, for example, deals with outdoor activity space. The kōhanga reo website guidance consists of the following under a bold-type heading:

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131. Document A64 (Licensing Criteria for Kōhanga Reo Affiliated with Te Kōhanga Reo National Trust, 2008 pursuant to regulation 41 of the Education (Early Childhood Services) Regulations 2008), p 622

132. Document A64 (Licensing Criteria for Kōhanga Reo Affiliated with Te Kōhanga Reo National Trust, 2008 pursuant to regulation 41 of the Education (Early Childhood Services) Regulations 2008), p 622

133. Document A84 (Titoki Black, third brief of evidence, 7 March 2012), p 10

134. Titoki Black, under questioning by claimant counsel, first week of hearings, 15 March 2012 (transcript 4.1.3, p 454)

135. Document A36 (Harata Gibson, brief of evidence, 22 December 2011), pp 12–13

136. Document A64 (Licensing Criteria for Kōhanga Reo Affiliated with Te Kōhanga Reo National Trust, 2008 pursuant to regulation 41 of the Education (Early Childhood Services) Regulations 2008), pp 626

**Rationale/Intent:**

The criterion aims to:

- ▶ uphold a minimum level of quality education by ensuring that children have easy access to the outdoor environment;
- ▶ uphold children's safety by ensuring that the outdoor environment is securely fenced so that 'escape' is less likely; and
- ▶ uphold children's safety and a minimum level of quality education by ensuring the area is well-drained and has suitable surfacing.

The criterion is underpinned by the belief that the opportunity for outdoor play is an important feature of the education and care of young children in New Zealand.<sup>137</sup>

There is nothing else to provide any guidance on how to interpret PF13, only the holding statement on the website guidance page: 'Guidance information has not yet been fully developed for this requirement'. The guidance pages for all other premises and facilities criteria are also empty. This contrasts with the detailed guidance provided for centre-based education and care services, which, as we pointed out above, may come to be treated as the default position.

**(3) Access to kitchen areas**

A number of claimant witnesses gave evidence in relation to regulations and criteria that have been used to require that children be excluded from all food preparation areas. Taina Ngarimu, kaumātua for a cluster of nine kōhanga reo in the Gisborne area, spoke of the difficulties of obtaining a new licence in these terms:

The kitchen was an area of difficulty. Again, tikanga Māori dictates that there is tapu around food. Further, the kitchen is a very important learning environment for mokopuna as there is tikanga to teach them around the preparation and eating of food. We introduce our mokopuna to this tikanga all in te reo. Te reo Māori and tikanga must be learnt side by side. It is therefore essential that we can use the kitchen as a learning environment for children and therefore it is not just a place to prepare food for them to eat. However, the Ministry of Education has made it very difficult for us to do this. They see the kitchen as a hazard rather than as a learning environment and the clear message we have received is that children should be kept out of it as much as possible<sup>138</sup>

Ms Gibson, speaking of the safety of mokopuna, instanced a kōhanga reo in Manukau City, which confirmed that in 2003:

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137. Ministry of Education, 'Licensing Criteria for Services: Ngā Kōhanga Reo; PF13 Outdoor Activity Space', Ministry of Education, [www.lead.ece.govt.nz](http://www.lead.ece.govt.nz), accessed 4 September 2012

138. Document A38 (Taina Ngarimu, brief of evidence, 18 January 2012), p 4

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they were required by the Ministry of Education to put a fence across the kitchen so the mokopuna could not go in there. It is extremely rude to have your kitchen door closed or blocked as this is a sign of not wanting to provide food for visitors or mokopuna. The kitchen plays an important part of learning for our children and whānau. Kitchen at the marae is a focal part of a whare where all whānau gather, to share stories and share the workload – whānau would “educate” themselves by learning about, among other things, whakapapa.<sup>139</sup>

Professor Milroy stated:

The regulations impose barriers, both physical and metaphysical. For example, a well-known proverb states that as it takes a pillar to stand the whare, it takes kai to stand the people. This demonstrates the centrality of kai in Māori culture. Accordingly, much of our language and tikanga go hand in hand with food preparation and protocol. Yet, the application of regulatory requirements has forced kōhanga to separate or fence off their kitchens from mokopuna. This has an immediate impact on learning.<sup>140</sup>

This is an example, say the claimants, of where the regulations and licensing criteria impact negatively on the language and culture as a result of the exclusion of children from food preparation areas. We note that PF17 deals with access issues. The criteria concerning premises and facilities require that all kitchen and cooking facilities or appliances ‘are designed, located, or fitted with safety devices to ensure that children cannot access them without adult assistance or supervision.’ The rationale or intent is stated to be:

to uphold children’s safety by ensuring that they are unable to access hazardous equipment or activities (such as hot food/liquid being transferred from the stove to the bench by a staff member whilst preparing a meal) unless adequately supervised.<sup>141</sup>

On the face of it, this criterion does not appear to require the children to be excluded from entire wharekai, or even the full area of a kitchen. Rather, it addresses what happens in the zone where cooking takes place. Once again, there is no guidance information for kōhanga reo. The guidance for centre-based ECE services states that ‘centres need to have the ability to make their kitchen and cooking facilities inaccessible to children’ but that ‘[t]his does not mean children must never be able to go into the centre kitchen. There are likely to be times when you want children to be able to access your kitchen facilities to take part in activities such as cooking and food preparation.’ We have not found any regulation,

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139. Document A86 (Harata Gibson, brief of evidence, 7 March 2012), p10

140. Document A34 (Te Wharehuia Milroy, brief of evidence, 22 December 2011), p 12

141. Ministry of Education, ‘Licensing Criteria for Services: Ngā Kōhanga Reo; Premises and Facilities; Food Preparation and Eating Spaces; PF17 Kitchen Inaccessible – Overview’, Ministry of Education, <http://www.lead.ece.govt.nz>, accessed 3 September 2012

criterion or guidance that expressly prohibits children from being present in food preparation areas.

The claimant evidence suggests that some licensing and ERO officers have interpreted the criteria in a rather restrictive manner and that a number of them consider children to be ‘unsafe’ in any food preparation area. We note, however, that kōhanga reo whānau do acknowledge there are some risks in food preparation areas that must be identified and addressed.

Thus, there is some degree of agreement that sensible criteria should apply in this and other areas subject to regulation. We note, however, that apart from curriculum, very little adaptation of the licensing criteria to the kōhanga reo environment has been allowed; that with the exception of some health criteria, very little guidance information is provided for kōhanga reo; and that none of what is provided is presented in equivalent te reo Māori text. We note Ms Olsen-Ratana’s indication that the Ministry offered the Trust the opportunity to draft the website guidance for kōhanga reo, work that may have become a casualty of the dispute over the translation of the licensing criteria that we discussed above.<sup>142</sup> Again this evidence indicates why there needs to be greater partnership and cooperation in formulating regulations, licensing criteria and guidance information specific to the needs and situation of kōhanga reo so as to ensure that health, safety and other compliance issues are addressed.

#### 9.4 TRIBUNAL ANALYSIS AND FINDINGS

In the 2001 Meade report, the authors noted that Māori ECE services ‘may face particular barriers in meeting the objectives of ECE regulations’. They suggested that there be a review of the regulations to ‘examine the compliance load on ECE services. The review should consider the Treaty of Waitangi, examine the interpretation of regulations from a Māori perspective, and explore ways of bringing the regulations in line with the needs of tamariki and whānau, where this is an issue.’<sup>143</sup> In addition, when the 2008 regulatory framework was proposed, the Cabinet Legislation Committee was advised that the new regulatory framework complied with the principles of the Treaty of Waitangi.<sup>144</sup>

However, the claimants do not agree that the regulatory framework is consistent with the principles of the Treaty. They instead refer to the ‘Early Childhood Education 2008 Regulations Review Report’. Written by the Sector Working Group, the report states:

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142. Document A79 (Tina Olsen-Ratana, fourth brief of evidence, 22 December 2011), p 4

143. Document A73 (Early Childhood Education Strategic Plan Working Group, ‘Final Report of the Strategic Plan Working Group to the Minister of Education’, October 201), p 491

144. Document A79 (Office of the Minister of Education, ‘Implementation of the New Early Childhood Education Regulatory Framework’, report prepared for the Cabinet Legislation Committee, June 2008), p 221

The lack of regulatory framework and criteria that recognises the primary function of kōhanga reo as the development and retention of the language and cultural role, rather than as an education and care service, is of concern. This was promised in 1989, as part of the “Before Five” initiative, but has not been delivered.

The definition of an early childhood centre (in the Act and regulations) does not encompass the essence of kōhanga reo. An example of how kōhanga differ from other early childhood centres is the adult: child ratios in kōhanga need to be lower (ie, fewer children per adult) to ensure a rich Māori language environment is created for the children to acquire te reo and tikanga Māori from the principal source, the adults. This flows on to the kōhanga approach to the implementation of Te Whariki where language interaction between adult and child is expected to be higher.

There are many important aspects of the current regulatory framework that are relevant (health and safety, Te Whariki) but the unique role in language revitalisation is not recognised. It was acknowledged that separate criteria document [*sic*] had been developed and this was still an outstanding issue between Te Kōhanga Reo National Trust and the Ministry of Education.<sup>145</sup>

The claimants and the Crown were at least in agreement that, from the perspective of kōhanga reo, the experience of the regulatory framework has been mixed. The Crown also recognised that there is scope to develop new licensing criteria that could be better suited to kōhanga reo. The Crown did not dispute that imprecisely defined requirements were sometimes imposed as ‘rules of thumb’ that were objectionable to kōhanga reo rather than opting for more flexibility in their practical application. Nor does it dispute that some more detailed prescriptions in the 2008 licensing criteria, which in areas of compliance other than the curriculum are the same as for ECE services generally, might also be of concern to kōhanga reo whānau. The Crown emphasised that it is now committed to taking a renewed and more robust approach to efforts to improve the regulatory framework for kōhanga reo.<sup>146</sup>

The current problem that must be addressed is that the kōhanga reo-specific licensing criteria are merely that in name. They are, with the exception of the curriculum criteria, the same in nearly all respects as the licensing criteria for all ECE services. Ultimately, no firm consensus has been reached between the parties on all these criteria. We also know that the Crown’s regime in relation to kōhanga reo is, in part, posing a risk around relicensing and property upgrading. There is no doubt in our mind that the kōhanga reo movement will need, by the end of 2014, assistance to ensure compliance for many of its kōhanga reo. Outside the areas of health and safety where clearly children’s safety is genuinely at issue,

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145. Document A79 (Sector Working Group, ‘Early Childhood Education 2008 Regulation Review’, April 2009), pp 204–205

146. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 57–59



the regulatory regime and licensing criteria impose a framework that is on occasion unnecessary and an unwarranted interference with the governance of kōhanga reo. Both parties need to understand that each party to the Treaty has a partnership role to play in ECE and ideally, each should respect and support the other in their respective roles. In chapter 3, we discussed the relevant principles of the Treaty and those aspects particularly relevant to this chapter are the principles of:

- ▶ partnership; and
- ▶ the exchange of kāwanatanga for the guarantee of rangatiratanga.

In the exercise of its kāwanatanga responsibility, the Crown should draft, in partnership with the Trust, efficient and effective policy (including its regulatory and licensing criteria) so as to enable kōhanga reo autonomy, where needed, to promote and protect te reo Māori. In doing so, it is entitled to a reasonable degree of cooperation from the Trust. That is because the corollary of state funding is a degree of State regulation and systemisation in education, although even that should not stifle their motivation unnecessarily.

This must mean that the claimants must respect the right of the Crown to provide for the health and safety of children and accept that this is one area where its role is clearly provided for under article 1 of the Treaty of Waitangi. The Crown, however, must respect the right of the Trust and kōhanga reo to administer their programmes without unnecessary state interference. We are not suggesting that kōhanga reo should have the right to operate autonomously. It is clear that regulations and licensing criteria are needed to address genuine health and safety issues. This is not a case of one size fits all. Rather, there needs to be greater partnership and cooperation in formulating regulations and licensing criteria specific to the needs and situation of kōhanga reo so as to ensure that health and safety issues are addressed.

We note the examples given in the evidence of where regulatory measures have been suggested for kōhanga reo where there were limited risks for children. In such situations, the regulatory regime should be flexible enough to accommodate Māori rangatiratanga and tikanga. Being overly prescriptive can be culturally inappropriate and stifle Māori motivation. Ms Gibson, in this respect stated that:

The collective effect of the licensing requirements . . . has been to alter the nature of Kōhanga Reo, little by little. They have changed the way in which our mokopuna learn, and taken them out of their natural environment into an artificial one which is fenced off from the real world and full of artificial toys and equipment. This is not the way in which te reo blooms.<sup>147</sup>

Her point may well be sound with respect to some of the non-essential licensing criteria. In the end it is a question of balance and degree, and it depends on whether the risk to the

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147. Document A36 (Harata Gibson, brief of evidence, 22 December 2011), p13

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health and safety of children is too great. A sound partnership approach to developing a framework that will accommodate the needs of kōhanga reo is what is needed. Because the responsibilities of the Crown and Māori overlap in this area, it is our view that such matters should be worked out in partnership, jointly by the Trust and the Crown, with each cooperating in good faith to achieve the legitimate goals and aspirations of the other. A robust dispute resolution process is also needed when regulations and criteria are interpreted on the ground for each kōhanga reo.

**9.5 CONCLUSION**

Mr Brell told us that the Ministry was sympathetic to developing kōhanga reo-specific criteria in some areas, 'but was constrained by the potential scale of the work in the time available.'<sup>148</sup> We note that years, now decades, have gone by with little substantive change to the actual content of the regulatory regime beyond periodic reshuffling of the material.

We consider that there are ways in which kōhanga reo, the Trust, and the Crown, can work towards a better regulatory and licensing criteria framework. We were encouraged by the Crown's statements on this matter. We suggest how this can be done in chapter 11.

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148. Document A63 (Rawiri Brell, brief of evidence, 15 February 2012), p 18

CHAPTER 10

TE AROMĀTAI ME TE TE TARI AROTAKE MĀTAURANGA  
PERFORMANCE REVIEWING AND THE EDUCATION REVIEW OFFICE



The Education Review Office (ERO) evaluates and reports on the quality of education and care provided for children attending schools and ECE services, including kōhanga reo and kura kaupapa Māori.<sup>1</sup> Although kōhanga reo interact with other central and local government agencies on particular regulatory matters, ERO plays a central role in evaluating their performance and compliance against ECE regulations and criteria, as well as more broadly against *Te Whāriki* and specific areas of Government interest in education.<sup>2</sup>

ERO was established in 1989 as a public service department under the State Sector Act 1988.<sup>3</sup> ERO's formal mandate commenced in 1990 through an amendment to the Education Act 1989, which requires it to review 'the performance of applicable organisations in relation to the applicable services they provide'.<sup>4</sup> This Act brought under its coverage all ECE

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1. Document A56 (Graham Stoop, brief of evidence, 15 February 2012), p1

2. Document A57 (ERO, *Framework for Kōhanga Reo Education Reviews: Education Reviews in Kōhanga Reo* (Wellington: ERO, 2004)), pp 10–12

3. Document A56 (Graham Stoop, brief of evidence, 15 February 2012), pp1–2, 5

4. Education Act 1989 s 325

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services that were required to be licensed or in receipt of public funds.<sup>5</sup> The Education (Early Childhood Centres) Regulations 1990 ended the partial autonomy that the 1985 regulations had accorded to the Trust and mainstreamed kōhanga reo together with other ECE services.<sup>6</sup> ERO currently has a specialist Māori review services unit, Te Uepū ā-Motu, responsible for all reviews in kōhanga reo and kura kaupapa Māori. Te Uepū ā-Motu has a staff of 15 reviewers, all of whom are Māori with ‘specific knowledge and skills in tikanga and te reo Māori’.<sup>7</sup> ERO reports on kōhanga reo are written in te reo Māori and English.<sup>8</sup>

ERO’s main instruments of assessment are regular three-yearly reviews of the quality of education and care, augmented by supplementary reviews, which are reported to Government, parents, whānau, and local communities.<sup>9</sup> We turn now to an examination of ERO’s system of performance and compliance reviews, the manner in which reviews are undertaken, and the outcomes they have for kōhanga reo. ERO’s review regime was the subject of wide-ranging and detailed complaint by the claimants and vigorous rebuttal by ERO and the Crown.

The evidence in relation to review processes addressed ERO’s approach to reviews and, particularly, the place of that review work within the Government’s wider educational priorities. Evidence was also presented about ERO’s Māori review services team, Te Uepū ā-Motu, and the frameworks it has used to review individual kōhanga reo. In this chapter we consider in particular:

- ▶ ERO’s statutory mandate and role;
- ▶ the development of the review framework and criteria, in particular the extent of consultation with and input from the Trust and kōhanga reo;
- ▶ the consistency of the framework and criteria with the kaupapa of the kōhanga reo movement;
- ▶ the consistency and clarity of ERO’s review methodology and the fit between self-review, regular external review, and supplementary review;
- ▶ the orientation and quality of the review process, working relationships, and opportunities for problem-solving;
- ▶ ERO’s capability for conducting reviews of kōhanga reo; and
- ▶ the conclusions and recommendations of ERO reviews, and the consequences for kōhanga reo.

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5. Education Act 1989 s 324

6. Education (Early Childhood Centres) Regulations 1990

7. Document A56 (Graham Stoop, brief of evidence, 15 February 2012), p 5

8. Document A56 (Graham Stoop, brief of evidence, 15 February 2012), p 10

9. Document A56 (Graham Stoop, brief of evidence, 15 February 2012), pp 1–2

**10.1 THE CLAIMANTS' POSITION**

Since the incorporation of kōhanga reo into the ECE regime in the early 1990s, ERO has been the principal official source of information on the performance and regulatory compliance of kōhanga reo for whānau and parents, the public, and responsible Crown agencies. The claimants say that kōhanga reo have been reviewed in terms of an ECE framework 'that is inconsistent with their kaupapa' and that sets educational objectives that kōhanga reo were not designed to meet.<sup>10</sup> On the ground, most ERO reviewers, they say, compound that inconsistency by interpreting the ECE regulations and evaluation criteria with insufficient regard to the kaupapa of kōhanga reo and their cultural context.<sup>11</sup>

Claimant counsel criticised ERO on a number of grounds, in particular:

- ▶ that at the national level it has failed to consult adequately with the Trust;
- ▶ that it has exacerbated a lack of clarity in the ECE regulations and licensing criteria by not developing clear processes for reviewing kōhanga reo, notably for supplementary reviews;
- ▶ that where kōhanga reo fail to undertake adequate self-reviews, the cause is often ERO's failure to set clear expectations;
- ▶ that at times ERO lacks the staff capability to undertake adequate reviews of kōhanga reo; and
- ▶ that key indicators of kōhanga reo performance, especially the standard of te reo me ngā tikanga Māori achieved, lie outside the scope of ERO reviews.<sup>12</sup>

In advancing their case, the claimants relied principally on evidence given by a number of kōhanga reo witnesses, Trust staff, and ERO officials, and on a comparative analysis of ERO reviews undertaken by Arapera Royal-Tangaere.<sup>13</sup> They pointed to evidence of adverse consequences for the kōhanga reo movement in:

- ▶ widespread misunderstandings between kōhanga reo whānau and ERO officials on the purpose, process, timing, and standards of reviews;
- ▶ no or insufficient feedback on aspects of kōhanga reo performance that lie outside the terms of reference for ERO reviews, above all as to the quality of language transmission; and
- ▶ harm to the kaupapa arising from the enforced adaptation by kōhanga reo of their premises and practices to fit the ECE compliance obligations on which their review results and ultimately their licences have depended.<sup>14</sup>

Claimant counsel argued that the inadequacies of the review regime arose primarily from a failure on the part of the Crown to inform itself. This failure, the claimants said,

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10. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 88

11. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 88

12. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 89

13. Document A49 (Arapera Royal-Tangaere, 'Comparative Review of Education Review Office Reports', 2011), pp 45–57

14. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 88–91, 96, 98, 128–129

breached the Crown's Treaty obligations to exercise 'good kāwanatanga' by ensuring that the regulatory framework was properly consulted on, clearly expressed, and 'consistently applied'.<sup>15</sup> The claimants alleged that the cumulative consequences of a review regime geared to ECE compliance were profound and had reduced the ability of kōhanga reo whānau and kaumātua to fulfil their commitment to the kaupapa.<sup>16</sup>

#### 10.2 THE CROWN'S POSITION

In reply, the Crown responded under two general headings: ERO's approach to its reviewing of kōhanga reo; and the development and implementation of the *Framework for Kōhanga Reo Reviews* (the *Framework*) and the associated *Evaluation Indicators for Education Reviews in Kōhanga Reo* (the *Evaluation Indicators*).<sup>17</sup>

Crown counsel described ERO's role as one of evaluation, not policy-making or enforcement. Its focus was on the quality of education and the quality and safety of care.<sup>18</sup> Although assessing the acquisition of te reo Māori was not amongst the purposes of its reviews, counsel argued that reviewers could comment on 'observable language acquisition' and that they gave plenty of attention to the transmission of te reo me ngā tikanga Māori in kōhanga reo practice.<sup>19</sup>

Counsel emphasised the importance of ERO's statutory independence from the Crown and other stakeholders to its ability to assure the accountability of ECE services to the Crown for the appropriate use of Government funds and to parents, whānau, and the wider community for the quality of education and care. Towards that end, ERO ensured transparency by publishing its reviews and its standards and processes.<sup>20</sup>

Crown counsel submitted that most aspects of the review regime were clearly stated, and not confusing and subjective as alleged.<sup>21</sup> The *Framework* differentiated between self-review, whereby kōhanga reo whānau set their own goals and assessed their effectiveness, and self-audit, which focused more narrowly on compliance with legal obligations.<sup>22</sup> Counsel portrayed ERO's external reviews as geared to assisting and strengthening the self-review process and fulfilment of kōhanga reo priorities. Reviews identified strengths as well as

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15. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 89

16. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 89–90

17. Document A57 (ERO, *Framework for Kōhanga Reo Education Reviews: Education Reviews in Kōhanga Reo* (Wellington: ERO, 2004), pp 1–30; doc A57 (ERO: *Evaluation Indicators for Education Reviews in Kōhanga Reo: Education Reviews in Kōhanga Reo* (Wellington: ERO, 2005, revised 2006)), pp 31–84

18. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 87

19. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 104

20. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 87–88

21. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 88

22. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 88

opportunities for improvement, which might be identified by the whānau as well as by the reviewers.<sup>23</sup>

On the vexed question of supplementary reviews, Crown counsel stated that they were required when ERO considered that a kōhanga reo needed further monitoring or support in addressing areas of concern before the next three-yearly regular review became due.<sup>24</sup> The grounds for a supplementary review could arise from any part of the broad scope set by the *Framework* and the *Evaluation Indicators*, and were thus not restricted to issues of compliance.<sup>25</sup> Counsel pointed to the strengthening of capability for self-review as a key reason for undertaking supplementary reviews. Such reviews might therefore have developmental purposes and were not necessarily indicators of a poor quality of service.<sup>26</sup>

ERO's review methodology is based on the *Framework* and the *Evaluation Indicators*. These, Crown counsel argued, were developed between 2002 and 2005 with Trust and kōhanga reo participation in a consultative and cooperative process that involved a joint working party, a series of hui, trialling in kōhanga reo, and a training programme.<sup>27</sup> Counsel pointed to recognition of the kōhanga reo kaupapa in the *Framework* and to the inclusion of quality indicators distinctive to kōhanga reo. The Crown argued that the dedicated review framework followed by ERO recognises the distinct kaupapa of kōhanga reo.<sup>28</sup>

Counsel described the conduct of reviews as a collaborative and respectful process undertaken kanohi ki te kanohi, in which kōhanga reo whānau participated fully, set the review focus, could nominate a kaimahi to the review team, received a report-back of the preliminary findings, and were supplied with the draft report for comment.<sup>29</sup> Counsel denied that the *Framework* and *Evaluation Indicators* were used as a prescriptive checklist; rather, they served as a flexible guide for discussion.<sup>30</sup> The kōhanga reo kaupapa, cultural practice, and te reo transmission featured prominently and generally positively in many reviews.<sup>31</sup> Counsel described working relationships as generally good at both district and national levels. There were informal channels for raising complaints, on which ERO had demonstrated its willingness to act where warranted.<sup>32</sup>

ERO was, counsel considered, currently well equipped for conducting reviews of kōhanga reo, with an all-Māori review team well versed in tikanga Māori and the kōhanga reo kaupapa. Half were proficient te reo speakers and all had a good understanding. ERO had a

23. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 88–89

24. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 90

25. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 90

26. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 92

27. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 96–99

28. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 58–59

29. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 100–102

30. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 102

31. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 107

32. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 105



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rigorous professional development programme, performance management of staff, and peer review appraisal of documents.<sup>33</sup>

### 10.3 TRIBUNAL ANALYSIS AND FINDINGS

Arising from these polarised positions, we find two associated questions that run through our analysis in the following sections. One is the extent to which the reviewing methodology and practice reflects the regulatory and licensing regime that set the framework for its assessments of kōhanga reo. The other is to what extent, being independent of the Ministry of Education, the reviewing agency's practice helped or hindered adherence to the kōhanga reo kaupapa and the achievement of its goals.

#### 10.3.1 ERO's mandate and role

The incorporation of the kōhanga reo movement into the ECE sector brought its operations under the scrutiny of ERO. Provisions relating to ERO first appeared in the Education Act when part 17 was added by the Education Amendment Act 1990.<sup>34</sup> Section 230 stated that the Chief Review Officer, who heads ERO, was to inquire into and report to the Minister at intervals of not less than three years on the elimination of unnecessary barriers to student progress; programmes for achieving equal employment opportunities for different groups of persons; programmes to attract students from under-represented or disadvantaged groups; and the success rates of students.<sup>35</sup> Section 231 gave the Chief Review Officer powers to require information and documents to be produced.<sup>36</sup>

In 1993, part 17 was replaced by the current part 28 of the Education Act 1989.<sup>37</sup> Part 28 more clearly defines ERO's powers and functions. It establishes the function of the Chief Review Officer for administering reviews of the performance of educational organisations and reports thereon to the Minister; ERO's powers of entry and inspection; and the role and responsibilities of its review officers.<sup>38</sup>

For several years after 1990, mainstream ECE standards and regulatory compliance set the framework for ERO reviewing. The Government's *Statement of Desirable Objectives and Practices*, to which all chartered ECE services had to adhere, outlined general educational

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33. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 103–104

34. Education Amendment Act 1990 (no 60), s 39

35. Education Amendment Act 1990 (no 60), s 39

36. Education Amendment Act 1990 (no 60), s 39

37. Education Amendment Act 1993 (no 51), s 25, adding the current pt 28 (ss 323–328) of the Education Act 1989

38. Education Amendment Act 1993 (no 51), Education Act 1989, Part 28, ss 323–328.

and operating standards that made no reference to kōhanga reo or te ao Māori.<sup>39</sup> Early ERO reviews tended to focus on regulatory compliance.<sup>40</sup>

Curriculum and charter documents specific to kōhanga reo were produced in the mid-1990s and provided a starting point for a revision of kōhanga reo assessment practices. *Te Korowai*, prepared by the Trust and signed with the Ministry in 1995, established the Trust as kaitiaki of all kōhanga reo and served as the Trust's charter agreement with the Ministry in fulfilling the requirements of the *Statement of Desirable Objectives and Practices*.<sup>41</sup> The following year saw the publication of *Te Whāriki*, for which the Trust contributed substantial input, as the bicultural national ECE curriculum. It had a section in Māori specifically for kōhanga reo and any other Māori immersion services.<sup>42</sup> Although both documents reflected compromises between the Ministry and the Trust, ERO now had reference points strongly rooted in mātauranga Māori and the Trust's kōhanga reo kaupapa.

The legal requirements of the ECE regulations continued to be a focus of ERO compliance reviewing. The wide-ranging coverage of the regulations, with which most of which ERO reviewers had responsibility for assuring compliance, risked dominating the review agenda. Those which kōhanga reo whānau considered to conflict with kōhanga reo tikanga and practice generated an interface of tension between reviewers and whānau. In its 1997 national review of quality in kōhanga reo, ERO observed that the principal areas of difficulty for kōhanga reo whānau, and for the Trust in providing support, guidance, and quality assurance, were in regulatory compliance, which ERO was required to assess against the 1990 regulations.<sup>43</sup> One of these was ensuring that they kept their educational programme up to date with ECE practice in providing 'a range of developmentally appropriate activities'.<sup>44</sup>

ERO found that between 10 and 30 per cent, and occasionally 40 per cent or more, of kōhanga reo needed to improve their compliance with one or more of the prescribed regulatory standards. These included safe working conditions, job descriptions and grievance procedures, staff health, ratio of adults to children, a safe indoor and external environment for children, first aid supplies, parental permission for medicine, excluding sick children, handling suspected child abuse, attendance and excursion records, a written policy on child misbehaviour, safe and approved car travel, supervision of sleeping children, financial management and budgeting, and involvement of parents, caregivers, and whānau.<sup>45</sup> At the same

39. Ministry of Education, 'Statement of Desirable Objectives and Practices for Chartered Early Childhood Services', 29 November 1990, *New Zealand Gazette*, 6 December 1990, no 213, pp 4582–4585

40. Document A36 (Harata Gibson, first brief of evidence, 22 December 2011), p 17; doc A78, appendix (ERO, 'Overview Analysis: Assurance Audits of Te Kohanga Reo', 25 June 1993), pp 123–124

41. Document A44 (ERO, 'Early Childhood Monograph: The Quality of Education and Care in Kōhanga Reo', March 2008), p 551

42. Document A64 (Ministry of Education, *Te Whāriki: He Whāriki Mātauranga Mō Ngā Mokopuna o Aotearoa. Early Childhood Curriculum*, (Wellington: Learning Media, 1996)

43. Document A81 (ERO, 'What Counts as Quality in Kohanga Reo', publication no 6, winter 1997), p 555

44. Document A81 (ERO, 'What Counts as Quality in Kohanga Reo', Publication No 6, winter 1997), p 555

45. Document A81 (ERO, 'What Counts as Quality in Kohanga Reo', publication no 6, winter 1997), pp 555–562

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time, the quality of the key outcome of kōhanga reo – children confident in te reo me ngā tikanga Māori – was outside the scope of ERO’s reviewing brief.

ERO was assessing kōhanga reo through a mainstream early childhood lens with little refocusing on the physical and cultural environment within which kōhanga reo operated, especially on marae and in rural areas. Describing ERO’s approach in the 1990s, ERO’s current review services manager, Lynda Watson, told us:

Previously we used a different approach that was predominantly – it was still about evaluation and it still had at its core intent, allowing people to share their views about what was going on in the kōhanga. The difficulty . . . was that the methodology could be, and predominantly was more a mainstream view than the current methodology we have . . . We attempted back then to get at the kaupapa but didn’t do a great job . . .<sup>46</sup>

More recently, ERO has developed a separate framework for kōhanga reo reviews. Formal ERO reviews are intended to complement a process of self-review and self-audit that kōhanga reo, in common with other ECE centres, are required to undertake under ECE regulations.<sup>47</sup> Each year ERO undertakes between 120 and 150 reviews of kōhanga reo.<sup>48</sup> The processes and indicators ERO follows when a kōhanga reo is scheduled for a review are set out in the *Framework* and the *Evaluation Indicators*.<sup>49</sup> The *Guidelines for Kōhanga Reo Whānau Management Assurance Statement and Self Audit Checklists* (the *Guidelines*) also assist kōhanga reo whānau to undertake the self-audit process (see ERO’s review methodology – self-review, external review, and supplementary review section, below).<sup>50</sup>

According to Dr Graham Stoop, ERO’s chief review officer, the review approach focuses on how whānau managers contribute to the learning, development, safety, and well-being of mokopuna and the learning and development of whānau. Its review approach incorporates the philosophies of kōhanga reo.<sup>51</sup> The kōhanga reo review process was developed in consultation with the Trust, although the Trust argues that this process was never completed to its satisfaction.<sup>52</sup> The Crown’s evidence is that in recent years ERO has, through a consultative process, developed a review framework, criteria, and methodology specifically

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46. Lynda Watson, under questioning by the Tribunal, second week of hearing, 23 March 2012 (transcript 4.1.4, p 665)

47. Document A56 (Graham Stoop, brief of evidence, 15 February 2012), pp 7–8

48. Document A56 (Graham Stoop, brief of evidence, 15 February 2012), p 5

49. Document A56 (Graham Stoop, brief of evidence, 15 February 2012), p 7; doc A57 (ERO, *Framework for Kōhanga Reo Education Reviews: Education Reviews in Kōhanga Reo* (Wellington: ERO, 2004)), pp 1–30; doc A57 (ERO, *Evaluation Indicators for Education Review in Kōhanga Reo: Education Reviews in Kōhanga Reo* (Wellington: ERO, 2005, revised 2006)), pp 31–84

50. Document A57 (ERO, *Guidelines for Kōhanga Whānau Management Assurance Statement and Self Audit Checklist* (Wellington: ERO, 2010)), pp 221–249

51. Document A56 (Graham Stoop, brief of evidence, 15 February 2012), p 8

52. Document A56 (Graham Stoop, brief of evidence, 15 February 2012), p 8; submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 95

tailored to kōhanga reo and flexibly attuned to their kaupapa.<sup>53</sup> The claimants counter with evidence of excessive and alienating regulations and culturally insensitive standards, insensitively reinforced by an uncomprehending and unsympathetic reviewing regime.<sup>54</sup>

### 10.3.2 Standardisation of assessment methodologies to measure quality

ERO defines high-quality ECE in terms of assessment measures that respond to children's learning. In high-quality services, according to ERO, it is the interaction between a number of features that underpins the quality of education and care. These include leadership, philosophy, vision, relationships and interactions, teaching and learning, assessment and planning, professional learning, qualifications and support, self-review, and management.<sup>55</sup>

ERO's approach has attempted to balance ECE theory and practice to assess quality in Māori ECE services. In its 1997 publication, *What Counts as Quality in Kōhanga Reo*, it began its discussion by noting that kōhanga reo were one of the largest providers of ECE services at that time, comprising 20 per cent of licensed services overall, and the largest provider of such services to Māori. The report noted that there were 704 licensed and 63 unlicensed kōhanga reo. The latter were to remain unlicensed until they met 'the quality standards' required of licensed ECE services. ERO noted that 46 per cent of Māori children enrolled at a licensed ECE service attended kōhanga reo.<sup>56</sup> The ERO report considered different factors to ascertain what quality is in kōhanga reo.<sup>57</sup> Along with the emphasis on kaupapa and immersion language education, factors such as curriculum, good administration practices, financial management, health and safety issues, and whānau involvement were also considered to be vital factors in determining the quality of kōhanga reo.<sup>58</sup> The focus for ERO, in terms of providing 'high quality' education, lay in ensuring that educational programmes were keeping up with ECE practice and children's needs.<sup>59</sup> Its next section reviewed what counts as quality in kōhanga reo, which appear to be a mix of Trust and ECE goals around kaupapa, administration, curriculum, financial, and personnel management, whānau involvement and innovations.<sup>60</sup> In concluding, ERO declared that there were challenges for the kōhanga reo movement, including for all those involved in providing high-quality immersion ECE, as well as challenges specifically for the Trust to increase the number of kōhanga reo entitled to receive funding at the higher 'quality' subsidy rate.<sup>61</sup>

53. Document A56 (Graham Stoop, brief of evidence, 15 February 2012), p 8

54. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 95–96

55. Document C11 (ERO, 'Quality in the Early Childhood Services', 2010) p 4

56. Document A81 (ERO, 'What Counts as Quality in Kohanga Reo', publication no 6, winter 1997), pp 542–543

57. Document A81 (ERO, 'What Counts as Quality in Kohanga Reo', publication no 6, winter 1997), pp 551–553

58. Document A81 (ERO, 'What Counts as Quality in Kohanga Reo', publication no 6, winter 1997), pp 551–553, 555–562

59. Document A81 (ERO, 'What Counts as Quality in Kohanga Reo', publication no 6, winter 1997), p 555

60. Document A81 (ERO, 'What Counts as Quality in Kohanga Reo', publication no 6, winter 1997), pp 563–564

61. Document A81 (ERO, 'What Counts as Quality in Kohanga Reo', Publication No 6, winter 1997), p 567

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In a more recent unpublished ERO report entitled *'The Quality of Education and Care in Kōhanga Reo'* (March 2008), individual ERO reports were reviewed covering 55 licensed kōhanga reo, representing 11 per cent of the total number of such services. Kōhanga reo numbers by this stage (2007) had declined to 13 per cent of the total number of licensed ECE services and, with their smaller average roll size, to only 5 per cent of the total child enrolment in licensed ECE services and 26 per cent of Māori children in ECE.<sup>62</sup>

ERO considered the overall performance of kōhanga reo, noting that a majority of kōhanga reo showed good support for a child's language development. This 'included the provision of stimulating activities for children and the use of high-quality reo by kaimahi'.<sup>63</sup> Other benefits of the kōhanga reo kaupapa for quality education were noted.<sup>64</sup> However, ERO continued to find weaknesses in kōhanga reo performance in terms of programme planning, assessment and evaluations, and regulatory compliance. These findings followed a similar pattern to those for 2000.<sup>65</sup>

**10.3.3 Impact of ERO reviews**

ERO's evaluations and reviews of kōhanga reo are having an enormous impact on perceptions concerning a lack of quality in kōhanga reo. As we noted in chapter 7, the Wai 262 Tribunal referred to ERO work from the 1990s as finding that the quality of teaching and even the use of te reo Māori was distinctly lacking.<sup>66</sup> What the ERO reports do highlight is a declining number of fluent speakers and teachers of Māori, and kaumātua. Where such resources were present, ERO reported in 1997 that at least one kōhanga reo was achieving a higher quality te reo Māori learning environment.<sup>67</sup> Other kōhanga reo were not able to consistently provide such a level of instruction, a matter that the Wai 262 Tribunal also noted.<sup>68</sup>

This issue was covered in research commissioned by the Ministry of Education between 2004 and 2006, which resulted in a report entitled *Quality in Parent/Whānau Led Services*

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62. Document A81 (ERO, 'Early Childhood Monographs: The Quality of Education and Care in Kohanga Reo', 2008), p 573; Ministry of Education, 'Education Counts', Ministry of Education, <http://www.educationcounts.govt.nz/>, accessed 5 October 2012

63. Document A81 (ERO, 'Early Childhood Monographs: The Quality of Education and Care in Kohanga Reo', 2008), p 576

64. Document A81 (ERO, 'Early Childhood Monographs: The Quality of Education and Care in Kohanga Reo', 2008), pp 576–579

65. Document A81 (ERO, 'Early Childhood Monographs: The Quality of Education and Care in Kohanga Reo', 2008), pp 583–584. ERO was referring to a section on kōhanga reo in the report it published in 2000 on *What Counts as Quality in Early Childhood Services?*

66. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), p 408

67. Document A81 (ERO, 'What Counts as Quality in Kohanga Reo', publication no 6, winter 1997), p 556

68. Document A81, (ERO, 'What Counts as Quality in Kohanga Reo', publication no 6, winter 1997), p 555; Waitangi Tribunal *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), p 408

published in June 2006.<sup>69</sup> That report, jointly undertaken by researchers from the Trust and the New Zealand Council for Education Research, identified a number of matters relevant to kōhanga reo as being ‘useful aspects to consider in policy and service work aimed at raising quality’.<sup>70</sup> These included recruiting and retaining fluent qualified kaiako and kaumātua to work in kōhanga reo to support children’s learning of te reo and tikanga Māori. The authors identified the need to ‘offer pathways to parents for their own learning’ and to encourage ‘parent involvement in whānau-based learning wānanga’. They also considered that all kōhanga reo should be offered ‘ongoing training and professional development focused on the curriculum, planning, assessment and evaluation’. They commented that, while the Trust ‘has a network and a system of support for kōhanga reo whānau, focused on improving the quality of te reo, and on enabling whānau to understand their role, there are barriers to achieving these aims. They reported:

Individual kōhanga reo whānau, who are responsible for recruiting and retaining kaiako, are finding it increasingly difficult to recruit fluent, qualified (Tohu Whakapakari) kaiako, or even fluent kaiako, unless a competitive salary is offered. Similarly, the retention of kaiako was related to salary levels.<sup>71</sup>

Those kōhanga reo in the study which said they paid ‘market rates’ had to charge higher fee levels than others.<sup>72</sup> According to the report, ‘providing ongoing training on te reo and the curriculum through Whakapiki Reo and Te Whāriki contracts with the Ministry of Education also has limitations. Lack of availability of expertise meant that not all kōhanga reo can receive support at the kōhanga reo or purapura [cluster] levels’. They noted that ‘an expansion of the Trust’s role to review all kōhanga reo is limited by resourcing, both human and financial.’<sup>73</sup> They concluded that ‘it will take a long time to build up the expertise.’<sup>74</sup>

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69. Linda Mitchell, Arapera Royal-Tangaere, Diane Mara and Cathy Wylie, *Quality in Parent/Whānau-led Services, and the Factors Which Support it: Technical Report* (Wellington: New Zealand Council for Educational Research and Te Kōhanga National Trust, 2006))

70. Document A81 (Linda Mitchell, Arapera Royal-Tangaere, Diane Mara and Cathy Wylie, *Quality in Parent/Whānau-led Services: Summary Research Report* (Wellington: Ministry of Education, 2006)), p137

71. Document A81 (Linda Mitchell, Arapera Royal-Tangaere, Diane Mara and Cathy Wylie, *Quality in Parent/Whānau-led Services: Summary Research Report* (Wellington: Ministry of Education, 2006)), p138

72. Document A81 (Linda Mitchell, Arapera Royal-Tangaere, Diane Mara and Cathy Wylie, *Quality in Parent/Whānau-led Services: Summary Research Report* (Wellington: Ministry of Education, 2006)), p138

73. Document A81 (Linda Mitchell, Arapera Royal-Tangaere, Diane Mara and Cathy Wylie, *Quality in Parent/Whānau-led Services: Summary Research Report* (Wellington: Ministry of Education, 2006)), p138. Whakapiki i te Reo is one of a range of professional development and language programmes aimed at increasing the number of teachers proficient in te reo Māori.

74. Document A81 (Linda Mitchell, Arapera Royal-Tangaere, Diane Mara and Cathy Wylie, *Quality in Parent/Whānau-led Services: Summary Research Report* (Wellington: Ministry of Education, 2006)), p138



**10.3.4 The development of the review framework and evaluation criteria**

For more than a decade ERO's review methodology was generic and, however flexibly applied, not explicitly adapted to the kōhanga reo environment.<sup>75</sup> Between 2002 and 2005, however, ERO sought to develop a revised methodology specifically for reviewing kōhanga reo, and to bring it into line with the 'assess and assist' approach, with its emphasis on self-review and self-audit, and on stakeholder participation.<sup>76</sup> The Crown described this process as fully consultative, with the Trust closely involved.<sup>77</sup> The claimants described it as token consultation with little prior input from the Trust.<sup>78</sup>

Ms Watson told us about her work on the development of evaluation standards for kura kaupapa Māori and kōhanga reo since 2000. A kura kaupapa working party was developed in 2000 between Te Rūnanganui o Ngā Kura Kaupapa Māori o Aotearoa, ERO, and the Ministry.<sup>79</sup> This group had a number of discussions about appropriate evaluation models and developed a review methodology, known as *Te Aho Matua Kura Kaupapa Māori*.<sup>80</sup> The agreed methodology and criteria were said to have provided impetus for change within ERO and were formalised in a report to the Minister. This work informed the evaluation processes for kōhanga reo.<sup>81</sup>

An agreement was entered into between the Trust and ERO in 2001. That agreement records that a working party was to be established to 'consider and examine review processes developed by the kura kaupapa working party as a basis for developing a methodology for the review of kōhanga reo'. The chief executives of both ERO and the Trust signed the agreement in September 2001. The agreement provided for joint representation on the working party.<sup>82</sup>

Ms Watson stated that the key immersion evaluation features developed for *Te Aho Matua Kura Kaupapa Māori*, and then drawn on in working with the Trust, included:

- ▶ evaluation principles that reflect the importance and resurgence of te reo Māori, tikanga Māori and the developmental nature of the immersion education setting;
- ▶ a review process that acknowledges the marae protocol of encounter, ongoing dialogue, and the value of kōrero kanohi ki te kanohi;

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75. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 88; doc A53 (Lynda Watson, brief of evidence, 15 February 2012), pp 2, 4

76. Document A56 (Graham Stoop, brief of evidence, 15 February 2012), pp 6–7; doc A57 (ERO, *Framework and Resources for Early Childhood Education Reviews: Education Reviews in Early Childhood Education Services*, (Wellington: ERO, 2002)), pp 191–193

77. Document A56 (Graham Stoop, brief of evidence, 15 February 2012), p 8; submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 96–97

78. Document A85 (Arapera Royal-Tangaere, third brief of evidence, 7 March 2012), pp 12–13; doc A84 (Titoki Black, third brief of evidence, 7 March 2012), pp 8–9

79. Document A53 (Lynda Watston, brief of evidence, 15 February 2012), pp 2–3

80. Document A53 (Lynda Watston, brief of evidence, 15 February 2012), pp 2–3

81. Document A53 (Lynda Watston, brief of evidence, 15 February 2012), p 3

82. Document A57 ('Te Kōhanga Reo National Trust and the Education Review Office Joint Working Party' terms of reference, 19 September, 2001), pp 533–534



- ▶ specific indicators identifying the unique context of the immersion environment; and,
- ▶ a TRN [Ngā Kura Kaupapa Māori o Aotearoa] representative as kaitiaki of *Te Aho Matua* [*Kura Kaupapa Māori*] in the review team . . . to support whānau with their understanding of self review, enhance the complementary nature of external evaluation and support kura kaupapa to build internal evaluation capability.<sup>83</sup>

According to Ms Watson, ‘throughout 2002–2005, ERO worked with members appointed by the Trust on the development of Te Kōhanga Reo methodology and indicators. This included a reciprocal training and trial reviews with members of the Trust and ERO’. A draft framework and evaluation indicators were subjected to a joint training programme, field testing, and a number of hui at which kaumātua, kaimahi, and kōhanga reo gave feedback.<sup>84</sup>

In 2004, ERO published its *Framework for Kōhanga Reo Education Reviews*, which it described as having been developed in consultation with the Trust.<sup>85</sup> Ms Watson later acknowledged the framework and indicators that followed developed on the basis of informal meetings and hui she had had with kuia and kaumātua and other representatives of the Trust.<sup>86</sup> She would not, however, concede that there was no formal consultation during the planning and development of this framework before it was published.<sup>87</sup> We accept the evidence of the Trust on this point, however, as we expect something as important as this framework and indicators should have been put to the working party established under the 2001 agreement. Ms Royal-Tangaere criticised the level of ERO’s consultation with the Trust in developing these evaluation standards:

I do not agree that we ‘developed’ the methodology and indicators together. Rather, what occurred was that ERO had already done the work and simply presented these to us at a series of hui. In other words, they did not consult the Trust first to get ideas but, rather, they had already done the drafting which I believe they based upon a kura kaupapa model they had already established.<sup>88</sup>

We find that the process for developing the methodology did not include any substantive consultation with a formal opportunity for input from the Trust and kōhanga reo whānau, in accordance with the agreement between ERO and the Trust. Nor did it fulfil the partnership envisaged in the working party set up under agreement. The Trust representatives were not involved in the scoping and development of the *Framework* and *Evaluation Indicators*.

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83. Document A53 (Lynda Watston, brief of evidence, 15 February 2012), p 3

84. Document A53 (Lynda Watston, brief of evidence, 15 February 2012), pp 3–4

85. Document A57 (ERO, *Framework for Kōhanga Reo Education Reviews: Education Reviews in Kōhanga Reo* (Wellington: ERO, 2004)), p 6

86. Lynda Watson under questioning by Crown counsel and the Tribunal, second week of hearing, 23 March 2012 (transcript 4.1.4, pp 647–650, 666)

87. Lynda Watson, under questioning by claimant counsel, second week of hearing, 23 March 2012 (transcript 4.1.4, pp 652–655)

88. Document A85 (Arapera Royal-Tangaere, third brief of evidence, 7 March 2012), p 13

The initial design and development had already taken place before it was presented to the Trust. This was not true partnership, as it limited the Trust's ability to influence the development process.<sup>89</sup>

Be that as it may, the *Framework* has been used since 2004. It has four main strands: kōhanga reo priorities; planning and evaluation; areas of specific Government interest regarding the effects of policies; and compliance.<sup>90</sup> One section of the *Framework* concerns quality, with ERO linking this to 'whānau management, professional kaiako and high-quality programmes underpinned by the philosophy of kōhanga reo, *Te Whāriki* and the involvement of communities.'<sup>91</sup> After the *Framework* was adopted, ERO published the *Evaluation Indicators* in May 2005. ERO also publishes a *Manual of Standard Procedures for Education Reviews*, which has been regularly updated since its first edition in 1990.

### 10.3.5 The evaluation indicators

In 2005, ERO published a series of evaluation indicators which aimed to inform the judgements that review officers make about the quality of experiences within a kōhanga reo programme. These were revised in 2006 and published as *Evaluation Indicators for Education Reviews in Kōhanga Reo*.<sup>92</sup> The 2006 *Framework* adapted ERO's general framework for ECE reviews to the kōhanga reo kaupapa and institutional context. It made prominent reference to the principles of *Te Aho Matua*, which had been legislated in 1999 as the foundation statement for kura kaupapa Māori with Te Rūnanga Nui o Ngā Kura Kaupapa Māori as its kaitiaki.<sup>93</sup> In turn, the revised *Evaluation Indicators* drew heavily on the guiding themes, principles, and aims of *Te Korowai*, stating explicitly that 'ERO has designed its evaluation indicators to support the kōhanga reo philosophy and approach.'<sup>94</sup>

The *Evaluation Indicators* include te reo components, but do not include an assessment of the quality of te reo achieved.<sup>95</sup> The focus is on child learning and behaviour; other aspects feature as derivative or supporting roles rather than in their own right.<sup>96</sup> Space and effort is

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89. Document A84 (Titoki Black, third brief of evidence, 7 March 2012), pp8–9

90. Document A57 (ERO, *Framework for Kōhanga Reo Education Reviews: Education Reviews in Kōhanga Reo* (Wellington: ERO, 2004)), pp10–12

91. Document A57 (ERO, *Framework for Kōhanga Reo Education Reviews: Education Reviews in Kōhanga Reo* (Wellington: ERO, 2004)), pp19–20

92. Document A57 (ERO, *Evaluation Indicators for Education Reviews in Kōhanga Reo: Education Reviews in Kōhanga Reo* (Wellington: ERO, 2005, revised 2006)), pp31–84; doc A53 (Linda Watson, brief of evidence, 15 February 2012), p4

93. Education Act 1989, ss155 A & B; doc A57 (ERO, *Framework for Kōhanga Reo Education Reviews: Education Reviews in Kōhanga Reo*, (Wellington: ERO, 2004)), pp5–6

94. Document A57 (ERO, *Evaluation Indicators for Education Reviews in Kōhanga Reo: Education Reviews in Kōhanga Reo* (Wellington: ERO, 2005, revised 2006)), pp36–40

95. Document A57 (ERO, *Evaluation Indicators for Education Reviews in Kōhanga Reo: Education Reviews in Kōhanga Reo* (Wellington: ERO, 2005, revised 2006)), pp39–40

96. Document A57 (ERO, *Evaluation Indicators for Education Reviews in Kōhanga Reo: Education Reviews in Kōhanga Reo* (Wellington: ERO, 2005, revised 2006)), p43

devoted to the evaluation of learning and planning rather than compliance, despite compliance issues in ERO reviews being a main source of complaint.<sup>97</sup> Although these documents give substantial recognition to the kōhanga reo kaupapa, claimants argued that their application by ERO review officers on the ground was not always fulfilled. While tikanga and manaakitanga are explicitly recognised in the *Framework* and *Evaluation Indicators*, Harata Gibson, the Trust's general manager, told us:

Never in any reports that I have read, has ERO ever acknowledged or commented on te reo o ngā mokopuna or tikanga Maori. Tikanga includes taking shoes off at the door, a warm greeting on arrival, words of welcome, the cups of tea and meals they are offered, the way in which our kaimahi show aroha and manaaki to the mokopuna and manuhiri. I find ERO's failure to inform itself about even the most basic kaupapa of Kōhanga Reo unacceptable and insulting. All of these basic practices are very important to us as Māori.<sup>98</sup>

### 10.3.6 ERO's review methodology

ERO uses a number of processes to conduct reviews of kōhanga reo, and these are outlined in the *Framework*, *Evaluation Indicators*, and *Guidelines* available to kōhanga reo and the Trust. The *Framework* refers to ERO's dual role to 'assess and assist' by providing information to whānau, communities, and Government 'to inform their decision making', and by assisting kōhanga reo in achieving education standards.<sup>99</sup>

Three aspects of kōhanga reo are reviewed through an ERO report. The first aspect consists of the kōhanga reo whānau's choice of curriculum strands based on Ngā Taumata Whakahirahira in the *Te Whāriki* learning programme.<sup>100</sup>

Claimant witnesses were critical of the ability of ERO and its reviewers to assess their culturally specific performance and outcomes.<sup>101</sup> The unpublished 2008 report '*The Quality of Education and Care in Kohanga Reo*', for example, did not highlight to any significant degree the identified high quality achieved in kaupapa-relevant standards such as te reo development (good support, stimulating activities, high-quality spoken reo), tikanga (warm and friendly interactions, practice reflecting tikanga Māori values), and, where whānau

97. Document A57 (ERO: *Evaluation Indicators for Education Reviews in Kōhanga Reo: Education Reviews in Kōhanga Reo* (Wellington: ERO, 2005, revised 2006)), pp 49–79

98. Document A36 (Harata Gibson, first brief of evidence, 22 December 2011), p 18

99. Document A57 (ERO, *Framework for Kōhanga Reo Education Reviews: Education Reviews in Kōhanga Reo* (Wellington: ERO, 2004)), pp 6–7

100. Document A49 (Arapera Royal-Tangaere, 'Comparative Review of Education Review Office Reports', 2011), p 9

101. Document A49 (Arapera Royal-Tangaere, second brief of evidence, 22 December 2011), p 3; doc A84 (Titoki Black, third brief of evidence, 7 March 2012), pp 9–12; doc A36 (Harata Gibson, first brief of evidence, 22 December 2011), p 18; doc A88 (Heke Huata, brief of evidence, 7 March 2012), pp 6–9

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management was working well, a high level of whānau engagement in decision-making.<sup>102</sup> Kōhanga reo considered that they tended to be marked down on their performance against standards defined in conventional ECE terms.<sup>103</sup> The more explicitly critical remarks in the monograph were directed to such educational aspects as learning programmes (too structured and adult-directed, or not sufficiently responsive to particular group needs); assessment, planning, and evaluation processes (insufficient information collected and used); and the physical learning environment (variable quality). ERO found that its conclusions were close to those of its previous report in 2000 in respect both of areas for improvement and of the proportion of kōhanga reo affected.<sup>104</sup>

The second aspect reviewed is in relation to effective whānau management, high-quality kaiako/kaimahi, a high-quality *Te Whāriki* programme, and positive outcomes for mokopuna.<sup>105</sup> The third aspect concerns compliance, for which ERO reviews four areas to ensure that regulatory compliance standards are met: administration; health, safety and welfare; personnel management; and financial and property management.<sup>106</sup>

**10.3.7 Self-audits and self-reviews**

As part of a greater emphasis on self-assessment, ERO encourages kōhanga reo to undertake self-audits of their compliance with the minimum legal standards.<sup>107</sup> Its aim is to focus its external reviews less on legal compliance and more on service performance and improvement, although it acknowledges the tension between the two functions.<sup>108</sup> Self-auditing is not specifically required by the 2008 licensing criteria, which prescribe a process of self-review. Under ERO's two-step practice, self-auditing thus falls under the self-review prescribed by licensing criterion GMA6, while its own self-review embraces those aspects of the criterion not included in the self-audit.<sup>109</sup>

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102. Document A81 (ERO, 'Early Childhood Monographs: The Quality of Education and Care in Kōhanga Reo', 2008), p 576

103. Document A84 (Titoki Black, third brief of evidence, 7 March 2012), pp 9–12

104. Document A81 (ERO, 'Early Childhood Monographs: The Quality of Education and Care in Kōhanga Reo', 2008), p 583

105. Document A49 (Arapera Royal-Tangaere, 'Comparative Review of Education Review Office Reports', 2011), p 9

106. Document A49 (Arapera Royal-Tangaere, 'Comparative Review of Education Review Office Reports', 2011), p 9

107. Described as a 'Management Assurance Statement' in doc A81 (ERO, 'Early Childhood Monographs: The Quality of Education and Care in Kōhanga Reo', 2008), p 582

108. Document A57 (ERO, *Framework for Kōhanga Reo Education Reviews: Education Reviews in Kōhanga Reo* (Wellington: ERO, 2004)), pp 9–10, 12; doc A57 (ERO, *Framework and Resources for Early Childhood Education Reviews* (Wellington: ERO, 2002)), pp 199–200; doc A53 (Lynda Watson, brief of evidence, 15 February 2012), pp 6–7; doc A56 (Graham Stoop, brief of evidence, 15 February 2012), pp 7–8

109. Document A64 (Licensing Criteria for Kohanga Reo affiliated with Te Kohanga Reo National Trust 2008, Criterion GMA6), p 632

Self-review was written into the 2008 licensing criteria as a standard that ‘helps the service maintain and improve the quality of education and care.’ Documentation required by the standard comprised a review process and its recorded outcomes.<sup>110</sup> This corresponded with long-established kōhanga reo practice in terms of goals 5 and 11 of *Te Korowai*, under which kōhanga reo whānau would undertake a ‘regular review of operations’, involve whānau members and hold monthly whānau hui.<sup>111</sup> ERO positioned its three-yearly external reviews as complementing the process and results of services’ internal self-assessment and as assuring their adequacy.<sup>112</sup>

The licensing criteria’s general requirement for an ECE service to have a written statement of its philosophy exposed a difference over fundamental objectives that ERO reviewers had to bridge. Whereas the criteria require a written statement about ‘the provision of early childhood education and care’, the kōhanga reo movement’s overriding aim is to revitalise te reo me ngā tikanga Māori.<sup>113</sup>

It appears that the distinction between self-review and self-audit is not well understood by kōhanga reo or the Trust. In her analysis of ERO supplementary reviews, Ms Royal-Tangaere concludes that ‘reviewing, amending or updating charter policies was the most frequent compliance issue.’<sup>114</sup> ERO’s 2008 draft monograph recorded that ‘programme evaluation was an area of development for most whānau.’<sup>115</sup> Dr Stoop told us that a lack of capability for self-review was a principal reason for the higher ratio of supplementary reports from kōhanga reo.<sup>116</sup> We query why self-reviews are so important that failure to complete one may generate an ERO supplementary review.

### 10.3.8 Supplementary reviews

The use of supplementary reviews by ERO was a particular bone of contention between claimants and the Crown. Approximately a third of kōhanga reo reviews are supplementary reviews.<sup>117</sup> Supplementary reviews are carried out in ECE services for two main reasons. One

110. Document A64 (Licensing Criteria for Kōhanga Reo affiliated with Te Kōhanga Reo National Trust 2008, Criterion GMA6), p 632

111. Document A84 (Te Kōhanga Reo National Trust Board, *Te Korowai*, undated), pp 442, 455, 465; doc A85 (Arapera Royal-Tangaere, third brief of evidence, 7 March 2012), pp 15–16; doc A49 (Arapera Royal-Tangaere, ‘Comparative Review of Education Review Office Reports’, 2011), pp 56–57

112. Document A56 (Graham Stoop, brief of evidence, 15 February 2012), p 6

113. Document A64 (Licensing Criteria for Kōhanga Reo affiliated with Te Kōhanga Reo National Trust 2008, Criterion GMA5), p 632

114. Document A49 (Arapera Royal-Tangaere, ‘Comparative Review of Education Review Office Reports’, 2011), p 34

115. Document A44 (ERO, ‘Early Childhood Monograph: The Quality of Education and Care in Kōhanga Reo’, March 2008), p 554.

116. Graham Stoop, under questioning by Crown counsel, second week of hearing, 23 March 2012 (transcript 4.1.4, p 603)

117. Document A49 (Arapera Royal-Tangaere, ‘Comparative Review of Education Review Office Reports’, 2011), p 8

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is where an earlier review has identified areas of concern that reviewers judge as needing to be addressed by management or whānau. The other is where the reviewers believe the management of the ECE service or the whānau of the kōhanga reo may need further support or direction before the next three-yearly review.<sup>118</sup> As we discussed in chapter 6, sensitivity to supplementary reviews has been heightened by their use in the ECE Taskforce report as a ‘possible indicator’ of poor quality in kōhanga reo performance.<sup>119</sup> Crown evidence suggested that, in the 1990s and early 2000s, this might have been a reasonable interpretation of ERO’s perception of the need for a supplementary review.<sup>120</sup> Current ERO practice, however, gives them a broader role.<sup>121</sup> As we noted in chapter 6, Dr Stoop rejected the view that supplementary reviews always pointed to poor quality. In his view:

There can be many reasons why we would call a supplementary review . . . [In a kōhanga reo,] you might have 30 families, for example, and six might be involved. Now because whānau participation is so central to *Te Korowai* we would have concerns about that. That is what I am referring to as a developmental reason for calling a supplementary review as opposed to a concern that we might have about compliance or quality, for example.<sup>122</sup>

Dr Stoop and Ms Royal-Tangaere were thus in broad agreement that supplementary reviews reflected ERO’s ‘assess and assist’ approach, in terms of which recommendations for improvement were not necessarily matters of non-compliance or concern.<sup>123</sup> In some cases, according to Dr Stoop:

institutions will even ask for a supplementary review, usually when they themselves feel a need for further guidance and perhaps reassurance that they are on the right track.<sup>124</sup>

The trigger for supplementary reviews was much broader than just points of non-compliance with regulations and could arise from any aspect of the review agenda. Dr Stoop indicated that supplementary reviews were usually called when ERO lacked confidence that an ECE service should be left for the standard length of time between regular reviews in light of an issue that needed to be addressed. He made it clear that, although in his view the regular review process was highly consultative, the decision to recommend a supplementary review

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118. Document A56 (Graham Stoop, brief of evidence, 15 February 2012), pp 5–6

119. Document A4 vol1 (ECE Taskforce, *An Agenda for Amazing Children: Final Report of the ECE Taskforce* (Wellington: Ministry of Education, June 2011)), p 167

120. Document A81 (ERO, ‘Early Childhood Monographs: The Quality of Education and Care in Kōhanga Reo’, 2008), 2008, p 575

121. Document A56 (Graham Stoop, brief of evidence, 15 February 2012), pp 5–6

122. Graham Stoop under questioning by Crown counsel, second week of hearing, 23 March 2012 (transcript 4.1.4, p 600)

123. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), p 90

124. Document A56 (Graham Stoop, brief of evidence, 15 February 2012), p 6

was ultimately a matter for the judgement of the review officers and ERO, consistent with its statutory responsibility.<sup>125</sup>

### 10.3.9 The review process and working relationships

As described by Ms Royal Tangaere, ERO undertakes a thorough review process. ‘The ERO notifies the kōhanga reo by letter and gives that kōhanga reo approximately two months to prepare for their visit. Often, the district office of the National Trust is also notified.’ During the earlier stages of contact ERO provides copies of the *Framework, Evaluation Indicators*, and *Guidelines*. The review officer co-coordinating the visit contacts the kōhanga reo whānau and discusses the review.<sup>126</sup>

This ‘contact enables the whānau to discuss the review requirements at the whānau hui, the tikanga for the visit and nominate those whānau members who will represent the kōhanga [reo].’<sup>127</sup> The whānau management of each kōhanga reo are asked to complete a management assurance statement and a self-audit checklist as part of the review process. The checklist covers compliance requirements in four key areas: administration; health, safety, and welfare; personnel management; and finance. Kōhanga reo whānau attest whether they are meeting their legal requirements and declare that they are in the process of addressing areas of non-compliance in their assurance statement.<sup>128</sup> ERO then uses this information to plan the focus of its review. The more assurance the kōhanga reo whānau can provide with regard to meeting their legal requirements, the more ERO is enabled to focus on other areas of the review such as the identified kōhanga reo priorities and planning and evaluation, material in respect of which is then made available to the ERO review team.<sup>129</sup>

Next, the ERO review team considers the self-review, self-audit and other documents, as well as previous review reports. It ‘works alongside the Trust’s [district kaupapa] kaimahi and begins the investigation . . . stage of the review with the kōhanga whānau.’ The ERO review team ‘meets with the kōhanga reo whānau and reports back [to the whānau] on their findings, discussing areas of good performance and areas for improvement. The team also discusses and develops recommendations to be included in the report with the whānau and

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125. Document A56 (Graham Stoop, brief of evidence, 15 February 2012), pp 5–6

126. Document A49 (Arapera Royal-Tangaere, ‘Comparative Review of Education Review Office Reports’, 2011), p17

127. Document A49 (Arapera Royal-Tangaere, ‘Comparative Review of Education Review Office Reports’, 2011), p17

128. Document A49 (Arapera Royal-Tangaere, ‘Comparative Review of Education Review Office Reports’, 2011), p14

129. Document A49 (Arapera Royal-Tangaere, ‘Comparative Review of Education Review Office Reports’, 2011), p14



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if appropriate will discuss the outcome of the review resulting in either a regular cycle or a supplementary [review].<sup>130</sup>

In the final phase, '[a]n unconfirmed review report is sent to the whānau to consider, discuss, and query with ERO within a [set] period of time. Once the report (including any views from the whānau) is received by ERO a confirmed report is written, sent to the kōhanga whānau and the confirmed report then becomes available to the general public.'<sup>131</sup>

This cycle of initial alert, contact with the Trust's kaimahi, preparatory hui, hui and review inspection, preliminary verbal feedback to kōhanga reo whānau, the whānau response, a draft report for comment, and the final report and translation is generally regarded as best practice and inclusive of the kōhanga reo whānau. ERO decides what the final report recommends.<sup>132</sup>

Ms Gibson was concerned about ERO review criticisms of whānau management. She thought that wider whānau involvement and its contribution to learning was not measured by ERO:

Reviewers seemed to perceive a lack of whānau participation if whānau weren't in attendance at the time of the review or at the time of the ERO report back to whānau. The reviewers tend to neglect the fact that the reviews are a two day event and the report back to the whānau was scheduled for 1 or 2pm – times when most whānau were at work. ERO did not consider that although some whānau don't attend the whānau hui, for various reasons, they still contribute in many ways for instance through korero Māori to the mokopuna, teaching tikanga to mokopuna, making lunches for the Kōhanga, paying koha or fees, contributing other resources, providing advice, support, and maintaining Kōhanga buildings. All these contribute to the practice of whānau learning. ERO never recognised this significant contribution.<sup>133</sup>

Although Ms Gibson welcomed the developments ERO had made to improving its understanding of te reo and tikanga Māori, she stated ERO's practice of sending one person to each review who speaks te reo Māori was a recent development.<sup>134</sup> Vaine Daniels, a kaiako at a kōhanga reo in Porirua, also confirmed that past reviewers had not spoken te reo Māori when they had visited her kōhanga reo.<sup>135</sup>

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130. Document A49 (Arapera Royal-Tangaere, 'Comparative Review of Education Review Office Reports', 2011), p17

131. Document A49 (Arapera Royal-Tangaere, 'Comparative Review of Education Review Office Reports', 2011), p17

132. Document A56 (Graham Stoop, brief of evidence, 15 February 2012), pp 2, 12; Graham Stoop, under questioning by the Tribunal, 23 March 2012 (transcript 4.1.4, p 637)

133. Document A36 (Harata Gibson, first brief of evidence, 22 December 2011), p19

134. Document A86 (Harata Gibson, second brief of evidence, 7 March 2012), p13

135. Document A80 (Vaine Daniels, brief of evidence, 18 January 2012), p5; see also doc A84 (Titoki Black, third brief of evidence, 7 March 2012), pp 4, 16

Recently, some good working relationships have been established at district and national levels. Ms Gibson thought the Trust's relationship with ERO had improved over the last five years and become increasingly positive, with 'open and honest' discussion between ERO and the Trust.<sup>136</sup>

While information is given to kōhanga reo about the review process, the evidence is that many kōhanga reo whānau are confused about how they are being reviewed and what reviewing is for. As Ms Royal-Tangaere told us, ERO's standard processes for kōhanga reo reviews are contained in three wordy documents, which are not in te reo Māori and not whānau-friendly.<sup>137</sup> She explained how whānau are confused by the English terminology and 'have a tendency to believe the statements of the Review Officers and begin replacing Māori cultural practice with "good practice" as interpreted by early childhood or government regulations.'<sup>138</sup>

### 10.3.10 ERO's capability for conducting reviews of kōhanga reo

At hui attended by Ms Watson, kōhanga reo kaumātua emphasised strongly during the process of developing the *Evaluation Indicators* that they had gone some way towards addressing their concerns for the kaupapa, but that much would depend on how they were interpreted on the ground by ERO.<sup>139</sup> Flexibility was needed to make space for variations across whānau, hapū, and iwi. Feedback from whānau was that ERO review staff would need to have not just technical proficiency in te reo Māori but also a good understanding of mātauranga Māori to be equipped to implement the evaluation indicators appropriately. If they lacked sufficient competence, ERO reviewers would need the assistance of kaumātua.<sup>140</sup>

Claimant counsel alleged most ERO reviewers lacked either sufficient expertise in te reo me ngā tikanga Māori or an adequate understanding of the kōhanga reo kaupapa.<sup>141</sup> Review teams had not always included a fluent te reo speaker, as claimed by Crown witnesses.<sup>142</sup> Whether or not proficient in te reo, most reviewers either did not have sufficient understanding of the kaupapa or applied a mainstream ECE perspective in identifying areas for

136. Document A86 (Harata Gibson, second brief of evidence, 7 March 2012), p13

137. Document A49 (Arapera Royal-Tangaere, 'Comparative Review of Education Review Office Reports', 2011), p14

138. Document A49 (Arapera Royal-Tangaere, 'Comparative Review of Education Review Office Reports', 2011), p14

139. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 88–89; doc A85 (Arapera Royal-Tangaere, third brief of evidence, 7 March 2012), pp 13–14; doc A84 (Titoki Black, third brief of evidence, 7 March 2012), pp 3, 9

140. Document A85 (Arapera Royal-Tangaere, third brief of evidence, 7 March 2012), pp 13–14

141. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 88–89

142. Document A86 (Harata Gibson, second brief of evidence, 7 March 2012), p13

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improvement.<sup>143</sup> Claimant witnesses pointed to particular instances as examples of a general pattern, such as criticism of the length of karakia or waiata, disrespect for kaumātua, a failure to acknowledge karakia as important to child safety, a checklist approach to compliance, and criticism of fluctuating participation in kōhanga reo whānau hui.<sup>144</sup>

The Crown gave two main responses. The first was to defend ERO's current capability. It was claimed that half of Te Uepū ā-Motu staff are fluent or proficient speakers and the rest have good te reo comprehension. Given ERO's current policy of attempting to ensure that review teams have at least one fluent te reo speaker, the majority of review visits should not encounter a technical limitation on the use of te reo.<sup>145</sup> There appeared to be a measure of agreement between the parties that English would tend to be spoken only where necessary or at the request of whānau.<sup>146</sup>

The Crown's second response was that, in the words of Dr Stoop, ERO reviewers 'live and breathe Māori tikanga and language'.<sup>147</sup> All are or have been members of kōhanga reo whānau themselves and three were previously employees of kōhanga reo.<sup>148</sup> One of the ERO reviewers, Ani Rolleston, affirmed their commitment: 'I would like to say these people are Māori and steadfast to the purpose. While they may have different views, at the end of the day the purpose of their task is for the children.'<sup>149</sup>

This commitment, Crown counsel argued, was backed up by effective systems of mentoring, professional development, and peer review.<sup>150</sup> That there have been instances of poor practice by reviewers was not disputed, but when raised by kōhanga reo with ERO these were confronted and effectively dealt with.<sup>151</sup> On several of the specific examples of poor reviewer practice described by claimant witnesses, Crown counsel drew on contextual evidence that allowed a different conclusion to be drawn, or stated that they predated the current review regime.<sup>152</sup> Counsel pointed to Ms Royal-Tangaere's analysis of ERO reviews in recent years as

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143. Document A36 (Harata Gibson, first brief of evidence, 22 December 2011), p 18; doc A80 (Vaine Daniels, brief of evidence, 18 January 2012), p 5; doc A84 (Titoki Black, third brief of evidence, 7 March 2012), p 9; doc A88 (Heke Huata, brief of evidence, 7 March 2012), p 7

144. Document A8 (Titoki Black, brief of evidence in support of application for urgency, 16 August 2011), p 8 doc A36 (Harata Gibson, first brief of evidence, 22 December 2011), p 19; doc A80 (Vaine Daniels, brief of evidence, 18 January 2012), p 5; doc A84 (Titoki Black, third brief of evidence, 7 March 2012), pp 9, 12; doc A86 (Harata Gibson, second brief of evidence, 7 March 2012), p 6

145. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 103–104

146. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 104; Titoki Black under questioning by Crown counsel, first week of hearing, 15 March 2012 (transcript 4.1.3, p 44); doc A54 (Makere Smith, brief of evidence, 15 February 2012), p 12

147. Graham Stoop, under questioning by claimant counsel, second week of hearing, 23 March 2012 (transcript 4.1.4, p 610)

148. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 103

149. Ani Rolleston, statement accompanying brief of evidence, second week of hearing, 23 March 2012 (transcript 4.1.4, p 703)

150. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 103–104

151. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 106

152. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), pp 106, 110

evidence in support of reviewers' ability and willingness to recognise kōhanga reo strengths in tikanga, te reo, and whanaungatanga.<sup>153</sup>

We do not doubt the commitment of ERO's current leadership and review team to an approach that takes full account of the kōhanga reo kaupapa. Nor do we question the sense of frustration expressed by Trust and kōhanga reo whānau witnesses at what they regard as an alienating review practice.

We are unable to ascertain how representative the particular negative experiences described by claimant witnesses have been of kōhanga reo whānau in general. Claimant counsel argued that they exemplify the general situation. Crown counsel responded that they are exceptions to a generally positive picture. Neither party has undertaken a systematic empirical analysis of recent review practice and kōhanga reo experience, which would anyway have been beyond the scope of this urgent inquiry.

We concur with claimant counsel that reviewers with adequate expertise and understanding of the applicable kaupapa can achieve an effective reviewing practice. The example cited by counsel, Ms Daniels's account of a 2011 review, indicates that this is feasible within the current regime:

This year was my first experience of a review by inspectors who were fluent in te reo Māori, spoke to us in te reo Māori and understood the kōhanga reo kaupapa. They were very sympathetic, they observed and understood tikanga and sat down and listened to what we were saying. I was so moved that I cried . . .

What pleased me most about this was that it showed that our relationship with the Ministry and with ERO does not have to be difficult. But it was also frustrating. We have endured 10 years of difficulties with ERO before this happened.<sup>154</sup>

Whether this was an isolated instance, as asserted by claimant counsel, or an exemplar of a now well-established review practice, as Crown counsel would have it, we are not in a position to judge from the available evidence. The review procedure described by Crown counsel as standard today, and outlined above, would appear to provide opportunity for good communication and shared understandings to evolve. We would note, however, that although the procedure involves Trust staff during the preparatory and review stages, it does not make explicit provision for the involvement of kaumātua. We agree with the claimants that this would add an important enhancement to the abilities of reviewers and reviewed to gain maximum benefit and avoid the many potential pitfalls.

ERO's reviewers of kōhanga reo approach their work with a dual perspective – evaluation and culture. They are all Māori and we were told they share a commitment to the kaupapa of the kōhanga reo movement. A number understand the language and cultural principles upon which kōhanga reo are based and value the contribution that kōhanga reo have

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153. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 107

154. Document A80 (Vaine Daniels, brief of evidence, 18 January 2012), pp 4–5

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made to the cultural identity of Māori. However, as we concluded in our discussion above of ERO's indicators, ERO is constrained by the regulatory framework in which it needs to work. Although the reviewers aim to evaluate and assess in a way that is respectful of the kaupapa, they are ultimately evaluating against an ECE policy setting which does not adequately accommodate the transmission of te reo me ngā tikanga Māori, which is the core aim of the kōhanga reo kaupapa.

**10.3.11 Review experience and outcomes: compliance**

The burden of compliance with a large array of regulations and associated guidance documentation is a prominent claimant grievance. In particular, ERO compliance reviewing was a persistent source of friction between kōhanga reo whānau and review officers, who were required to evaluate in terms of the prevailing ECE regulations.<sup>155</sup> A common complaint in claimant testimony at our hearings was that the 1998 ECE regulations were too open-ended, allowing licensing officers and reviewers to make inconsistent interpretations and adopt arbitrary 'rules of thumb'.<sup>156</sup> The 2008 revision of the regulations was in part intended to provide a clearer guide to practice.<sup>157</sup> There was nevertheless a trade-off between flexibility and prescription. Taking the example of nappy-changing facilities, discussed in chapter 9, the vagueness of the 1998 regulation gave wide latitude to review officers' perceptions of how the standard was to be met, with results that sometimes did and at other times did not meet the cultural expectations of kōhanga reo whānau. By contrast, the 2008 regulations required a fixed structure in a certain environment with a written procedure, providing more precise guidance but at greater risk of offending kōhanga reo tikanga.<sup>158</sup>

The claimants emphasised that the differing applications of the regulations by different review officers have had an adverse impact on kōhanga reo.<sup>159</sup> The claimants also asserted that ECE regulations are open to variable interpretations, and that ERO reviewers often interpret regulations and licensing criteria in a culturally inappropriate way.<sup>160</sup> They alleged

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155. Document A80 (Vaine Daniels, brief of evidence, 18 January 2012), pp 3–5; doc A86 (Harata Gibson, second brief of evidence, 7 March 2012), pp 5–6

156. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 11, 19; doc A86 (Harata Gibson, second brief of evidence, 7 March 2012), pp 3, 6, 7, 10; Harata Gibson under questioning by claimant counsel, first week of hearing, 16 March 2012 (transcript 4.1.3, pp 484–485)

157. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 11

158. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 16–17; doc A8 (Titoki Black, brief of evidence in support of application for urgency, 16 August 2011), p 7; doc A36 (Harata Gibson, first brief of evidence, 22 December 2011), pp 6–7; doc A80 (Vaine Daniels, brief of evidence, 18 January 2012), p 12

159. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 128–129

160. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 128–133

that the collective cultural and spiritual safety of the kōhanga or marae is not measured as an aspect of safety by ERO.<sup>161</sup>

Ms Gibson told us the whānau at Kimihia Te Kupu Te Kōhanga Reo were told that they needed to purchase more tables and chairs because the ERO reviewer thought that working and playing on the floor with the other mokopuna and kaiako was unsuitable. The kōhanga reo also had to purchase shelving to create more ‘self initiated’ learning.<sup>162</sup> The provision of toys and play equipment was also cited as a requirement that ERO officers suggested kōhanga reo make.<sup>163</sup>

Ms Daniels stated:

We have a kitchen at the kōhanga which we use to prepare food for the mokopuna. Our kaupapa is that we should teach the mokopuna how to prepare the food in the kitchen. It is an opportunity to learn about tapu, wairua Maori and tikanga Maori. This is at the heart of our tikanga and something that should be fundamental to our children. However, I recall being criticised by an ERO officer for having four mokopuna in the kitchen with me when I was teaching them about making bread. They were learning about how food is prepared, the reo around this exercise and the tikanga associated with cooking. We no longer cook with the children in the kitchen. The compromise we have had to make is that we have an area outside the kitchen where we prepare food with the children. For example we might mix dough for bread outside the kitchen. But the children cannot bring the dough into the kitchen or watch it being cooked in the oven. This means we have lost a valuable part of learning.<sup>164</sup>

Ms Royal-Tangaere’s analysis of ERO reports from 2003 to 2008 found that supplementary reviews reported on aspects of health, safety, and welfare as areas for kōhanga reo ‘improvement’ at the highest frequency (30 per cent), followed by administration (27 per cent), property and finance (26 per cent), *Te Whāriki* (14 per cent) and, finally, personnel management (3 per cent).<sup>165</sup> Evacuation plans and drills rated the highest non-compliance area in health, safety, and welfare, followed closely by safety checks for potential hazards, general health and safety issues (such as post-disaster relief, water temperature, and poisonous plants), recordings in the accident and medicine register, and entries in an immunisation register

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161. Submission 3.3.3 (claimant counsel, closing submissions, 23 April 2012), pp 128–130; doc A84 (Titoki Black, third brief of evidence, 7 March 2012), pp 9–11; doc A86 (Harata Gordon, second brief of evidence, 7 March 2012), p 6

162. Document A36 (Harata Gibson, first brief of evidence, 22 December 2011), p 18

163. Document A8 (Titoki Black, brief of evidence in support of application for urgency, 16 August 2011), pp 8–9

164. Document A80 (Vaine Daniels, brief of evidence, 18 January 2012), pp 10–11

165. Document A49 (Arapera Royal-Tangaere, ‘Comparative Review of Education Review Office Reports’, 2011), p 9

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where parents had not updated this information.<sup>166</sup> Ms Royal-Tangaere's analysis of administration issues indicated charter policies, procedures, and practices (including child abuse and child management policies) and police vetting as areas not meeting the regulation requirements. Property and finance issues included such matters as building repairs and maintenance, indoor and outdoor space, safety of equipment, and financial management. Property issues were the major concern, with financial management being less than 10 per cent of the non-compliance sections of the reports. The fourth area for non-compliance was *Te Whāriki*, which identified such areas as general knowledge of and delivery of *Te Whāriki*. Other areas were organisational, such as supervision, the sleeping area, and resources.<sup>167</sup>

We appreciate that getting the balance right may be easier said than done. The dilemma over the extent to which the regulations and licensing criteria should be prescriptive has been discussed in chapter 9. We have suggested that the parties need to sit down together to review the appropriateness of the current framework. The Crown has indicated that it is open to that suggestion.

**10.3.12 Review experience and outcomes: curriculum and learning**

The claimants asserted that the relentless impact of ECE-based appraisal of kōhanga reo performance and regulatory compliance was a major contributor to the deep unease that came to a head in the kōhanga reo movement in the late 1990s. It led, we were told, to widespread criticism of the Trust for not adequately protecting the kaupapa, and conversely to the Trust scrutinising kōhanga reo against adapting too far towards an ECE service at the expense of the kaupapa.<sup>168</sup> Ms Royal-Tangaere found 'some kōhanga reo whānau performed well in planning, whānau participation and whānau management'. Although ERO reviewers are constrained by a system that does not adequately evaluate in te reo and tikanga dimensions in kōhanga reo, ERO's regular reviews tend to indicate strengths in these areas for kōhanga reo. Developing learning programmes and strategic plans, as well as evaluation processes such as self-review, evaluation, and monitoring, were areas where ERO indicated kōhanga reo whānau needed support.<sup>169</sup>

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166. Document A49 (Arapera Royal-Tangaere, 'Comparative Review of Education Review Office Reports', 2011), pp 9–10

167. Document A49 (Arapera Royal-Tangaere, 'Comparative Review of Education Review Office Reports', 2011), p 10

168. Document A78 (Dame Iritana Tāwhiwhirangi, third brief of evidence, 4 January 2012), pp 11–12, 22; (Dame Iritana Tāwhiwhirangi, oral evidence, first week of hearing, 13 March 2012 (transcript 4.1.3, p 207)

169. Document A49 (Arapera Royal-Tangaere, 'Comparative Review of Education Review Office Reports', 2011), p 9



#### 10.4 CONCLUSION

We agree that ERO's method and practice was inadequate until recent years in some respects, especially concerning culturally inappropriate evaluation methods. The competence of reviewers in te reo Māori was a major issue until recent times. This seems now to have been at least partly addressed by the increasing number of competent speakers in Te Uepū ā-Motu and the practice of using te reo Māori in current ERO reviews of kōhanga reo. There is evidence of recent good cultural practice in contemporary ERO reviews.

The fundamental difficulty remains, however, that ERO's statutory mandate is centred within an educational frame of reference and on educational objectives. Assessing achievements towards other goals, such as language revitalisation, transmission of tikanga, and whānau development, feature, if at all, only as incidental props to teacher-centred learning. In particular, no matter how flexibly and sensitively ERO orientates its approach to reviewing kōhanga reo, it does not evaluate their effectiveness in delivering kaupapa outcomes, above all children's competence in speaking te reo and knowledge of tikanga Māori.

We explore possible solutions in chapter 11, such as a joint reviewing regime shared between ERO and the Trust.



CHAPTER 11

NGĀ HUA ME NGĀ TOHUTOHU  
FINDINGS AND RECOMMENDATIONS



**11.1 THE STATE OF TE REO**

Two Tribunal reports, the *Report of the Waitangi Tribunal on Te Reo Māori* in 1986 and the *Ko Aotearoa Tēnei* report on the Wai 262 claim in 2011, highlight that the state of te reo has fluctuated from decline prior to 1980, to a gradual improvement from 1980 to 1996, to a renewed decline. It was described in the report of the Wai 262 Tribunal as diminishing at ‘both ends’ as older fluent native speakers passed away, and as the percentage of mokopuna entering the kōhanga reo immersion system has declined to an alarming degree.<sup>1</sup> The total enrolment and retention numbers within other early childhood education immersion services are also relatively small. When the dispersed nature of the numbers of children learning te reo is factored in, the question arises as to whether te reo will survive in many communities, and whether current efforts are sufficient to save the language, or whether it is on the brink of a rapid and irreversible decline. Already kōhanga reo are thinly spread across the country, for example, there are very few kōhanga reo in the South Island.

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1. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuatahi* (Wellington, Legislation Direct, 2011), p 157

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The Tribunal has concluded that the Crown should re-prioritise its expenditure on te reo Māori in ECE toward supporting kōhanga reo as the best means at this time of ensuring language survival and revitalisation. That reprioritisation is needed to ensure that demand for immersion learning is supported and that there is a smooth transition to Māori medium primary education.

### 11.2 KŌHANGA REO AND LANGUAGE TRANSMISSION

The kōhanga reo movement is first and foremost an initiative for the transmission of Māori language, driven by the commitment of Māori communities to preserve te reo me ngā tikanga Māori.<sup>2</sup>

Kōhanga reo were integrated into the early childhood education sector in 1990 and were subject to a policy and compliance regime designed for teacher-led education systems. Thus the system has struggled to cope with the significant cultural difference that kōhanga reo have presented, and the fundamental difference in kaupapa. The policy system endeavoured to make kōhanga reo 'fit' through a series of compromises both to its funding and compliance regime, and to the kōhanga reo model.

These compromises were ultimately insufficient to satisfy the respective objectives of the Ministry of Education and the kōhanga reo movement, and the result has been an increasing and resisted pressure for the inclusion of the Māori model for language transmission into the western model of teacher-led early childhood education.

The ongoing tension between the early childhood policy, funding and regulatory regime and the kōhanga reo model has coincided with a significant decline in kōhanga reo enrolments which has had serious implications for the survival of the Māori language. The kōhanga reo model has the ability to contribute to both language survival and education success. However the policy regime has not provided for this.

### 11.3 THE TREATY RELATIONSHIP

Te reo Māori is an integral part of Māori culture, a taonga guaranteed by the Treaty, and the Crown and Māori have significant responsibilities for its survival. A sustained and committed joint effort from both Māori and the Crown through policy and action is needed to give effect to this responsibility. This requires the Crown and Māori to work together in partnership to develop legislation and policies to support the transmission of te reo Māori so that it may survive as a living language.

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2. Submission 3.3.1 (claimant counsel, opening submissions, 23 March 2012), pp 10–11

The Crown has supported the kōhanga reo movement from its beginnings. It embraced the kōhanga reo initiative and worked with the leaders of the movement over many years to provide for the kaupapa of kōhanga reo. Much was done to support and enable kōhanga reo to deliver a broadly successful nationwide programme for the promotion and protection of te reo Māori.

As a result, kōhanga reo provide the largest group of te reo Māori speakers to the primary education sector. However, more recently there has been a decline in Māori language acquisition and this coincides with a decline in enrolments in te reo immersion services. This has occurred despite a small rise in enrolments for kōhanga reo over the period between 2007 and 2011, but that rise has now been offset by a further decline in 2012. In addition, the overall proportion of Māori engaged with kōhanga reo has declined. This decline must be arrested by vigorous action for the protection of te reo with recognition and support for kōhanga reo as the most significant ECE service able to achieve this.

In chapter 3, we identified the principles of the Treaty of Waitangi relevant to this claim as:

- ▶ partnership, with its underpinning of reciprocity, or the essential exchange of kāwanatanga for the guarantee of rangatiratanga, requiring the parties to act towards each other with the utmost good faith, reasonableness, mutual cooperation and trust (the Crown has additional obligations, which we discuss below); and
- ▶ the principles of options and equity.

### 11.3.1 Treaty partnership

With respect to the first relevant Treaty principle we have found that for those kōhanga reo affiliated to it, the Trust acts as their kaitiaki and can express their rangatiratanga through the Trust's representation of its members. The kōhanga reo movement is not the only Treaty partner that the Crown will engage with in the context of te reo Māori revitalisation in early childhood education. However, it is the largest, most experienced Māori institution within the early childhood education sector, and it has been endorsed by whānau, hapū and iwi.

The Iwi Chairs Forum and the Iwi Partners Education Forum identify kōhanga reo as priorities for 'accelerated investment' supported by the 'design and implementation of policy' to properly support them.<sup>3</sup> The Crown also acknowledges its Treaty responsibility towards kōhanga reo within the Tripartite Agreement 2003.<sup>4</sup> But the effect of its actions and omissions has been that the commitments it made in that agreement have been undermined.

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3. Document c2 (Selwyn Parata, chairman, Matauranga-A-Iwi, Iwi Chairs Forum/Iwi Education Partners, Presentation to Prime Minister at Iwi Chairs Forum – Waitangi; 5 February 2012), p 7

4. Document A64 ('Tripartite Relationship Agreement between Te Kōhanga Reo National Trust and the Ministers of Education and Māori Affairs', 2003), p 385

**11.3.2 Kāwanatanga and rangatiratanga**

We have also found that, in accordance with the principle of kāwanatanga, the Crown may develop early childhood education policy for the benefit of all New Zealanders. It has the right to ensure that resources are used in an efficient and effective way and to establish regulatory frameworks for the health and safety of children.

In the case of kōhanga reo the right of the Crown to govern is qualified by the requirement to actively protect the ‘tino rangatiratanga’ or authority of Māori and their taonga. This means that the Crown must design early childhood education policy in terms of te reo Māori for Māori children and their whānau in a manner that does not undermine the rangatiratanga rights of Māori and their institutions. The challenge for the Crown and Māori in the ECE space is to ensure that any efforts towards shared goals are collaborative and complementary.

In the case of kōhanga reo this requires that the Crown’s right to govern, by regulation or otherwise, is exercised in a manner that provides for, and does not undermine, the exercise of Māori authority in relation to these initiatives. In the Tribunal’s view this is one of the fundamental principles that has not been well executed in relation to kōhanga reo in recent years.

The Ministry of Education, in particular, has not understood its obligations in early childhood education in terms of protecting te reo Māori or in relation to the Treaty relationship. It has not engaged in ‘especially vigorous action’<sup>5</sup> to protect te reo, and nor has it focused on the importance of kōhanga reo to the survival of te reo as a living language. Most importantly, it has failed to design and implement policy, quality measures, a funding and regulatory regime and evaluation standards that can adequately provide for the unique role of kōhanga reo in early childhood immersion education. This is particularly important given that it is the Ministry of Education who is charged with leading the Crown’s relationship with the Trust under the Tripartite Agreement, and it is responsible for general immersion education. It is also important given that it has admitted that it has had an ad hoc approach to the Māori language in education.<sup>6</sup>

Te Puni Kōkiri has largely considered kōhanga reo as being under the control of the Ministry of Education, and beyond its responsibility although it has participated in the Tripartite relationship and made efforts towards some policy and funding propositions.

Many of the issues that gave rise to this claim might have been avoided had an adequate policy framework, based on a sound understanding of the Crown’s Treaty obligations to actively protect te reo through kōhanga reo in ECE, been developed.

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5. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513, 517

6. Document A91 (Ministry of Education, ‘Briefing to the Incoming Minister’, December 2011), p 50

### 11.3.3 The duty to actively protect

The kōhanga reo movement is inextricably linked to the survival of the language. Kōhanga reo are the modern application of a traditional Māori practice of child rearing within an environment where inter-generational transmission of te reo me ngā tikanga occurs. Kōhanga reo cannot exist in isolation from te reo me ngā tikanga. Without the transmission of te reo to the very young the language will not survive and kōhanga reo are the contemporary vehicle of choice for this age group outside the home domain. The kōhanga reo movement is the largest and most effective Māori initiative for total immersion education for children aged 0–5. Thus they are so linked to the taonga that without them te reo Māori me ngā tikanga may not survive.

The Crown has accepted its obligation to actively protect te reo as a taonga. However, it appears not to appreciate that one irreducible way for the Crown to discharge its obligation to te reo Māori at this time is to actively protect te reo through kōhanga reo with ‘especially vigorous action.’<sup>7</sup> We recommend what action that the Crown should follow so as to re-prioritise its effort to achieve the greatest possible coverage and effect. That, according to the experts, rests on a large enough cohort of children aged 0–5 years learning te reo.

Kōhanga reo are recognised nationally and internationally and are cited as ‘an exemplar of indigenous language revitalisation.’<sup>8</sup> The expert evidence is incontrovertible that if te reo is to be saved and revitalised then bilingual immersion centres are pivotal. As we discussed in chapter 4, the Crown’s expert Professor May stressed the need for bilingual programmes (with the optimum being immersion) to last for at least six to eight years.<sup>9</sup> Thus, immersion in ECE with a transition into bilingual programmes at primary school level will contribute to the successful transmission of te reo me ngā tikanga and to the acquisition of bilingualism and biliteracy.

The Crown’s policy of increasing participation in ECE and its Treaty duty to protect te reo through support for kōhanga reo are not mutually exclusive. The focus should be on what numbers of kōhanga reo graduates are needed per annum to ensure that there are enough children entering and graduating from Māori medium primary school with sufficient competency in te reo (that is, bilingual and biliterate) so that te reo remains a living language. Only when the number of students leaving the education system bilingual and biliterate reaches a level necessary for the survival of the reo will the Crown have met its duty to actively protect te reo. Identifying and monitoring this critical level and number is as much a matter for the Ministry of Education, as it is for the kōhanga reo movement and Māori language experts.

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7. *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513, 517

8. Stephen May, under questioning by Crown counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, p373)

9. Stephen May, under questioning by claimant counsel, second week of hearing, 21 March 2012 (transcript 4.1.4, pp 380–381)



While the Crown's approach of funding kōhanga reo over past decades has been important, in fact most of the funding and operational policies relating to kōhanga reo are focused on supporting education outcomes. Less than \$1 million (1.19 per cent) out of \$84 million is dedicated specifically to preservation of te reo and only part of the balance can be regarded as supporting te reo rather than general education objectives.<sup>10</sup>

The number of native speakers has dramatically declined and the funding needed to adequately promote or protect te reo requires serious reconsideration. ECE expenditure has increased as a result of a policy focus to increase the level of participation and quality in ECE. Kōhanga reo are funded mostly to perform a general educational policy role unrelated to transmission of te reo.

#### 11.3.4 The principles of options and equity

The right to ECE is a citizenship right extended to all New Zealanders and residents. The Crown's Treaty obligations in this regard are to ensure that Māori can make fully informed choices about ECE options for their children. This will require the Crown to ensure that Māori whānau have information on the opportunities and significance of the various ECE pathways.

Where Māori have implemented their own initiative to preserve and promote te reo Māori through a tikanga-based nationwide system such as kōhanga reo, and that system is central to the inter-generational transmission of te reo Māori, then it is for the Crown to actively support that in a vigorous manner given the continued vulnerable state of te reo. It should also ensure that they enjoy access to the same opportunities to develop as other New Zealanders operating ECE services. This means providing efficient and effective policy, funding, and regulatory support. As we discussed in chapter 5, it also requires having a policy of actively promoting participation in kōhanga reo by ensuring that the vital link between total immersion and language survival is better understood, and that kōhanga reo are not wrongly perceived to provide a low quality service (a perception inadvertently promoted by Crown actions and omission).

This is not a case of requiring the Crown to support Māori control and leadership of kōhanga reo, as the expression of rangatiratanga, without ensuring its own 'expertise and resources remain central to the effort' to achieve its responsibilities of kāwanatanga.<sup>11</sup> The Crown's partnership with kōhanga reo and the Trust is critical to their combined efforts to revitalise te reo Māori. In addition, it requires that they work together by respecting the metes and bounds of their respective Treaty rights and obligations, including identifying

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10. Document A62 (Richard Walley, brief of evidence, 15 February 2012), p 26; doc B8 (Te Kōhanga Reo National Trust, 'Equity Funding Report', report prepared for the Ministry of Education, March 2012), p 3

11. Submission 3.3.1 (claimant counsel, opening submissions, 12 March 2012), p 19

together how the Crown should regulate for the education, care, health and safety of children attending kōhanga reo.

The experts in our inquiry said there are real educational benefits that flow from immersion, but information on the pivotal role kōhanga reo play for the transmission of the Māori language has not been adequately promoted to Māori parents or to the general population. In fact it would appear that almost no research has been undertaken by the Crown in relation to these outcomes during the 30 years that kōhanga reo have been in operation.

#### 11.4 THE CROWN–KŌHANGA REO RELATIONSHIP AND POLICY

The 2003 Tripartite Agreement contains a shared vision and outcomes for Māori language development, Māori development and education, and commits to fostering the participation of Māori in quality early learning within a Māori environment. Two Ministers of the Crown and the Trust formally signed their agreement to that kaupapa.<sup>12</sup> The Tribunal's view is that the requirements placed on the parties in that Agreement reflect duties owed under the Treaty. It conveys the kaupapa of the kōhanga reo movement and the partnership obligations required to fulfil it.

The 2005 and 2008 Master Agreements for provision of services between the Crown and the Trust specifically refer to partnering principles.<sup>13</sup>

The translation of these commitments into policy practice faltered when the Quality, Sustainability and Funding Working Group did not adequately address policy failures and funding inequities in a timely way. The Ministry knew by late 2010 that kōhanga reo were facing cumulative and urgent funding pressure but allowed the Tripartite negotiations to lapse. Nine years on from the 2003 Tripartite Agreement, the policy regime has not responded sufficiently to protect the transmission of te reo Māori through kōhanga reo, and the relationships have deteriorated to a loss of faith.

In chapter 6, we described how the Trust gradually lost faith in its relationship with the Crown.<sup>14</sup> We also described how Crown officials have limited confidence in the relationship. It seems that the parties have frequently talked past each other during their engagements over recent years.<sup>15</sup>

The Crown acknowledges recent shortcomings in its performance concerning the ECE Taskforce and that this exacerbated the most recent relationship breakdown. In fact the

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12. Document A64 ('Tripartite Relationship Agreement between Te Kōhanga Reo National Trust and the Ministers of Education and Māori Affairs', 2003), p 383–390

13. Document A64 (Ministry of Education and Te Kōhanga Reo National Trust, 'Master Agreement to Provide Services for Nga Kōhanga Reo', 2008), pp 392–445

14. Document B9 (Closing comments of the claimants (Toni Waho), 26 March 2012), p 2

15. Apryll Parata, under questioning by Tribunal, second week of hearing, 22 March 2012 (transcript 4.1.4, pp 486–487, 516)

Ministry and Te Puni Kōkiri have apologised to the Trust for various matters, and in the case of the Ministry of Education, for its failure to deal appropriately with the impact of the *ECE Taskforce Report*.<sup>16</sup>

The Crown has a duty to develop efficient and effective policy that takes account of the unique contribution of kōhanga reo to ECE immersion education and the transmission of te reo Māori. The Crown's obligation to take especially vigorous action to protect te reo requires this. In chapter 4 we found that the Crown has failed to provide such a policy framework for kōhanga reo. In chapter 5 we noted that one result of the lack of a policy framework was that the Crown has not pursued a specific policy of actively increasing participation in kōhanga reo.

The Crown must now do so, and in developing a new policy framework, the Tripartite Agreement should be considered. It has defined the kaupapa of kōhanga reo in terms that both parties agreed to. Both parties should work on this policy framework in the spirit of partnership. This will require both partners to have competencies in relation to the kaupapa of kōhanga reo and the formulation of policy advice. The Crown will need to reprioritise its te reo Māori expenditure in ECE so as to achieve the best results for the promotion and protection of the Māori language through kōhanga reo.

#### 11.5 QUALITY ISSUES

We found in chapter 7 that the Crown has not developed with the Trust specific policies to measure and improve quality in kōhanga reo. The evidence for the claimants and the Crown indicates there may be a number of ways to assess quality in kōhanga reo, but the Crown has never reached an agreement with the claimants on what these measures should be.

The Crown introduced a 2005 funding model which provided higher funding for ECE qualified teacher-led centres to improve quality.<sup>17</sup> The Crown subsequently made this system partially available for kōhanga reo by attempting to modify it. However even with the modifications, the funding regime did not provide equity with the funding available to other parts of the ECE sector.

As an expression of their rangatiratanga, kōhanga reo are entitled to develop, in partnership with the Crown, their own standards for measuring quality in kōhanga reo. They should not be compelled to adopt the Crown's measures for assessing and improving quality for other ECE services simply to achieve parity in funding.

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16. Submission 3.3.5 (Crown counsel, closing submissions, 26 April 2012), p 46

17. Document A62 (Richard Walley, brief of evidence, 15 February 2012), pp 36–37

### 11.6 FUNDING ISSUES

As we discussed in chapter 8, the Crown's funding regime is inequitable and unfair. It does not provide kōhanga reo with the same level of support as other ECE services. Kōhanga reo cannot achieve the higher levels of funding available to teacher-led ECES. The current funding system incentivises kōhanga reo to become teacher-led in order to obtain higher levels of funding.

We acknowledge that the funding model does provide for some limited recognition of the Tohu Whakapakari by having a higher rate of funding available for 'quality' kōhanga reo. The indicator for quality is at least one staff member with a Tohu Whakapakari qualification. However, the two tier quality funding system for kōhanga reo has a lower maximum value than the top of the second tier on the four-tier teacher-led funding model.

Kōhanga reo employees have not enjoyed the same salary related funding increases as the ECE sector since 2005. Salary costs are around 70 to 75 per cent of overall service costs.<sup>18</sup> Since 2005 kōhanga reo have struggled to offer equivalent rates of pay as teacher-led ECE centres, because they cannot access the same funding rates. The Crown considers that a costs reimbursement policy provides a mechanism to reimburse kōhanga reo for the shortfall in salary costs. However, this is an inferior funding option. In practice, kōhanga reo try to manage their costs within the income provided so as not to operate in deficit. They reduce their operating and capital expenditure to try and achieve pay parity rather than bear the risk associated with overspending and taking a chance on being reimbursed. As a result there has been a significant decline in the maintenance of kōhanga reo buildings.

The key challenge for the Crown and the Trust is to design a funding model that will effectively support the efforts of kōhanga reo to increase participation and thus to improve the numbers of children learning te reo Māori.

#### 11.6.1 State of kōhanga reo building stock

The shortfall of investment in kōhanga reo capital maintenance and development has led to a depressed building stock.

Te Puni Kōkiri funded an assessment of the state of the kōhanga reo building portfolio in 2010 which concluded that some \$20 million of investment was required over a four-year period to bring all the kōhanga reo buildings up to standard.<sup>19</sup> There is a deadline of November 2014 for all existing services to meet the new regulations. Those unable to meet all requirements when inspected will be given up to 18 months to comply.<sup>20</sup> The Te Puni Kōkiri proposal identified that 172 kōhanga reo (approximately one-third of the total)

18. Document A83 (Angus Hartley, second brief of evidence, 7 March 2012), p5, 17

19. Document A8 (Nikorima Broughton, kaupapa kaimahi, Te Kōhanga Reo National Trust to Ministry of Education, 'Kōhanga Reo Meeting MOE Re-licensing Requirements, Proposal', July 2010), appendix C, para 1

20. Richard Walley, under questioning by the Tribunal, second week of hearing, 20 March 2012 (transcript 4.1.4, p266)

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11.6.2

could not meet the licensing criteria and would risk closure, potentially affecting some 3,000 mokopuna and their whānau.<sup>21</sup> This will have a significant negative impact on the Government's efforts to raise participation, and an acute impact on the efforts to ensure transmission and survival of te reo.

The Ministry of Education sought ministerial approval to put forward a 2011 budget bid for \$20 million of funding to assist kōhanga reo. However, it was put forward to the Minister with a range of other funding requests that were assessed by the Ministry to be of higher priority.<sup>22</sup> We are concerned that the duty to actively protect te reo Māori through support for kōhanga reo was not accorded a higher priority in that budget bid.

In our view, the Crown must act to avoid the looming disaster in the ability of kōhanga reo to function. If it does not, at its worst the Crown and its Māori Treaty partner (the kōhanga reo movement) face the very real prospect that effectively a third of the kōhanga reo operations will have to cease. An offer of \$2 million was made by the Ministry of Education during the Tribunal hearing in April 2012 as a contribution towards this.<sup>23</sup> But this is ad hoc and nowhere near adequate given the figures the Trust has provided.

We also note that kōhanga reo have in excess of 1,200 mokopuna on waiting lists as at September and October 2011<sup>24</sup> but do not have the capital resources to expand. We accept that there are likely to be areas where the demand is higher than demonstrated by the waiting lists, as parents have chosen to look elsewhere rather than sit on a waiting list.

Addressing the property issue by providing support for kōhanga reo to upgrade its buildings and expand sufficiently to cater for existing demand, or to encourage new demand, will be an important contribution from the Crown. It should also form part of its new policies to increase participation in kōhanga reo.

**11.6.2 Funding the Trust**

We have found in chapter 8 that the Trust has been significantly underfunded for the work that it has been required to do as the representative for the kōhanga reo movement. There have been increased demands placed on the Trust to provide advice and to be available to submit views during the ECE sector reforms, yet Crown funding to the Trust has remained

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21. Document A8 (Nikorima Broughton, kaupapa kaimahi, Te Kōhanga Reo National Trust to Ministry of Education, 'Kōhanga Reo Meeting MOE Re-licensing Requirements, Proposal', July 2010), appendix c, paras 1, 12, 14, 20

22. Richard Walley, under questioning by claimant counsel and the Tribunal, second week of hearing, 22 March 2012 (transcript 4.1.4, pp 445, 447); Karl Le Quesne, under questioning by claimant counsel, second week of hearing, 22 March 2012 (transcript 4.1.4, pp 561–562); doc c9 (Stephen Glover, acting senior manager, Education System Strategy, Ministry of Education to Minister of Education, 'Education Report: Budget 2011 – Process Information and Assessment of Pressures', 5 November 2011)

23. Document E8 (Ministry of Education, 'Targeted Assistance for Participation Funding Opportunities Hui', minutes, 18 April 2012)

24. Document B5 (Te Kōhanga Reo National Trust, waiting lists for te kōhanga reo, table, 14 March 2012)

static for 17 years. This must be addressed as it contrasts poorly with the approach taken for other ECE service funding, most of which is adjusted in line with Treasury's inflation forecasts.

### 11.6.3 Research funding issues

We also noted in chapter 8 that after more than 30 years of operation there has been a serious lack of research relating to kōhanga reo. The Crown has limited information on the contribution kōhanga reo makes to retention of te reo me ngā tikanga as well as achieving other Crown and Māori objectives.

Māori academics point to the high quality and increasing numbers of Māori entering tertiary education who started in kōhanga reo.<sup>25</sup> The only statistics available show that the proportion of Māori-medium education school leavers qualifying for university entrance has risen and is now higher than those Māori entering from mainstream education.<sup>26</sup> Having a kōhanga reo education may have contributed to these outcomes.

Over 10 years ago the Gallen Report recognised the need for research relating to kōhanga reo and made a formal recommendation to the Ministers of Education and Māori Affairs to that effect.<sup>27</sup> This recommendation has not been adequately pursued.

The Tribunal considers that the Crown should work in conjunction with the kōhanga reo movement to identify the contributions kōhanga reo make to successful language transmission, educational gains, whānau wellbeing, and supporting Māori to succeed as Māori. The Ministry should also be commissioning independent research on effectiveness.

## 11.7 THE REGULATORY REGIME AND ERO

In chapters 9 and 10 we considered the issues concerning regulatory compliance and performance. We have found that the regulations and licensing criteria for kōhanga reo that have been imposed have not always taken sufficient account of the kōhanga reo kaupapa.

We also found that the Crown is justified in seeking to ensure the care, health and safety of children through the regulations and licensing criteria. This is of paramount importance. However, the particular environment within which the regulatory regime is applied should also be considered. This is not a case where one size should fit all. While there have been efforts to provide for the kōhanga reo context within the regulatory regime, both the Crown

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25. Document A34 (Wharehuia Milroy, brief of evidence, 22 December 2011), pp 8–9

26. Document A42 (Tania Ka'ai, brief of evidence, 22 December 2011), pp 16–17

27. Document A24(h) (Crown and Kōhanga Reo National Trust Joint Working Group, *Report to the Ministers of Education and Māori Affairs: Review of the relationship between the Crown and the Te Kohanga Reo National Trust* (Wellington: Crown/Kōhanga Reo National Trust Joint Working Group, 2001)), p 34

and the kōhanga reo movement acknowledge that there is scope to develop more flexible criteria suited to kōhanga reo.

We consider that this must be achieved by both parties in the spirit of partnership developing suitable regulations and licensing criteria with a robust dispute resolution process.

In terms of ERO, the chief executives of ERO and the Trust established a working party to develop a review process and evaluation criteria for the external review of kōhanga reo. The agreement provided for joint representation on the working party and the draft framework and evaluation indicators were subjected to a joint training programme, field testing, and a number of hui at which kaumātua, kaimahi, and kōhanga reo gave feedback.<sup>28</sup> The problem was that the evaluation measures were never formally put to the Trust during consultation and thus have never been formally agreed. In chapter 10 we found that there is a strong case for a more appropriate review framework and methodology specific to kōhanga reo.

### 11.8 PREJUDICE

The Tripartite Agreement of 2003 agreed a shared vision and outcomes for Māori Language Development, Māori Development and Education.<sup>29</sup> Through this document the Crown and the Trust charted a way forward to meet the combined Treaty obligations of protecting te reo in an active manner, and ensuring that the broader educational needs of Māori children were provided for. This was the strategic statement of intent declared between the parties. The subsequent measures to support this should have involved an integrated package of policy, funding, and regulatory development to give effect to this agreement.

Following the signing of the Tripartite Agreement, the Treaty duty to take especially vigorous action to actively protect te reo was largely overlooked in the failure to develop appropriate ECE policy relating to kōhanga reo. What followed was a piecemeal approach to addressing the kōhanga reo context with significant policy, funding, and regulatory shortfalls.

We have found the claim to be well founded and that the Crown should reprioritise its expenditure on te reo Māori in ECE. We have also found that the Trust and kōhanga reo have suffered significant prejudice from the Crown:

- ▶ failing to provide a sound policy framework that addresses the Crown's duty to actively protect te reo Māori in the early childhood education space through support for immersion services, particularly kōhanga reo to whom the Crown owes Treaty obligations;

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28. Document A57 (Te Kōhanga Reo National Trust and ERO Joint Working Party, 'Terms of Reference' and 'Tasks', memorandum, 19 September 2001), pp 533–534; doc A57 (ERO, *Framework for Kōhanga Reo Education Reviews: Education Reviews in Kōhanga Reo*, (Wellington: ERO, 2004)), pp 1–84

29. Document A64 ('Tripartite Relationship Agreement between Te Kōhanga Reo National Trust and the Ministers of Education and Māori Affairs', 2003), pp 383–390



- ▶ failing to promote participation and targets for the numbers of children moving through early childhood education who can speak Māori with the competency necessary to enter the school system long enough to become bilingual and biliterate;
- ▶ omitting to develop, in partnership with the Trust, appropriate quality measures for assessing and improving quality in kōhanga reo for transmission of te reo;
- ▶ imposing a funding regime that incentivises teacher-led ECE models and does not provide equitable arrangements for kaiako holding the degree qualification designed for kōhanga reo;
- ▶ imposing a regulatory and licensing regime that does not adequately address the specific needs of the kōhanga reo movement and in part stifles their motivation and initiative; and
- ▶ failing to accurately measure the achievements of kōhanga reo at any time during the 30 years since the movement started.

We have, therefore, found that the Crown's failures to address the place of kōhanga reo has led to actions and omissions inconsistent with the principles of the Treaty, namely the principles of: partnership; the guarantee of rangatiratanga; the obligations on the Crown to make efficient and effective policy and to actively protect te reo Māori in ECE through kōhanga reo; and the principle of equity. There has been serious prejudice to the kōhanga reo movement as a result of these Crown actions and omissions. In particular there has been:

- ▶ inadequate recognition in ECE policy for kōhanga reo;
- ▶ a decline in the proportion of Māori participating in kōhanga reo;
- ▶ adverse impacts on the reputation of the kōhanga reo movement;
- ▶ serious underfunding of the Trust for services provided and insufficient funding to kōhanga reo, which has led to a decrease in capital expenditure posing a relicensing risk and exposing 3,000 mokopuna to the possibility of losing their kōhanga reo building;
- ▶ imposition of a regulatory regime including licensing criteria that has paid insufficient regard to the particular kōhanga reo environment; and
- ▶ an ERO evaluation methodology that remains focused on teacher-led models unbalanced against the important results that kōhanga reo provide for te reo transmission and whānau development.

Our discussion below focuses on what is required to urgently address the serious Crown and Trust relationship impasse; the imminent ECE reforms; the looming re-licensing crisis which threatens continued operation for many kōhanga reo; and serious operational and capital funding pressure arising from the disparate treatment of kōhanga reo. If these matters are not addressed urgently, they will have the effect of further tipping the scales toward decreasing proportionate kōhanga reo enrolments leading to a further decrease in the proportions of children learning te reo.

11.8.1

The Crown simply cannot afford to let too much time pass by without recognising once again, as it did in the 1980s, that kōhanga reo require urgent support. Value for money in the language revitalisation area for ECE is best prioritised in kōhanga reo immersion learning with a supported transition into Māori medium primary school learning.

The recommendations of this report add further information to be taken into account alongside the Government's Māori Language Strategy response to the report of the Wai 262 Tribunal and *Te Reo Mauriora*. However, the issues that have driven this inquiry cannot await that longer-term process. The issues that need to be addressed are outlined below.

**11.8.1 The Tripartite Agreement**

The parties should recommit to the Tripartite Agreement. If the Tripartite Agreement was given effect, the function of kōhanga reo as a vehicle to assist te reo revitalisation would involve support from a range of Crown agencies and entities such as Te Taura Whiri i te Reo Māori. The Tripartite Agreement model, supported by the interim oversight of an independent advisor, provides a neutral platform for the parties to re-engage to develop a policy framework, quality measures, and a supportive funding and regulatory regime.

**11.8.2 Oversight by the DPMC and an independent advisor**

There has been a significant loss of trust and faith between the Trust, kōhanga reo, the Ministry of Education, and Te Puni Kōkiri. However, the Ministry of Education and Te Puni Kōkiri must have an ongoing relationship with the Trust and the kōhanga reo movement. That said, we cannot ignore the fact that both agencies have over the last eight years failed to carry out the terms of the Tripartite Agreement and to address issues in a manner consistent with that agreement.

The process for developing a policy framework, quality measures, and a supportive funding and regulatory regime should be under the interim oversight of the Department of Prime Minister and Cabinet (DPMC). A high-level advisor should be appointed by the Prime Minister to direct the work needed to ensure progress of the work programme we recommend below. Such an advisor should have mana, te reo, Treaty knowledge, and policy acumen.

We would envisage the advisor being appointed after consultation with the Trust. The advisor would be accountable to the Prime Minister. The term of appointment would be for sufficient time to advance the work that must be done by the parties in partnership.

### 11.8.3 Equity in funding

We consider that urgent attention is required to develop an equitable funding model for kōhanga reo. The respective contributions of the Crown and the Trust to the development of the funding model should involve skilled and culturally competent financial advisers, so that time is not lost in further misunderstandings that could be readily resolved in face to face negotiations by fiscally and culturally competent practitioners. The Tribunal proposes that this also form part of the DPMC interim advisory oversight role and be subject to the direction of the independent advisor.

### 11.8.4 Capital funding

The Crown should discuss with the Trust how it may provide capital funding to avert the major relicensing risk that exposes more than 3,000 mokopuna to losing their kōhanga reo buildings.

The Crown should also develop with the Trust a kōhanga reo-specific capital funding scheme to provide extra capacity for kōhanga reo in areas of high demand, as demonstrated by long waiting lists in those areas. The current TAPS funding model for greater participation in general ECE puts kōhanga reo in direct competition with well-resourced commercial entities, and is too limited to meet the urgent needs of kōhanga reo.

### 11.8.5 Communicating the benefits of kōhanga reo for language revitalisation

It is very important that various means of publicising the positive benefits of the kōhanga reo immersion model should commence. Those benefits were agreed upon by the Crown expert witness Professor May and the claimant expert witnesses. Every reasonable means to spread that important message among parents of children under six years of age should be taken. That is a shared obligation that lies on both the Crown and the Trust.

The Crown, whether through Taura Whiri i te Reo Māori, Te Puni Kōkiri, or the Ministry of Education, or a combination of all, should be ensuring that, through booklets and/or user-friendly websites and other means of communication, the benefits of kōhanga reo are emphasised. The Trust could also usefully consider promoting such information through its website.

### 11.8.6 Shared responsibility for licensing and ERO reviews

One of the realities of accepting Government funding is that it comes with accountability obligations, for that is the corollary of state funding. The Crown has an obligation to ensure the care, health, and safety issues for children are provided for. The Trust is equally

11.8.7

concerned with care, health, and safety issues. However, the regulatory, licensing and reviewing frameworks for the kōhanga reo context have not yet been applied to the satisfaction of both the Crown and the kōhanga reo movement, and there are ongoing tensions associated with this.

The Crown and the Chief Education Review Officer have indicated that they are open to discussing new options with the Trust. Such an approach is the best way of ensuring that both their interests in the care, health and safety of children are reconciled.

**11.8.7 Research provision**

The Tribunal is surprised that after 30 years of operation, sufficient evaluative data have not been collected on kōhanga reo as a means of ensuring high quality intergenerational transmission of te reo, or the contribution made by kōhanga reo to its survival as a living language.

The challenge for the Crown and the Trust is to agree upon and to scope research and data collection on the performance of the kōhanga reo movement. The parties have available to them a number of expert advisers in this area. It remains of pressing urgency to ensure that research is commenced. No agreement, however, should not mean inaction. The Ministry has available data going back more than 30 years on the state of te reo and on the work of the kōhanga reo movement, and it should be able to draw together better results than those we were provided with. In addition, the proposal to track children through ECE, including kōhanga reo, and kura kaupapa will ensure that ongoing data can be provided.

**11.8.8 Secondments**

The suggestion from Apryll Parata of secondments has potential merit if genuinely approached as a process of mutual co-operation. One of the issues leading to the breakdown in the relationship between the Crown and the Trust has been each party speaking past the other. That has occurred in a range of ways, from high level policy development discussions to practical issues on the ground.

**11.8.9 Separate legislation**

During the hearing, the claimants asked the Tribunal to recommend separate legislation for kōhanga reo. The Tribunal notes that the matter of separate legislation is a current high level political issue under consideration by the National Party and Māori Party coalition government partners. The Coalition Agreement between those partners provides for the partners

‘to consider recognising the unique status of kōhanga reo, kura kaupapa Māori, kura-a-iwi, wānanga and Māori medium initiatives through their own statutory legislation.’<sup>30</sup>

The Tribunal supports the Trust and the Crown’s consideration of separate legislative recognition for kōhanga reo but acknowledges that this will require some further investigation and discussion by the parties. In the meantime the Crown will need to ensure that funding support for kōhanga reo is provided.

## 11.9 RECOMMENDATIONS

We therefore make the following recommendations.

### 11.9.1 Recommendation 1

We recommend that the Crown, through the Prime Minister, appoints an interim independent adviser of sufficient standing, Treaty knowledge, reo, and policy acumen, chosen after consultation by the DPMC with the Trust, the Ministry of Education, and Te Puni Kōkiri, and reporting to the Prime Minister (or DPMC), to oversee the implementation of the Tribunal’s recommendations, to redevelop the engagement between Government agencies and the Trust, and to ensure that the progress to achieve effective transmission of te reo Māori through kōhanga reo proceeds with the dedication and urgency required given the vulnerable state of te reo Māori.

### 11.9.2 Recommendation 2

We recommend that the Crown, through the DPMC and the independent advisor, oversees and facilitates the urgent completion of a work programme developed by the parties in accordance with the Shared Vision, Values, Goals, Outcomes and Understandings in the Tripartite Agreement 2003. The work should address the following urgent goals:

- ▶ a policy framework for kōhanga reo;
- ▶ a policy and targets for increasing participation in kōhanga reo and for reducing waiting lists;
- ▶ identification of measures for maintaining and improving quality in kōhanga reo;
- ▶ a supportive funding regime both for kōhanga reo and the Trust;
- ▶ a more appropriate regulatory and licensing framework specific to kōhanga reo;
- ▶ the provision of capital funding to ensure that existing kōhanga reo can meet the required standards for relicensing by the end of 2014; and

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30. Document D3 (John Key, Pita Sharples, and Tariana Turia, ‘Relationship Accord and Confidence and Supply Agreement with the Māori Party’, 11 December 2011), p3

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11.9.3

- ▶ support for the Trust to develop the policy capability to collaborate with the Government in policy development for kōhanga reo.

Engagement with kōhanga reo on these issues should be facilitated by the independent advisor and should involve at least some Crown officials who have a high level of competency in te reo me ngā tikanga and a good knowledge of Treaty principles and practice, and of the kōhanga reo movement.

**11.9.3 Recommendation 3**

We recommend that the Crown, through the Ministry of Education and Te Puni Kōkiri, discusses and collaborates with the Trust to scope and commission research on the effects and impacts of the kōhanga reo model, including how to support and build on the contribution that kōhanga reo make to language transmission and Māori educational success as Māori.

**11.9.4 Recommendation 4**

We recommend that the Crown, through the Ministry of Education, Te Puni Kōkiri, and the Trust, informs Māori whānau of the relative benefits for mokopuna in attending kōhanga reo with respect to te reo Māori and education outcomes. They should also be informed of the importance of bilingual/immersion programmes if te reo Māori is to survive as a living language.

**11.9.5 Recommendation 5**

We recommend that the Crown formally acknowledges and apologises to the Trust and kōhanga reo for the failure of its ECE policies to sufficiently provide for kōhanga reo. This apology is important to the process of reconciliation between the parties. In making such an acknowledgement and apology the Crown should also agree to meet the reasonable legal expenses of the Trust in bringing this claim.

**11.10 CLOSING – KAPINGA**

*‘Mate atu he tētē kura . . .’*

E ngā mate kua riro ki te pō roa, e te Kahurangi – Kātarina Te Heikōkō Mataira, e Jean Puketapu, e Timi Te Heuheu, koutou mā, moe mai ki tua o pae.

E kui, e Mere Moses ko koe tērā i mate ohorere ai hei whakapuaki i te kaupapa. Kia whakataukitia ake te mamae, aue taukiri, e!

Moe mai koutou, takoto, okioki i te tau o te marino.

‘. . . ara mai he tētē kura’

Ka tika me mihi hoki ki tā tātou mokopuna i whānau mai i te wā o te hui, a i tae mai i te whakakapinga i te kaupapa.

Tērā pea, ko te tohu ia o te ora; te ora o te reo.

Kāti, ‘*Tau ārai te pō; te hunga mate ki a rātou. Tau ārai ki te ao; tātou te pito ora ki a tātou.*’

‘*One fern frond passes . . .*’

To our dead now departed to long night, Dame Kātarina Mataira, Jean Puketapu, Timi Te Heu Heu, all of you take your rest beyond the horizon.

To you Mere Moses your unforeseen death opened the way for this kaupapa.

In poetic verse we lament all of you. Sleep, lay down, rest in peaceful repose.

‘. . . another fern frond rises in its place’

It is only right that we acknowledge our mokopuna Maraea Winslade born during the hearings and present on the closing day.

Perhaps, a promise of life; the life of the Māori language.

Enough said, ‘*Let the night realm be set apart; the departed unto the departed. Let the realm of light be set apart; the living to the living*’

#### **Te Korowai Aroha**

*Te korowai, korowai aroha*

*Te Kaupapa o Te Kōhanga Reo*

*Kei ā koe, kei ahau*

*Kei tēnā, kei roto i tēnā*

*Te kaupapa, korowai aroha*

*He parirau kei aku pōuri*

*He kahu ki aku mamae*

*Kia mahana i tō ao mokemoke*

*Kōmiria nā he miro*

*Ka whatu ki ngā mahara*

*Tūtahi ai ki ngā mahi ā iwi*

*Kei ā koe, kei ahau*

*Whatu mai, ka whati atu*

*Te korowai o Te Kōhanga Reo*

*Kei ā koe, kei ahau*

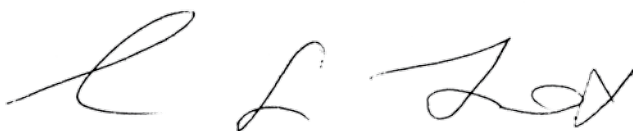
*Kei tēnā, kei roto i tēnā*

*Te kaupapa, korowai aroha*





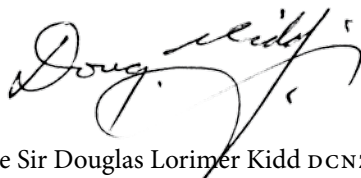
Dated at Wellington this 16<sup>th</sup> day of October 2012



Deputy Chief Judge Caren L Fox, presiding officer

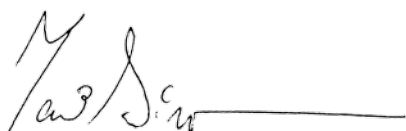


Ron Crosby, member



The Honourable Sir Douglas Lorimer Kidd DCNZM, member

Kihi Ngatai QSM, member



Tania Te Rangingangana Simpson, member





APPENDIX I

INQUIRY TIMELINE

Date		Doc numbers
25 July 2011	Memorandum of counsel supporting application for urgency filed with the Tribunal.	3-1.1
25 July 2011	Statement of Claim filed with the Tribunal on behalf of Dr Timoti Karetu, Tina Olsen-Ratana and Dame Iritana Te Rangi Tawhiwhirangi on behalf of Te Kōhanga Reo National Trust Board. Claimants state that the Crown will be making decisions which are likely to cause significant and irreversible prejudice to the Trust and to kōhanga reo.	1.1.1
26 July 2011	Chief Judge Isaac delegates the consideration of the urgent application to Deputy Chief Judge Fox.	2.5-1
28 July 2011	Memorandum which outlines the claim and application for urgency and sets down the hearing of the application for urgency 17 and 18 August 2011.	2.5-3
12 August 2011	Chief Judge Isaac appoints Kihī Ngatai and Sir Doug Kidd to assist Deputy Chief Judge Fox in her determination of whether to grant the application for urgency.	2.5-5
<b>17–18 August 2011</b>	<b><i>Application for urgency held at the Waitangi Tribunal over two days.</i></b>	
	Memorandum which discusses mediation following the hearing of the application for urgency.	2.5-6
12 September 2011	Memorandum which discusses mediation and sets down the date.	2.5-10
16 September 2011	Mediation teleconference held.	2.5-10
<b>20 September 2011</b>	<b><i>Mediation held at the Tribunal.</i></b>	
22 September 2011	Amended statement of claim	1.1.1(a)
25 October 2011	Decision granting application for urgency.	2.5-13
31 October 2011	Judicial teleconference convened.	2.5-14
3 November 2011	Chief Judge Isaac appoints the panel for the Kōhanga Reo urgency.	2.5-16
11 November 2011	Memorandum which outlines timetable for this urgency including filing dates and hearing dates.	2.5-19
25 November 2011	Memorandum accompanying Tribunal statement of issues (Wai 2336, doc 1.4.1).	2.5-22
27 January 2012	Application to participate in the inquiry received from New Zealand Educational Institute Te Riu Roa.	3-1.89
9 February 2012	Memorandum granting New Zealand Educational Institute Te Riu Roa a watching brief for this inquiry.	2.5-27
21 February 2012	Memorandum which outlines filing dates and confirms hearings agenda and dates for closing submissions.	2.5-30

MATUA RAUTIA : REPORT ON THE KŌHANGA REO CLAIM

**Appi**

**12–16 March**

***Two weeks of hearings held at Te Kōhanga Reo National Trust***

**19–23 March**

***Office, 67 Hankey Street, Mt Cook.***

12–16 March for claimant counsel

19–23 March for the Crown

**23–24 April**

***Closings heard at Te Kōhanga Reo National Trust Office.***

**26–27 April**

23–24 April for claimant counsel

26–27 April for the Crown

APPENDIX II

**COMPARISON OF THE 2008 CRITERIA FOR TWO REGULATORY STANDARDS WITH THE 1985, 1990, AND 1998 ECE REGULATIONS**

Note: This table compares the kōhanga reo licensing criteria for the premises and facilities (PF) and the health and safety (HS) standards in the 2008 ECE regulations with the equivalent clauses of the 1985, 1990, and 1998 regulations. The text is from the original regulations as first promulgated, without subsequent amendments.

Licensing Criteria for Kōhanga Reo affiliated with Te Kōhanga Reo National Trust 2008, 13 September 2008	The Education (Early Childhood Centres) Regulations 1998, SR1998/85	The Education (Early Childhood Centres) Regulations 1990, SR1990/261	The Child Care Centre Regulations 1985, SR1985/48
<i>Provisions specific to kōhanga reo</i>			
<p><b>15. Consultation required in certain cases affecting kōhanga reo—(1)</b> The Te Kohanga Reo Trust (Incorporated) may from time to time, by written notice to the Secretary nominate people for the purposes of this regulation.</p>	<p><b>17. Consultation required in certain cases affecting kōhanga reo—(1)</b> The Te Kohanga Reo Trust (Incorporated) may from time to time, by written notice to the Secretary nominate people for the purposes of this regulation.</p>	<p><b>10. Kohanga reo to be licensed as special-purpose centres, etc—(1)</b> In this regulation, 'kōhanga reo' means a child care centre under the control and oversight of Te Kohanga Reo Trust (Incorporated).</p>	
<p><b>15(2)</b> Every person shall be nominated in respect of a specified geographical area, the whole of New Zealand, or both.</p>	<p><b>17(2)</b> Every person shall be nominated in respect of a specified geographical area, the whole of New Zealand, or both.</p>	<p><b>10(2)</b> Every educational programme included in an application for a licence in respect of a kōhanga reo pursuant to regulation 4(4)(f) of these regulations shall be approved by Te Kohanga Reo Trust (Incorporated)</p>	
<p><b>15(3)</b> Subject to subclause (4),—                      (a) If for the time being there are 1 or more people nominated under subclause (1) of this regulation in respect of a geographical area, in which a centre under the control and oversight of the Trust is situated, the Secretary may not grant, refuse to grant, reclassify as a provisional licence, or suspend, a licence in respect of the centre without first making all reasonable attempts to consult a person so nominated; and</p>	<p><b>17(3)</b> Subject to subclause (4),—                      (a) If for the time being there are 1 or more people nominated under subclause (1) of this regulation in respect of a geographical area, in which a centre under the control and oversight of the said Trust is situated, the Secretary shall not grant, refuse to grant, reclassify as a provisional licence, or suspend, a licence in respect of the centre without first making all reasonable attempts to consult a person so nominated; and</p>	<p><b>10(3)</b> Every licence granted in respect of a kōhanga reo, shall be a special purpose child care centre licence.                      (4) Every licensed kōhanga reo shall have a supervisor whose training qualification is recognised by Te Kohanga Reo Trust (Incorporated)</p>	



<p>(b) If for the time being—</p> <p>(i) There is no person nominated under subclause (1) of this regulation in respect of a geographical area in which a centre under the control and oversight of the Trust is situated; but</p> <p>(ii) There are 1 or more people nominated under subclause (1) of this regulation in respect of the whole of New Zealand,— the Secretary shall not grant, refuse to grant, reclassify as a provisional licence, or suspend, a licence in respect of the centre without first making all reasonable attempts to consult a person so nominated.</p>	<p>17(4) The Secretary is not required by subclause (3) of this regulation to attempt to consult before suspending a licence under regulation 13 (1); but shall do so as soon as is reasonably practicable after suspending the licence.</p>
<p>(b) If for the time being—</p> <p>(i) There is no person nominated in respect of a geographical area in which a centre under the control and oversight of the Trust is situated; but</p> <p>(ii) There are 1 or more people nominated in respect of the whole of New Zealand,— the Secretary may not grant, refuse to grant, reclassify as a provisional licence, or suspend, a licence in respect of the centre without first making all reasonable attempts to consult a person nominated.</p>	<p>15(4) The Secretary is not required by subclause (3) to attempt to consult before suspending a licence under regulation 11 (1); but must do so as soon as is reasonably practicable after suspending the licence.</p>

Licensing Criteria for Kōhanga Reo affiliated with Te Kōhanga Reo National Trust 2008, 13 September 2008	The Education (Early Childhood Centres) Regulations 1998, sR1998/85	The Education (Early Childhood Centres) Regulations 1990, sR1990/261	The Child Care Centre Regulations 1985, sR1985/48
<p><b>PF1</b> The design and layout of the premises:</p> <ul style="list-style-type: none"> <li>▪ support the provision of different types of indoor and outdoor experiences; and</li> <li>▪ include quiet spaces, areas for physically active play, and space for a range of individual and group learning experiences appropriate to the number, ages, and abilities of children attending.</li> </ul>	<p><b>17 Premises</b></p> <p>(2) The licensee of a licensed centre must ensure that it has, to the satisfaction of the Secretary, adequate space for different types of indoor and outdoor play, including individual and group activities, quiet space, eating, sleeping, toileting, and bathing, having regard to the number and age range of the children attending and the period for which they attend.</p> <p><b>Schedule 1: Space Standards</b></p> <p>Indoor space, computed clear of all furniture, fittings, fixed equipment and stored goods, and excluding passageways, toilet facilities, staff rooms, specific sleeping areas for children under 2 years of age, and other areas not available for play: Area Required, per child = 2.5m<sup>2</sup></p> <p>Outdoor space: Area Required, per child = 5m<sup>2</sup></p>	<p><b>19 Premises</b></p> <p>(2) Subject to subclause (3) of this regulation, the licensee of a licensed centre shall ensure that it has, to the satisfaction of the Secretary, adequate space for different types of indoor and outdoor play, including individual and group activities, quiet space, eating, sleeping, toileting, and bathing, having regard to the number and age range of the children attending and the period for which they attend.</p> <p><b>First Schedule: Space Requirements</b></p> <p>Indoor space, computed clear of all furniture, fittings, fixed equipment and stored goods, and excluding passageways, toilet facilities, staff rooms, specific sleeping areas for children under 2 years of age, and other areas not available for play: Area required, per child = 2.5m<sup>2</sup></p> <p>Outdoor space: Area required, per child = 5m<sup>2</sup></p>	<p><b>20. Premises</b>—(2) Every child care centre shall have, to the satisfaction of the Director-General, adequate space for different types of indoor and outdoor play, including individual and group activities, quiet space, eating, sleeping, and toileting having regard to the number and age range of the children to be accommodated and the period for which they are to be cared for.</p> <p>(3) A child care centre which conforms to the standards set out in the First Schedule to these regulations shall be regarded as complying with subclause (2) of this regulation.</p> <p><b>First Schedule: Space Requirements</b></p> <p>Indoor space—computed clear of all furniture, fittings, fixed equipment, and stored goods, and excluding passageways, toilet facilities, staff rooms, specific sleeping areas for children under 2 years of age, and other areas not available for play or nursery purposes</p> <p>7 a.m. to 9 p.m. – 2.5 square metres</p> <p>9 p.m. to 7 a.m. – 4.5 square metres</p>
<i>Seven criteria to assess premises and facilities standard (2008)</i>			

<i>General facilities</i>	
<p><b>PF2</b> The design and layout of the premises support effective adult supervision so that children's access to the licensed space (indoor and outdoor) is not unnecessarily limited.</p>	<p><b>17(3)</b> The outdoor space must be close enough to the indoor space as to allow for quick, easy and safe access by children</p> <p><b>19(3)</b> The outdoor space shall be next to the indoor space; and shall comprise a safe space suitable surfaced and drained for a variety of activities, closed in by secure fences and gates.</p> <p><b>First Schedule: Space Requirements</b>                      Outdoor space (which shall comprise adequate suitably surfaced and drained space for a variety of activities in a safe play area closed in by secure fences and gates)</p>
<p><b>24. Safety and hygiene—</b>                      (1) The licensee of a licensed centre must ensure that—                      (d) the centre has at least 2 separate outside doors that allow people to get out easily;</p>	<p><b>26. Safety and hygiene—</b>                      (1) The licensee of a licensed centre shall ensure that—                      (d) The centre has at least 2 separate outside doors that allow people to get out easily;</p>
<p><b>PF3</b> The premises conform to any relevant bylaws of the local authority and the Building Act 2004.  <b>Documentation required:</b>                      1. Code Compliance Certificate issued under Section 95 of the Building Act 2004 for any building work undertaken, or alternatively any other documentation that shows evidence of compliance.                      2. Current Annual Building Warrant of Fitness (if the premises require a compliance schedule under Section 100 of the Building Act 2004).</p>	<p><b>17(1)</b> The licensee of a licensed centre must ensure that the centre's premises are kept in good repair, and conform with the bylaws of the local authority and the [Building Act 1991].</p> <p><b>19(1)</b> The licensee of every licensed centre shall ensure that the centre's premises are kept in good repair, and conform with the bylaws of the local authority.</p> <p><b>20. Premises—</b>(1) The premises of every licensed child care centre shall be maintained in a good state of repair and shall conform with the bylaws of the territorial authority of the territorial authority district in which the centre is situated</p>

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<p><b>P F4</b> A sufficient quantity and variety of (indoor and outdoor) furniture, equipment, and materials is provided that is appropriate for the learning and abilities of the children attending.</p>	<p><b>31. Play and other equipment for use by children</b>—The licensee of a licensed centre must ensure that there are provided and maintained in the centre, in good condition, furniture, indoor and outdoor play equipment and materials, and educational equipment and materials, of types and of a quantity and variety considered by the Secretary to be adequate and suitable for the developmental needs of the children.</p>	<p><b>33. Play and other equipment for use by children</b>—The licensee of a licensed centre shall ensure that there are provided and maintained in the centre, in good condition, furniture, indoor and outdoor play equipment and materials, and educational equipment and materials, of types and of a quantity and variety considered by the Secretary to be adequate and suitable for the developmental needs of the children.</p>	<p><b>24. Play and other equipment for use by children</b>—(1) In every child care centre there shall be provided and maintained in good condition furniture and indoor and outdoor play equipment of types and of a quantity and variety considered by the Director-General to be adequate and suitable for the needs of the children.</p>
<p><b>P F5</b> All indoor and outdoor items and surfaces, furniture, equipment and materials are safe and suitable for their intended use.</p>	<p><b>24(1)</b> The licensee of a licensed centre must ensure that— (a) the premises, furniture, furnishings, fittings, equipment, and materials in the centre to which the children attending have access are kept safe and hygienic, and all items and surfaces comply with all applicable New Zealand standards</p>	<p><b>26(1)</b> The licensee of a licensed centre shall ensure that— (a) the premises, furniture, furnishings, fittings, equipment, and materials in the centre to which the children attending have access are kept safe and hygienic, and all items and surfaces comply with all applicable New Zealand standards</p>	<p><b>25(1)</b> In every child care centre— (a) The premises, furniture, fittings, equipment, and materials to which children have access shall be maintained in a safe and hygienic condition.</p>
<p><b>P F6</b> Floor surfaces are durable, safe, and suitable for the range of activities to be carried out at the service (including wet and messy play), and can easily be kept clean.</p>	<p><b>24(1)(c)</b> all floor surfaces are suitable and safe for the activities to be carried out, and can easily be kept clean</p>	<p><b>26(1)(c)</b> All floor surfaces are suitable and safe for the activities to be carried out, and can easily be kept clean</p>	<p><b>25(1)(c)</b> All floor surfaces shall be suitable and safe for the activities to be carried out, and capable of being maintained in a hygienic condition</p>

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<p><b>Pf7</b> Any windows or other areas of glass accessible to children are either:</p> <ul style="list-style-type: none"> <li>▪ made of safety glass; or</li> <li>▪ covered by an adhesive film designed to hold the glass in place in the event of it being broken; or</li> <li>▪ effectively guarded by barriers which prevent a child striking or falling against the glass.</li> </ul>	<p><b>24(1)(e)</b> where any part of the centre is not at ground level, applicable safety standards in relation to windows and balconies in that part are maintained to the satisfaction of the Secretary; and</p> <p>(g) any window that on any side has its lower edge less than 80 cm above the floor, the ground, or any deck or verandah,—</p> <p>(i) in the case of a centre established in a building completed after 1 June 1991, either has a fixed protective barrier on that side, or is made of a material approved by the Secretary for the purpose; and</p> <p>(ii) in any other case, either is not a hazard to the children in an unprotected state, or is so protected that it is not a hazard to the children</p>	<p><b>26(1)(e)</b> Where any part of the centre is not at ground level, relevant safety standards in relation to windows and balconies in that part are maintained to the satisfaction of the Secretary; and</p> <p>(g) Any window that on any side has its lower edge less than 80 cm above the floor, the ground, or any deck or verandah, either has a fixed protective barrier on that side or is made of a material approved by the Secretary for the purpose;</p>	<p><b>25(1)(e)</b> Where the centre occupies premises which are not at ground level, reliable safety standards in relation to stairs, windows, balconies, and fire exits shall be maintained to the satisfaction of the Director-General</p> <p>(g) Any window less than 80 cm above floor level shall have a protective barrier on the inside</p>
<p><b>Pf8</b> There are sufficient spaces for equipment and material to be stored safely. Stored equipment and materials can be easily and safely accessed by adults, and where practicable, by children.</p>	<p><b>24(1)(f)</b> A handrail (and where appropriate, balusters) is fitted on all steps and ramps, except for stairways incorporating isolated steps</p> <p><b>24(1)(b)</b> all equipment and materials are safely stored</p>	<p><b>26(1)(f)</b> A handrail (and where appropriate, balusters) is fitted on all steps and ramps</p> <p><b>26(1)(b)</b> All equipment and materials are safely stored</p>	<p><b>25(1)(f)</b> A handrail shall be fitted on all steps and ramps</p> <p><b>25(1)(b)</b> All equipment and materials shall be stored in a safe manner.</p>

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<p><b>P F9</b> There is space for adults working at the service to:</p> <ul style="list-style-type: none"> <li>■ use for planned breaks;</li> <li>■ meet privately with parents and colleagues;</li> <li>■ store curriculum support materials; and</li> <li>■ assess, plan, and evaluate.</li> </ul>	<p><b>17(6)</b> The licensee of a licensed centre must ensure that the centre has adequate resource and work space for staff.</p>	<p><b>19(5)</b> The licensee of a licensed centre shall ensure that the centre has adequate resource and work space for staff, and storage space for administrative equipment and personal belongings.</p>	
<p><b>P F10</b> There are facilities (other than those required for P F26) or alternative arrangements available for the preparation and cleaning up of paint and other art materials.</p>			
<p><b>P F11</b> There is a telephone on which calls can be made to and from the service.</p>	<p><b>24(1)(i)</b> a telephone is available for emergency calls to and from the centre</p>	<p><b>26(1)(i)</b> There is ready access to a telephone in emergencies</p>	<p><b>25(1)(i)</b> There shall be ready access to a telephone in the event of an emergency</p>
<p><b>P F12</b> Parts of the building or buildings used by children have:</p> <ul style="list-style-type: none"> <li>■ lighting (natural or artificial) that is appropriate to the activities offered or purpose of each room;</li> <li>■ ventilation (natural or mechanical) that allows fresh air to circulate (particularly in sanitary and sleep areas);</li> </ul>	<p><b>22 Lighting, ventilation, noise, and heating—(1)</b> The licensee of a licensed centre must ensure that every room in the centre that is used by children has, to the satisfaction of the Secretary, adequate natural or artificial lighting, adequate ventilation . . . , and adequate heating.</p> <p><b>(2)</b> The heating in a room is adequate for the purposes of subclause (1) if the room</p>	<p><b>24 Lighting, ventilation, noise, and heating—(1)</b> Subject to subclause (2) of this regulation, the licensee of a licensed centre shall ensure that every room in the centre that is used by children has, to the satisfaction of the Secretary, adequate natural or artificial lighting, adequate ventilation . . . , and adequate heating.</p> <p><b>(2)</b> The heating in a room is adequate for</p>	<p><b>22 Lighting, ventilation, and heating—(1)</b> Every room in a child care centre used by children shall have, to the satisfaction of the Director-General, adequate natural or artificial lighting, adequate ventilation . . . , and adequate heating equipment.</p> <p><b>(2)</b> Heating equipment which is capable of maintaining a temperature of 15°C measured between 0.5 m to 1 m above the</p>

<ul style="list-style-type: none"> <li>▪ a safe and effective means of maintaining a room temperature of no lower than 16°C; and</li> <li>▪ acoustic absorption materials if necessary to reduce noise levels that may negatively affect children's learning or wellbeing.</li> </ul>	<p>is at or above a temperature of 16° Celsius measured between 0.5 m and 1 m above the floor.</p>	<p>the purposes of subclause (1) if the room is at or above a temperature of 16° Celsius measured between 0.5 m and 1 m above the floor.</p>	<p>floor shall be adequate for the purposes of this regulation.</p>
<p><b>PF13</b> Outdoor activity space is:</p> <ul style="list-style-type: none"> <li>▪ connected to the indoor activity space and can be easily and safely accessed by children;</li> <li>▪ safe, well-drained, and suitably surfaced for a variety of activities;</li> <li>▪ enclosed by structures and/or fences and gates designed to ensure that children are not able to leave the premises without the knowledge of adults providing education and care;</li> <li>▪ not unduly restricted by Resource Consent conditions with regards to its use by the service to provide for outdoor experiences; and</li> <li>▪ available for the exclusive use of the service during hours of operation.</li> </ul>	<p><b>17(3)</b> The outdoor space must be close enough to the indoor space as to allow for quick, easy, and safe access by children.</p> <p>(4) The outdoor space must comprise a safe space, suitably surfaced and drained for a variety of activities, and closed in by secure fences and gates.</p> <p>(5) A centre that conforms to the standards set out in Schedule 1 has adequate space for the purposes of subclause (2). [5m<sup>2</sup> per child].</p> <p>(8) The Secretary may direct that the outdoor space standard set out in Schedule 1 may be reduced or dispensed with for a centre that no child attends for longer than 2 hours on any day.</p>	<p><b>19(3)</b> The outdoor space shall be next to the indoor space; and shall comprise a safe space suitably surfaced and drained for a variety of activities, closed in by secure fences and gates.</p> <p>(4) A centre that conforms to the standards set out in the First Schedule to these regulations has adequate space for the purposes of subclause (2) of this regulation. [5m<sup>2</sup> per child].</p> <p>(7) In the case of a centre where no child attends for longer than 2 hours on any day, the Secretary may direct that the outdoor space standard set out in the First Schedule to these regulations may be reduced or dispensed with for the centre.</p>	<p><b>20(7)</b> Outside doors, fences, and gates at a child care centre shall be secure and safe to the extent that children are not able to leave the centre without it being known to a member of the staff.</p> <p><b>First Schedule: Space Requirements</b></p> <p>Outdoor space (which shall comprise adequate suitably surfaced and drained space for a variety of activities in a safe play area closed in by secure fences and gates)</p> <p>7 a.m. to 9 p.m. – 5 square metres</p>



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<p><b>PF14</b> APPLIES ONLY TO SERVICES LICENSED FOR UNDER 2 YEAR OLDS: There are safe and comfortable (indoor and outdoor) spaces for infants, toddlers or children not walking to lie, roll, creep, crawl, pull themselves up, learn to walk, and to be protected from more mobile children.</p>	<p>17(7) The licensee of a licensed centre must ensure that where children under 2 attend the centre, safe spaces for crawling, walking, and floor play are provided to the satisfaction of the Secretary.</p>	<p>19(6) The licensee of a licensed centre shall ensure that where children under 2 attend the centre, safe spaces for crawling, walking, and floor play are provided to the satisfaction of the Secretary.</p>	<p>20(6) Where children under the age of 2 years are cared for, safe spaces for crawling, walking, and floor play shall be provided in the centre to the satisfaction of the Director-General.</p>
<i>Food preparation and eating spaces</i>			
<p><b>PF15</b> There is a safe and hygienic place for children attending to sit when eating.</p>	<p>17(2) The licensee of a licensed centre must ensure that it has, to the satisfaction of the Secretary, adequate space for . . . eating, sleeping, toileting, and bathing, having regard to the number and age range of the children attending and the period for which they attend.</p>	<p>19(2) Subject to subclause (3) of this regulation, the licensee of a licensed centre shall ensure that it has, to the satisfaction of the Secretary, adequate space for . . . eating, sleeping, toileting, and bathing, having regard to the number and age range of the children attending and the period for which they attend.</p>	<p>20(2) Every child care centre shall have, to the satisfaction of the Director-General, adequate space for . . . eating, sleeping, and toileting having regard to the number and age range of the children to be accommodated and the period for which they are to be cared for.</p>
<p><b>PF16</b> There are facilities for the hygienic preparation, storage and/or serving of food and drink that contain:</p> <ul style="list-style-type: none"> <li>■ a means of keeping perishable food at a temperature at or below 4°C and protected from vermin and insects;</li> <li>■ a means of cooking and/or heating food;</li> </ul>	<p><b>18. Kitchen facilities</b> (1) The licensee of a licensed centre must ensure, to the satisfaction of the Secretary, that— (a) it is equipped with adequate and suitable kitchen facilities; or (b) its staff have access to adequate and reasonable kitchen facilities.</p>	<p><b>20. Kitchen facilities—(1)</b> The licensee of a licensed centre shall ensure that it is equipped with adequate and suitable kitchen facilities to the satisfaction of the Secretary. (2) The licensee of a licensed centre with an all day licence shall ensure that the staff of the centre have access to cooking</p>	<p>27(d) All food provided shall be stored, prepared, and served under hygienic conditions: <b>27. Provision of food—(1)</b> Every full day child care centre shall have access to cooking facilities, a refrigerator, and a dishwashing machine or other hygienic dishwashing facilities.</p>

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<ul style="list-style-type: none"> <li>▪ a means of hygienically washing dishes;</li> <li>▪ a sink connected to a hot water supply;</li> <li>▪ storage; and</li> <li>▪ food preparation surfaces that are impervious to moisture and can be easily maintained in a hygienic condition.</li> </ul>	<p>(2) The licensee of a licensed centre with an all day licence must ensure that the staff of the centre have access to cooking facilities, a refrigerator, and a dishwashing machine or other hygienic dishwashing facilities for the needs of the children.</p>	<p>20(4) Every child care centre, other than a sessional child care centre, shall be provided with adequate and suitable kitchen and laundry facilities to the satisfaction of the Director-General.</p>
<p>26. <b>Food and drink</b></p> <p>(2)(e) all food provided is clean when stored, prepared, and served; and</p> <p>(f) a record of every meal served to children at the centre, showing the type of food provided, is kept, and available for inspection, for 12 months after it is served.</p>	<p>28. <b>Food and drink</b></p> <p>(2)(e) All food provided is clean when stored, prepared, and served; and</p> <p>(f) A record of every meal served to children at the centre, showing the type of food provided, is kept, and available for inspection, for 12 months after it is served.</p>	<p>20(4) Every child care centre, other than a sessional child care centre, shall be provided with adequate and suitable kitchen and laundry facilities to the satisfaction of the Director-General.</p>
<p>PF17 Kitchen and cooking facilities or appliances are designed, located, or fitted with safety devices to ensure that children cannot access them without adult assistance or supervision.</p>	<p>18(1)(a) it is equipped with adequate and suitable kitchen facilities;</p>	<p>20(1) The licensee of a licensed centre shall ensure that it is equipped with adequate and suitable kitchen facilities to the satisfaction of the Secretary.</p>

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<i>Toilet and handwashing facilities</i>			
<p><b>PF18</b> The service has at least 1 toilet for every 1–15 persons. Persons are defined as children aged two and older and teaching staff that count towards the required adult:child ratio.</p>	<p><b>19. Toilets, etc</b>                      (1) The licensee of a licensed centre must ensure that the centre has, to the satisfaction of the Secretary, sanitary facilities that are conveniently accessible, safe, and appropriate, for use by children and adults.                      (2) A centre that conforms to the standards set out in Schedule 2 complies with subclause (1).</p>	<p><b>21. Toilets, etc.—(1)</b> Subject to subclause (2) of this regulation, the licensee of a licensed centre shall ensure that the centre has, to the satisfaction of the Secretary, sanitary facilities that are conveniently accessible, safe, and appropriate, for use by children and adults.                      (2) A centre that conforms to the standards set out in the Second Schedule to these regulations complies with subclause (1) of this regulation.</p>	<p><b>21. Sanitary facilities—</b>                      (1) Every child care centre, to the satisfaction of the Director-General shall be provided with adequate sanitary facilities which are conveniently accessible, safe, and comfortable for use by children.                      (2) A child care centre which conforms to the standards set out in the Second Schedule to these regulations shall be regarded as complying with subclause (1) of this regulation.</p>
<p><b>Schedule 2: Sanitary facilities required</b></p>			
<p><b>1. Water-closet pans</b>                      (1) Where the greatest number of people over 3 at any time using a centre is less than 16, the centre must have at least 1 water-closet pan.                      (2) Where the greatest number of people over 3 at any time using a centre is more than 15 and less than 31, the centre must have at least 2 water-closet pans.                      (3) Where the greatest number of people over 3 at any time using a centre is more than 30 and less than 46, the centre must</p>	<p><b>Second Schedule: Sanitary facilities required</b>  <b>1. Water closet pans—(1)</b> The minimum number of water closet pans required for a centre shall be calculated on the basis of the greatest number of people over 3 (that is to say staff, and children over 3 attending) at anytime using the centre as follows:                      (a) One water closet pan; plus                      (b) For every 15 (or part thereof) people over 3 in excess of 10, one further water closet pan.</p>	<p><b>Second Schedule: Sanitary Facilities Required</b>                      1. <i>Water Closet Pans</i>                      A minimum of 1 water closet pan shall be available, for every 10, or part of 10, persons over 3 years of age present at the centre. (Urinals and a staff toilet, provided separately, may be included in the determination of the number of water closet pans.)</p>	

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<p>have at least 3 water-closet pans.</p> <p>(4) Where the greatest number of people over 3 at any time using a centre is more than 45, the centre must have at least 4 water-closet pans.</p> <p>(6) For the purposes of this clause, the people over 3 using a centre at any time are all the children over 3 then attending the centre and all staff then present at the centre.</p>	<p>(2) At least one water closet pan shall be suitable for use by adults.</p>
<p><b>2. Chamber pots</b> (schedule 2)</p> <p>The centre must have enough chamber pots, having regard to the number and age range of the children attending the centre and the numbers of children who are not fully toilet-trained.</p>	<p><b>2. Chamber pots</b> (second schedule)—The centre shall have enough chamber pots, having regard to the number and age range of the children attending the centre and the numbers of children who are not fully toilet-trained.</p>
<p><b>PF-19</b> There is at least 1 tap delivering warm water (over an individual or shared handbasin) for every 15 persons (or part thereof) at the service (that is to say, children attending and adults counting towards the required adult:child ratio).</p>	<p><b>3. Hand-washing facilities</b> (second schedule)</p> <p>(1) The centre shall have at least 1 handbasin for every 10 (or part thereof) of the maximum number of people (that is to say, children attending and staff present) at any time.</p> <p>(4) The centre shall have a means, with an adjustable thermostat, of providing an adequate supply of hot water to the handbasins.</p>
<p><b>3. Hand-washing facilities</b> (schedule 2)</p> <p>(1) The centre must have at least 1 handbasin for every 15 (or part thereof) of the maximum number of people (that is to say, children attending and staff present) at any time.</p> <p>(4) The centre must have a means, with an adjustable thermostat, of providing an adequate supply of hot water to the handbasins.</p>	<p><b>3. Hand-washing facilities</b> (second schedule)</p> <p>(1) The centre shall have at least 1 handbasin for every 10 (or part thereof) of the maximum number of people (that is to say, children attending and staff present) at any time.</p> <p>(4) The centre shall have a means, with an adjustable thermostat, of providing an adequate supply of hot water to the handbasins.</p>
<p><b>3. Hand-washing facilities</b> (second schedule)</p> <p>(1) The centre shall have at least 1 handbasin for every 15 (or part thereof) of the maximum number of people (that is to say, children attending and staff present) at any time.</p> <p>(4) The centre must have a means, with an adjustable thermostat, of providing an adequate supply of hot water to the handbasins.</p>	<p><b>3. Hand Washing Facilities:</b> (second schedule)</p> <p>(a) One handbasin for every 10, or part of 10, persons shall be adjacent to the toilets.</p>

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<p><b>PF20</b> Toilet and associated handwashing/drying facilities intended for use by children are:</p> <ul style="list-style-type: none"> <li>■ designed and located to allow children capable of independent toileting to access them safely without adult help; and</li> <li>■ adequately separated from areas of the service used for play or food preparation to prevent the spread of infection.</li> </ul>	<p><b>3. Hand-washing facilities</b> (schedule 2)</p> <p>(2) The handbasins must be conveniently close to the water-closet pans.</p> <p>(3) The handbasins must be set at heights appropriate for the people who are to use them.</p>	<p><b>3. Hand-washing facilities</b> (second schedule)</p> <p>(2) The handbasins shall be conveniently close to the water-closet pans.</p> <p>(3) The handbasins shall be set at heights appropriate for the people who are to use them.</p>	<p><b>3. Hand Washing Facilities:</b> (second schedule)</p> <p>(b) Handbasins shall be set at suitable heights for the children that are to use them.</p>
<p><b>PF21</b> There is means of drying hands for children and adults that prevents the spread of infection.</p>	<p><b>3. Hand-washing facilities</b> (schedule 2)</p> <p>(7) Individual washcloths and towels, or some other hygienic means of drying hands, must be available near the handbasins.</p>	<p><b>3. Hand-washing facilities</b> (second schedule)</p> <p>(7) Individual washcloths and towels, or some other hygienic means of drying hands, shall be available near the handbasins.</p>	<p><b>3. Hand Washing Facilities:</b> (second schedule)</p> <p>(d) Individual washcloths and towels or hygienic alternatives shall be available.</p>
<p><b>PF22</b> At least one of the toilets for use by children is designed to provide them with some sense of privacy.</p>	<p><b>1. Water-closet pans</b> (schedule 2)</p> <p>(5) At least 1 water-closet pan in a centre must be suitable for use by adults.</p>	<p><b>1. Water closet pans</b> (second schedule)</p> <p>(2) At least one water closet pan shall be suitable for use by adults.</p>	

<i>Other sanitary facilities</i>	
<p><b>PF24</b> A tempering valve or other accurate means of limiting hot water temperature is installed for the requirements of criterion H513 to be met.</p>	<p><b>3. Hand-washing facilities</b> (schedule 2)                      (4) The centre must have a means, with an adjustable thermostat, of providing an adequate supply of hot water to the handbasins.</p> <p><b>3. Hand-washing facilities</b> (second schedule)                      (4) The centre shall have a means, with an adjustable thermostat, of providing an adequate supply of hot water to the handbasins.</p> <p><b>3. Hand Washing Facilities</b> (second schedule)                      (c) A hot water cylinder of sufficient size with an adjustable thermostat shall be provided. The temperature of the water accessible to children shall be effectively controlled so as not to exceed 40°C at the outlet.</p>

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<p><b>P F25</b> There are nappy changing facilities of rigid and stable construction that can be kept hygienically clean. These facilities are located in a designated area near to handwashing facilities, and are adequately separated from areas of the service used for play or food preparation to prevent the spread of infection. The design, construction, and location of the facilities ensure that:</p> <ul style="list-style-type: none"> <li>■ they are safe and appropriate for the age/weight and number of children needing to use them;</li> <li>■ children's independence can be fostered as appropriate;</li> <li>■ children's dignity and right to privacy is respected;</li> <li>■ some visibility from another area of the service is possible; and</li> <li>■ occupational health and safety for staff is maximised.</li> </ul>	<p><b>5. Napkin changing facilities</b> (schedule 2) The centre must have suitable arrangements for changing napkins if children likely to wear napkins are expected to attend.</p>	<p><b>5. Napkin changing facilities</b> (second schedule) The centre shall have suitable arrangements for changing napkins if children likely to wear napkins are expected to attend.</p>	<p><b>5. Napkin Changing Facilities</b> (second schedule) Suitable arrangements for changing napkins shall be available.</p>
<p><b>P F26</b> There are suitable facilities provided for washing sick or soiled children and a procedure outlining how hygiene and infection control outcomes will be met when washing sick and soiled children.</p>	<p><b>4. Washing facilities</b> (schedule 2) The centre must have suitable facilities for washing sick or soiled children.</p>	<p><b>4. Washing facilities</b> (second schedule) The centre shall have suitable facilities for washing sick or soiled children.</p>	<p><b>4. Bathing Facilities:</b> (second schedule) Facilities shall be available for bathing sick or soiled children.</p>



**Documentation required:**

A procedure outlining how the service will ensure hygiene and infection control outcomes are met when washing sick or soiled children.

<p><b>PF27</b> There is space (away from where food is stored, prepared, or eaten) where a sick child can:</p> <ul style="list-style-type: none"> <li>■ be temporarily kept at a safe distance from other children (to prevent cross-infection);</li> <li>■ lie down comfortably; and</li> <li>■ be supervised.</li> </ul>	<p><b>28. Child Health</b>                  (3) The licensee of a licensed centre must ensure that the centre has available an area and facilities suitable for the temporary isolation and care of at least 1 sick child.                  (4) The licensee of a licensed centre must ensure that where a child attending the centre has any minor illness, all practicable steps are taken to isolate the child from the others attending the centre and (subject to regulation 27(2)) return the child to the care of an appropriate parent, guardian, or whanau member without delay</p>	<p><b>30. Child Health</b>                  (3) The licensee of a licensed centre shall ensure that the centre has available an area and facilities suitable for the temporary isolation and care of at least 1 sick child.                  (4) The licensee of a licensed centre shall ensure that where a child attending the centre has any minor illness, all practicable steps are taken to isolate the child from the others attending the centre and return the child to the care of an appropriate parent, guardian, or whanau member without delay.</p>	<p><b>34. Child health—</b>                  (4) Every child care centre shall have available an area and facilities suitable for the temporary isolation and care of at least 1 sick child. In any case of minor illness all practicable steps shall be taken to isolate the sick child from the others attending the centre and to ensure that the child is returned to the care of the child's parent or guardian without delay.</p>
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Licensing Criteria for Kōhanga Reo affiliated with Te Kōhanga Reo National Trust 2008, 13 September 2008	The Education (Early Childhood Centres) Regulations 1998, s R1998/85	The Education (Early Childhood Centres) Regulations 1990, s R1990/261	The Child Care Centre Regulations 1985, s R1985/48
<p><b>PF28</b> There is a first aid kit that:</p> <ul style="list-style-type: none"> <li>■ complies with the requirements of Appendix 1; and</li> <li>■ is easily recognisable and readily accessible to adults; and</li> <li>■ is inaccessible to children.</li> </ul>	<p><b>25. First aid</b></p> <p>(1) The licensee of a licensed centre must ensure that there is provided at the centre and kept in good condition and ready for immediate use, a first-aid cabinet equipped to a standard approved by the body that, on the commencement of these regulations, was known as the Health Funding Authority.</p> <p>(2) The licensee of a licensed centre must ensure that every first-aid cabinet at the centre is fitted with a lock or other device that makes its contents inaccessible to children.</p>	<p><b>27. First aid</b></p> <p>(1) The licensee of a licensed centre shall ensure that there is provided at the centre and kept in good condition, and ready for immediate use, a first-aid cabinet equipped to a standard approved by the Area Health Board.</p> <p>(2) The licensee of a licensed centre must ensure that every first-aid cabinet at the centre is fitted with a lock or other device that prevents children from opening it.</p>	<p><b>26. First aid</b>—(1) At every child care centre there shall be provided, kept in good condition, and ready for immediate use a first aid cabinet equipped to a standard approved by the Medical Officer of Health.</p> <p>(2) Every first aid cabinet at a child care centre shall be fitted with a child-proof lock or other device which prevents children from opening it, or shall be so situated as to be inaccessible to children.</p>
<p><b>PF29</b> Furniture and items intended for children to sleep on (such as cots, beds, stretchers, or mattresses) are of a size that allows children using them to lie flat, and are of a design to ensure their safety.</p>	<p><b>21. Sleeping facilities</b></p> <p>(2) The licensee of a licensed centre must ensure that individual beds and bedding of a suitable and safe type are provided, to the satisfaction of the Secretary, having regard to the number and age range of the children attending and the period for which they attend.</p> <p>(3) The licensee of a licensed centre must ensure that all beds used by children are</p>	<p><b>23. Sleeping facilities</b></p> <p>(2) The licensee of a licensed centre shall ensure that individual beds and bedding of a suitable and safe type are provided, to the satisfaction of the Secretary, having regard to the number and age range of the children attending and the period for which they attend.</p> <p>(3) The licensee of a licensed centre shall ensure that all beds used by children are</p>	<p><b>24(2)</b> Individual beds and bedding of a suitable and safe type shall be provided having regard to the number and age range of the children to be accommodated and the period for which they are to be accommodated.</p> <p>(3) All beds used by children in a child care centre shall be so spaced or arranged as to ensure adequate means of access, hygiene, and safety.</p>

*Sleep*

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so spaced or arranged as to ensure hygiene, safety, and adequate means of access.

- PF30** Furniture and items intended for children to sleep on (such as cots, beds, stretchers, or mattresses) that will be used by more than one child over time are securely covered with or made of a non-porous material (that is, a material that does not allow liquid to pass through it) that:
- protects them from becoming soiled;
  - allows for easy cleaning (or is disposable); and
  - does not present a suffocation hazard to children.

**PF31** Clean individual bedding (such as blankets, sheets, sleeping bags, and pillowslips) is provided for sleeping or resting children that is sufficient to keep them warm.

**PF32** SESSIONAL SERVICES ONLY: A safe and comfortable place to sleep (such as a bed, stretcher, mattress, or couch) is available for children aged two and older that require sleep or rest during a session.

**21(1)** The licensee of a licensed centre must ensure that where children under 2 attend, or where children over 2 attend for more than 4 hours on any day, the centre has adequate space and facilities, to the satisfaction of the Secretary, for undisturbed rest for those children.

**23(1)** The licensee of a licensed centre shall ensure that where children under 2 attend, or where children over 2 attend for more than 4 hours on any day, the centre has adequate space and facilities, to the satisfaction of the Secretary, for undisturbed rest for those children.

**20(5)** Where children under the age of 2 years are cared for, or children over the age of 2 years attend for more than 4 hours on any day, there shall be adequate space and facilities at the centre for undisturbed rest for the children.

Licensing Criteria for Kōhanga Reo affiliated with Te Kōhanga Reo National Trust 2008, 13 September 2008	The Education (Early Childhood Centres) Regulations 1998, s R1998/85	The Education (Early Childhood Centres) Regulations 1990, s R1990/261	The Child Care Centre Regulations 1985, s R1985/48
<p><b>PF33 ALL-DAY SERVICES ONLY:</b> Space is available for children aged two and older to sleep or rest for a reasonable period of time each day. If the space used for sleeping or resting is part of the activity space, there are alternative activity spaces for children not sleeping or resting as necessary.</p>			
<p><b>PF34 ALL-DAY SERVICES ONLY:</b> Furniture or items intended for children to sleep on (such as cots, beds, stretchers, or mattresses) are available for the sleep or rest of children aged two and older</p>			
<p><b>PF35 SESSIONAL SERVICES ONLY:</b> A designated space is available to support the provision of restful sleep for children under the age of two at any time they are attending. This space is located and designed to:</p> <ul style="list-style-type: none"> <li>■ minimise fluctuations in temperature, noise and lighting levels;</li> <li>■ allow adequate supervision; and</li> <li>■ accommodate at least the requirements of criterion PF36, when arranged in accordance with criterion H510.</li> </ul>	<p><b>21(3)</b> The licensee of a licensed centre must ensure that all beds used by children are so spaced or arranged as to ensure hygiene, safety, and adequate means of access.</p> <p><b>(4)</b> The licensee of a licensed centre must ensure that, to the satisfaction of the Secretary, there is in place a system for monitoring sleeping children.</p>	<p><b>23(3)</b> The licensee of a licensed centre shall ensure that all beds used by children are so spaced or arranged as to ensure hygiene, safety, and adequate means of access.</p> <p><b>(4)</b> The licensee of a licensed centre shall ensure that all children resting are at all times within the sight of a staff member.</p>	<p><b>24(3)</b> All beds used by children in a child care centre shall be so spaced or arranged as to ensure adequate means of access, hygiene, and safety.</p>

<p><b>PF36 SESSIONAL SERVICES ONLY:</b>                  Furniture or items intended for children to sleep on (such as cots, beds, stretchers, or mattresses) are provided at a ratio of at least one to every 5 children under the age of two, have clear access to one side, sufficient air movement exists, and children are able to sit or stand safely as they wake.</p>	<p><b>21(1)</b> The licensee of a licensed centre must ensure that where children under 2 attend, or where children over 2 attend for more than 4 hours on any day, the centre has adequate space and facilities, to the satisfaction of the Secretary, for undisturbed rest for those children.</p>	<p><b>23(1)</b> The licensee of a licensed centre shall ensure that where children under 2 attend, or where children over 2 attend for more than 4 hours on any day, the centre has adequate space and facilities, to the satisfaction of the Secretary, for undisturbed rest for those children.</p>
<p><b>PF37 ALL-DAY SERVICES ONLY:</b> A designated space is available to support the provision of restful sleep for children under the age of two at any time they are attending.                  This space is located and designed to:</p> <ul style="list-style-type: none"> <li>■ minimise fluctuations in temperature, noise and lighting levels;</li> <li>■ allow adequate supervision; and</li> <li>■ accommodate at least the requirements of criterion PF38, when arranged in accordance with criterion H510.</li> </ul>	<p><b>21(3)</b> The licensee of a licensed centre must ensure that all beds used by children are so spaced or arranged as to ensure hygiene, safety, and adequate means of access.                  (4) The licensee of a licensed centre must ensure that, to the satisfaction of the Secretary, there is in place a system for monitoring sleeping children.</p>	<p><b>23(3)</b> The licensee of a licensed centre shall ensure that all beds used by children are so spaced or arranged as to ensure hygiene, safety, and adequate means of access.                  (4) The licensee of a licensed centre shall ensure that all children resting are at all times within the sight of a staff member.</p> <p><b>24(3)</b> All beds used by children in a child care centre shall be so spaced or arranged as to ensure adequate means of access, hygiene, and safety.</p>

Licensing Criteria for Kōhanga Reo affiliated with Te Kōhanga Reo National Trust 2008, 13 September 2008	The Education (Early Childhood Centres) Regulations 1998, SR1998/85	The Education (Early Childhood Centres) Regulations 1990, SR1990/261	The Child Care Centre Regulations 1985, SR1985/48
<p><b>PF38</b> ALL-DAY SERVICES ONLY: Furniture or items intended for children to sleep on (such as cots, beds, stretchers, or mattresses) are provided at a ratio of at least one to every 2 children under the age of two.</p>			
<p><b>8 Criteria to assess Health and Safety Practices standard (2008)</b></p>			
<p><i>Hygiene</i></p>			
<p><b>HS1</b> Premises, furniture, furnishings, fittings, equipment, and materials are kept safe, hygienic and maintained in good condition.</p>	<p><b>24(1)</b> The licensee of a licensed centre must ensure that— (a) the premises, furniture, furnishings, fittings, equipment, and materials in the centre to which the children attending have access are kept safe and hygienic, and all items and surfaces comply with all applicable New Zealand standards</p>	<p><b>26(1)</b> The licensee of a licensed centre shall ensure that— (a) The premises, furniture, furnishings, fittings, equipment, and materials in the centre to which the children attending have access are kept safe and hygienic, and all items and surfaces comply with all appropriate New Zealand standards</p>	<p><b>25(1)</b> In every child care centre— (a) The premises, furniture, furnishings, fittings, equipment, and materials to which the children have access shall be maintained in a safe and hygienic condition:</p>
<p><b>HS2</b> Linen used by children or adults is hygienically laundered. <b>Documentation required:</b> A procedure for the hygienic laundering (off-site or on-site) of linen used by the children or adults.</p>	<p><b>20. Laundry facilities</b> The licensee of a licensed centre must ensure that there is in place a system, satisfactory to the Secretary, for ensuring the hygienic laundering of linen used by the children or the staff.</p>	<p><b>22. Laundry facilities</b>—The licensee of a licensed centre with an all day licence shall ensure that staff have access to adequate and suitable laundry facilities to the satisfaction of the Secretary.</p>	<p><b>20(4)</b> Every child care centre, other than a sessional child care centre, shall be provided with adequate and suitable kitchen and laundry facilities to the satisfaction of the Director-General.</p>

**H53** A procedure for the changing (and disposal, if appropriate) of nappies is displayed near the nappy changing facilities and consistently implemented.  
**Documentation required:**  
 A procedure for the changing (and disposal, if appropriate) of nappies. The procedure aims to ensure:

- safe and hygienic practices; and
- that children are treated with dignity and respect.

*Emergencies*

**H54** The premises have a current Fire Evacuation Scheme approved by the New Zealand Fire Service.  
**Documentation required:**  
 A current Fire Evacuation Scheme approved by the New Zealand Fire Service.

**23. Fire and earthquake protection**  
 (1) The licensee of a licensed centre must ensure that there exists for the centre an operative evacuation scheme for public safety that meets the requirements of section 21A of the Fire Service Act 1975 and Part 2 of the Fire Safety and Evacuation of Buildings Regulations 2006.  
 (2) The licensee of a licensed centre must ensure that the centre has adequate provision for protection against earthquake damage, and for dealing with the consequences of an earthquake, to the satisfaction of the Secretary.

**25. Fire and earthquake protection—(1)**  
 The licensee of a licensed centre shall ensure that the centre has safeguards against fire, and means of escape from fire, satisfactory to the Secretary.  
 (2) The licensee of a licensed centre shall ensure that every inspection under this regulation is carried out by a member of an organisation approved by the Secretary for the purpose by notice in the *Gazette*.  
 (3) The licensee of a licensed centre shall ensure that every year the centre's fire protection procedures and equipment are reviewed (by a member of an organisation approved by the Secretary for the purpose by notice in the *Gazette*), and a written report on the review is sent to the Secretary.

**23. Fire protection—(1)** Every child care centre shall be provided with such safeguards against fire and means of escape in case of fire—  
 (a) As are required by die bylaws of the territorial authority of the territorial authority district in which the centre is situated applying to the centre; or  
 (b) If no such bylaws are in force, as are approved by a member of the fire service established by the Fire Service Act 1975 authorised to undertake fire safety inspections.  
 (2) An annual check of fire protection procedures and equipment shall be arranged by the licensee who shall inform the Director-General of the result before the centre's licence is renewed.



Licensing Criteria for Kōhanga Reo affiliated with Te Kōhanga Reo National Trust 2008, 13 September 2008	The Education (Early Childhood Centres) Regulations 1998, sR1998/85	The Education (Early Childhood Centres) Regulations 1990, sR1990/261	The Child Care Centre Regulations 1985, sR1985/48
<p><b>H55</b> Designated assembly areas for evacuation purposes do not unnecessarily place children at further risk.</p>	<p>(4) The licensee of a licensed centre shall ensure that all parts of the building it occupies that are not at ground level have external access to ground level that—</p> <p>(a) Is direct; and</p> <p>(b) Gives the children quick, easy, safe escape outside, to the satisfaction of the Secretary.</p> <p>(5) The licensee of a licensed centre shall ensure that the centre has adequate provision for protection against earthquake damage, and for dealing with the consequences of an earthquake, to the satisfaction of the Secretary.</p>		
<p><b>H56</b> Heavy furniture, fixtures, and equipment that could fall or topple and cause serious injury or damage are secured.</p>			

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<p><b>H57</b> There is a written procedure and supplies such as food, water, and spare clothes, necessary for ensuring the care and safety of children attending the service in the case of an evacuation or other emergency.</p> <p><b>Documentation required:</b></p> <ol style="list-style-type: none"> <li>1. A written procedure and list of supplies sufficient for the age and number of children attending the service. The procedure outlines how staff will access appropriate help and support in a variety of emergency situations (eg, sudden illness or injury, fire, threats, civil disaster, etc)</li> <li>2. Evacuation procedure for the premises.</li> </ol>	<p><b>24(1)(i)</b> A plan for the evacuation and care of the children in emergencies is prominently displayed on the premises;</p> <p><b>24(2)</b> The licensee of a licensed centre must notify—</p> <p>(a) The Local Controller of Civil Defence; or</p> <p>(b) Where there is no Local controller or person acting as Local Controller, the Regional Controller of Civil Defence —of the centre's location.</p>	<p><b>26(1)(j)</b> A plan for the evacuation and care of the children in emergencies is prominently displayed on the premises;</p> <p><b>26(2)</b> The licensee of a licensed centre must notify—</p> <p>(a) The Local Controller of Civil Defence; or</p> <p>(b) Where there is no Local controller or person acting as Local Controller, the Regional Controller of Civil Defence —of the centre's location.'</p>	<p><b>25(1)(i)</b> A plan for the evacuation and care of the children in the event of an emergency shall be displayed on the premises and a copy of it provided to the Director-General.</p> <p><b>25(2)</b> The licensee of a licensed centre must notify—</p> <p>(a) The Local Controller of Civil Defence; or</p> <p>(b) Where there is no Local controller or person acting as Local Controller, the Regional Controller of Civil Defence —of the centre's location.'</p>
<p><b>H58</b> Adults providing education and care are familiar with relevant emergency drills and regularly carry these out with the children.</p> <p><b>Documentation required:</b></p> <p>A record of the emergency drills carried out with children.</p>	<p><b>24(3)</b> The licensee of a licensed centre must ensure that all staff are trained in fire and earthquake drills, and in other emergency procedures, and that regular evacuation drills are carried out.</p> <p>(4) Every person responsible for the control of a centre, every staff member of a centre, and the licensee of a licensed centre must ensure that, so far as is reasonably practicable, hazards to the safety of the children are corrected, repaired, removed, or made inaccessible to the children.</p>	<p><b>26(3)</b> The licensee of a licensed centre shall ensure that all staff are trained in fire and earthquake drill, and in other emergency procedures, and that regular evacuation drill is carried out.</p> <p>(4) It is the duty of—</p> <p>(a) The licensee of a licensed centre; and</p> <p>(b) Every person responsible for the control of a centre</p> <p>(c) Every staff member of a centre— to ensure that, so far as is reasonably practicable, hazards to the safety of the children are corrected, repaired, removed, or made inaccessible to the children.</p>	<p><b>25(3)</b> Every licensee shall ensure that all persons employed at the child care centre receive training in fire and earthquake drill and in other emergency procedures</p>

Licensing Criteria for Kōhanga Reo affiliated with Te Kōhanga Reo National Trust 2008, 13 September 2008	The Education (Early Childhood Centres) Regulations 1998, sR1998/85	The Education (Early Childhood Centres) Regulations 1990, sR1990/261	The Child Care Centre Regulations 1985, sR1985/48
<p><b>HS9</b> A procedure for monitoring children's sleep is displayed and implemented and a record of children's sleep times is kept.</p> <p><b>Documentation required:</b></p> <ol style="list-style-type: none"> <li>1. A procedure for monitoring children's sleep.</li> </ol> <p>The procedure ensures that children:</p> <ul style="list-style-type: none"> <li>■ do not have access to food or liquids while in bed; and</li> <li>■ are checked for warmth, breathing, and general well-being at least every 5–10 minutes, or more frequently according to individual needs.</li> </ul> <ol style="list-style-type: none"> <li>2. A record of the time each child left in the care of the service sleeps, and checks made by adults during that time.</li> </ol>	<p><b>21(4)</b> The licensee of a licensed centre must ensure that, to the satisfaction of the Secretary, there is in place a system for monitoring sleeping children.</p> <p><b>26(2)(d)</b> no child has access to any fluid while in bed (or any other sleeping or resting place);</p>	<p><b>23(4)</b> The licensee of a licensed centre shall ensure that all children resting or sleeping are at all times within sight of a staff member.</p> <p><b>28(2)(d)</b> No child has access to any fluid while in bed (or any other sleeping or resting place);</p>	
<i>Sleep</i>			
<p><b>HS10</b> Furniture or items intended for children to sleep on (such as cots, beds, stretchers, or mattresses) are arranged and spaced when in use so that:</p> <ul style="list-style-type: none"> <li>■ adults have clear access to at least one side (meaning the length, not the width);</li> </ul>	<p><b>21(3)</b> The licensee of a licensed centre must ensure that all beds used by children are so spaced or arranged as to ensure hygiene, safety, and adequate means of access.</p>	<p><b>23(3)</b> The licensee of a licensed centre shall ensure that all beds used by children are so spaced or arranged as to ensure hygiene, safety, and adequate means of access.</p>	<p><b>24(3)</b> All beds used by children in a child care centre shall be so spaced or arranged as to ensure adequate means of access, hygiene, and safety.</p>

- the area surrounding each child allows sufficient air movement to minimise the risk of spreading illness; and
- children able to sit or stand can do so safely as they wake.

**HS11** If not permanently set up, furniture or items intended for children to sleep on (such as cots, beds, stretchers, or mattresses) and bedding is hygienically stored when not in use.

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<p><b>H512</b> Equipment, premises, and facilities are regularly checked for hazards to children.</p> <p>Accident/incident records are analysed to identify hazards and appropriate action taken. All practicable steps are taken to eliminate, isolate, or minimise hazards to the safety of children.</p> <p>Consideration of hazards must include but is not limited to:</p> <ul style="list-style-type: none"> <li>■ cleaning agents, medicines, poisons, and other hazardous materials;</li> <li>■ electrical sockets and appliances (particularly heaters);</li> <li>■ hazards present in kitchen or laundry facilities;</li> <li>■ vandalism, dangerous objects, and foreign materials (e.g. broken glass, animal droppings);</li> <li>■ equipment faults;</li> <li>■ poisonous plants; and</li> <li>■ bodies of water.</li> </ul>	<p><b>24</b>(1) The licensee of a licensed centre must ensure that—</p> <p>(h) all electrical sockets are either out of reach of children, or adequately shielded to prevent danger to children; and</p> <p>(l) outside doors, fences, and gates are secure and safe enough to ensure that children are not able to leave the centre without the knowledge of a staff member; and</p> <p>(m) any swimming pool, excavation, structure, or site at the centre capable of holding water is secured against entry by children in the manner prescribed by the Fencing of Swimming Pools Act 1987; and</p> <p>(n) no portable paddling pool at the centre has any water in it at any time, unless—</p> <p>(i) a staff member is then supervising alongside; or</p> <p>(ii) no children are then attending the centre; and</p> <p>(</p>	<p><b>26</b>(1) The licensee of a licensed centre shall ensure that—</p> <p>(h) All electrical sockets are either out of reach of children, or adequately shielded to prevent danger to children; and</p> <p>(l) Outside doors, fences, and gates are secure and safe enough to ensure that children are not able to leave the centre without the knowledge of a staff member; and</p> <p>(m) Any swimming pool, excavation, structure, or site at the centre capable of holding water is secured against entry by children in the manner prescribed by the Fencing of Swimming Pools Act 1987; and</p> <p>(n) No portable paddling pool at the centre has any water in it at any time, unless—</p> <p>(i) A staff member is then supervising alongside; or</p> <p>(ii) No children are then attending the centre; and</p> <p>(o) All sandpits, bark pits, and similar facilities—</p>	<p><b>20</b>(8) Any swimming pool, or excavation, structure, or site capable of holding water, at a child care centre, shall, in the manner prescribed by New Zealand Standard 9201, Chapter 21:1984, 'Restriction of Access to Private Swimming Pools', be secured against entry by children.</p> <p><b>25</b>(1)(h) All electrical power sockets shall either be out of the reach of children or be adequately shielded to prevent danger to the children:</p> <p><b>25</b>(6) It shall be the duty of—</p> <p>(a) The licensee of a child care centre; and</p> <p>(b) Every person responsible for the control of a child care centre; and</p> <p>(c) Every member of the staff of a child care centre—</p> <p>to ensure that, so far as is reasonably practicable, hazards to the safety of the children attending the centre are corrected, repaired, removed, or made inaccessible to the children.</p>
<i>Hazards and outings</i>			

<p><b>Documentation required:</b>                  A hazard identification and management system. The system can be consistent with the requirements of the Health and Safety in Employment Act 1992, but goes beyond the consideration of significant hazards to employees to include all hazards to children.</p>	<p>o) all sandpits, bark pits, and similar facilities—                  (i) are covered after the last session each day; or                  (ii) if covering is impracticable, are before the first session each day raked, and inspected, for animal droppings and dangerous objects; and                  (p) all cleaning agents, medicines, poisons, and other hazardous material at the centre are inaccessible to children; and                  (q) there are in place systems that prevent children from gaining access to any plant matter that is, or is capable of being, poisonous to children.                  (4) Every person responsible for the control of a centre, every staff member of a centre, and the licensee of a licensed centre must ensure that, so far as is reasonably practicable, hazards to the safety of the children are corrected, repaired, removed, or made inaccessible to the children.</p>	<p>(i) Are covered after the last session each day; or                  (ii) If covering is impracticable, are before the first session each day raked, and inspected, for animal droppings and dangerous objects; and                  (p) All cleaning agents, medicines, poisons, and other hazardous material at the centre are inaccessible to children; and                  (q) There are not planted at the centre any plants whose bark, leaves, flowers, sap, or fruit are, or are capable of being, poisonous to children.                  (r) There is not planted where its bark, leaves, flowers, or fruit could fall or be blown into the centre, or be reached by children attending the centre, any plant whose bark, leaves, flowers or fruit are, or are capable of being, poisonous to children.                  (4) It is the duty of—                  (a) The licensee of a licensed centre; and                  (b) Every person responsible for the control of a centre                  (c) Every staff member of a centre—to ensure that, so far as is reasonably practicable, hazards to the safety of the children are corrected, repaired, removed, or made inaccessible to the children.</p>
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Licensing Criteria for Kōhanga Reo affiliated with Te Kōhanga Reo National Trust 2008, 13 September 2008	The Education (Early Childhood Centres) Regulations 1998, SR1998/85	The Education (Early Childhood Centres) Regulations 1990, SR1990/261	The Child Care Centre Regulations 1985, SR1985/48
<p><b>H513</b> The temperature of warm water delivered from taps that are accessible to children is no higher than 40°C, and comfortable for children at the centre to use.</p>	<p><b>3 Hand-washing facilities</b> (schedule 2) (5) The temperature of the water at handbasins accessible to the children must be effectively controlled so as not to be higher than 40° Celsius at the outlet.</p>	<p><b>3 Hand-washing facilities</b> (second schedule) (5) The temperature of the water at handbasins accessible to the children shall be effectively controlled so as not to be higher than 40° C at the outlet.</p>	<p><b>3. Hand Washing Facilities</b> (schedule 2) (c) . . . The temperature of the water accessible to children shall be effectively controlled so as not to exceed 40°C at the outlet.</p>
<p><b>H514</b> Water stored in any hot water cylinder is kept at a temperature of at least 60°C.</p>	<p><b>3 Hand-washing facilities</b> (schedule 2) (6) Notwithstanding subclause (5), where a hot water cylinder is used as a means of providing hot water, the water in it must at all times when the centre is open be kept at a temperature of at least 60° Celsius.</p>	<p><b>3 Hand-washing facilities</b> (second schedule) (6) Notwithstanding subclause (5) of this clause, where a hot water cylinder is used as a means of providing hot water, the water in it shall at all times when the centre is open be kept at a temperature of at least 60° C.</p>	<p><b>3. Hand Washing Facilities</b> (schedule 2) (c) A hot water cylinder of sufficient size with an adjustable thermostat shall be provided. . . .</p>
<p><b>H515</b> All practicable steps are taken to ensure that noise levels do not unduly interfere with normal speech and/or communication, or cause any child attending distress or harm.</p>	<p><b>22 Lighting, ventilation, noise, and heating</b> (1) The licensee of a licensed centre must ensure that every room in the centre that is used by children has, to the satisfaction of the Secretary, . . . acoustics that ensure that noise is kept at a reasonable level, . . .</p>	<p><b>24 Lighting, ventilation, noise, and heating—(1)</b> Subject to subclause (2) of this regulation, the licensee of a licensed centre shall ensure that every room in the centre that is used by children has, to the satisfaction of the Secretary, . . . acoustics that ensure that noise is kept at a reasonable level, . . .</p>	<p><b>22 Lighting, ventilation, and heating—(1)</b> Every room in a child care centre used by children shall have, to the satisfaction of the Director-General, . . . acoustics which ensure that noise is kept at a reasonable level, . . .</p>



<p><b>Hs16</b> Safe and hygienic handling practices are implemented with regard to any animals at the service. All animals are able to be restrained.</p>	<p><b>24(k)</b> all animals are kept clean and healthy, and are able to be restrained;</p>	<p><b>26(k)</b> All animals are kept clean and healthy, and are able to be restrained;</p>	<p><b>Hs17</b> Whenever children leave the premises on an outing or excursion:</p> <ul style="list-style-type: none"> <li>■ assessment and management of risk is undertaken, and adult:child ratios are determined accordingly. Ratios are not less than the required adult:child ratio;</li> <li>■ the first aid requirements in criterion Hs25 are met in relation to those children and any children remaining at the premises;</li> <li>■ parents have given prior written approval to their child's participation and of the proposed ratios; for             <ul style="list-style-type: none"> <li>i. regular outings or excursions at the time of enrolment; and</li> <li>ii. special outings or excursions prior to the outing or excursion taking place; and</li> </ul> </li> <li>■ there are communication systems in place so that people know where the children are, and adults can communicate with others as necessary.</li> </ul> <p>When children leave the premises on a regular or special outing or excursion the outing or excursion must be approved by the Person Responsible.</p>	<p><b>27 Travel arrangements</b></p> <p>(2) The licensee of a licensed centre must ensure that no child leaves the centre with any person, unless the person—</p> <p>(a) Has custody of the child; or</p> <p>(b) Is authorised in writing to take the child by a person who has custody of the child.</p> <p>(3) The licensee of a licensed centre must ensure that if children are taken on any excursion or activity outside the centre while in the care of the centre—</p> <p>(a) there is a ratio of adults to children that, to the satisfaction of the Secretary, ensures the safety of those children; and</p> <p>(b) the parent or guardian of each child has given written approval to the ratio to be used; and</p> <p>(c) the adult to child ratio requirement for children remaining at the centre is maintained.</p>	<p><b>29 Travel arrangements</b></p> <p>(2) The licensee of a licensed centre shall ensure that no child leaves the centre with any person, unless the person—</p> <p>(a) Has custody of the child; or</p> <p>(b) Is authorised in writing to take the child by a person who has custody of the child.</p>	<p><b>25(4)</b> A child shall not be permitted to leave the care of a child care centre with any person who has not been authorised to collect the child by the parent or guardian of the child.</p>
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Licensing Criteria for Kōhanga Reo affiliated with Te Kōhanga Reo National Trust 2008, 13 September 2008	The Education (Early Childhood Centres) Regulations 1998, sR1998/85	The Education (Early Childhood Centres) Regulations 1990, sR1990/261	The Child Care Centre Regulations 1985, sR1985/48
<p><b>Documentation required:</b></p> <p>A record of outings or excursions. Records include:</p> <ul style="list-style-type: none"> <li>■ the names of adults and children involved;</li> <li>■ the time and date of the outing;</li> <li>■ the location and method of travel;</li> <li>■ assessment and management of risk;</li> <li>■ adult:child ratios;</li> <li>■ evidence of parental permission and approval of adult:child ratios for regular outings or excursions; and</li> <li>■ evidence of parental permission and approval of adult:child ratios for special outings or excursions</li> </ul>	<p><b>27(1)</b> The licensee of a licensed centre must ensure that if children travel in a motor vehicle while in the care of the centre—</p> <p>(a) a person responsible ensures that each child is restrained as required by regulation 29A of the Traffic Regulations 1976; and</p> <p>(b) there are at least 2 adults in any motor vehicle carrying more than 3 children; and</p> <p>(c) the written permission of the parent or guardian of the child has been obtained before the travel begins.</p>	<p><b>29(1)</b> The licensee of a licensed centre shall ensure that if children travel in a motor vehicle while in the care of the centre—</p> <p>(a) A person responsible ensures that each child is restrained as required by regulation 30 of the Traffic Regulations 1976; and</p> <p>(b) There are no more than 3 children per adult in any motor vehicle; and</p> <p>(c) The written permission of the parent or guardian of the child has been obtained before the travel begins.</p>	<p><b>25(5)</b> if a child travels in a motor vehicle while in the care of a child care centre, the person in charge of the child shall ensure that the child is restrained as required by regulation 30 of the Traffic Regulations 1976.</p>
<p><b>HS18</b> If children travel in a motor vehicle while in the care of the service:</p> <ul style="list-style-type: none"> <li>■ each child is restrained as required by Land Transport legislation;</li> <li>■ required adult: child ratios are maintained; and</li> <li>■ the written permission of a parent of the child is obtained before the travel begins (unless the child is traveling with their parent).</li> </ul>	<p><b>27(1)</b> The licensee of a licensed centre must ensure that if children travel in a motor vehicle while in the care of the centre—</p> <p>(a) a person responsible ensures that each child is restrained as required by regulation 29A of the Traffic Regulations 1976; and</p> <p>(b) there are at least 2 adults in any motor vehicle carrying more than 3 children; and</p> <p>(c) the written permission of the parent or guardian of the child has been obtained before the travel begins.</p>	<p><b>29(1)</b> The licensee of a licensed centre shall ensure that if children travel in a motor vehicle while in the care of the centre—</p> <p>(a) A person responsible ensures that each child is restrained as required by regulation 30 of the Traffic Regulations 1976; and</p> <p>(b) There are no more than 3 children per adult in any motor vehicle; and</p> <p>(c) The written permission of the parent or guardian of the child has been obtained before the travel begins.</p>	<p><b>25(5)</b> if a child travels in a motor vehicle while in the care of a child care centre, the person in charge of the child shall ensure that the child is restrained as required by regulation 30 of the Traffic Regulations 1976.</p>

<p><b>Documentation required:</b>  Evidence of parental permission for any travel by motor vehicle. In most cases, this requirement will be met by the excursion records required for criterion HS17. However, services that provide transport for children to and/or from the service must also gain written permission from a parent upon enrolment.</p>	<p>(2) The licensee of a licensed centre must ensure that no child leaves the centre with any person, unless the person—  a) Has custody of the child; or  (b) Is authorised in writing to take the child by a person who has custody of the child.</p>	<p>(2) The licensee of a licensed centre shall ensure that no child leaves the centre with any person, unless the person—  (a) Has custody of the child; or  (b) Is authorised in writing to take the child by a person who has custody of the child.</p>
<p><i>Food and drink</i></p>		
<p><b>HS19</b> Food is served at appropriate times to meet the nutritional needs of each child while they are attending. Where food is provided by the service, it is of sufficient variety, quantity, and quality to meet these needs. Where food is provided by parents, the service encourages and promotes healthy eating guidelines.</p> <p><b>Documentation required:</b>  A record of all food served during the service's hours of operation (other than that provided by parents for their own children). Records show the type of food provided, and are available for inspection for 3 months after the food is served.</p>	<p><b>26(1)</b> The licensee of a licensed centre must ensure that food is served in the centre at such times, and in such variety, quantity, and quality, as to meet the nutritional needs of the children.  (2) The licensee of a licensed centre must ensure that—  (f) a record of every meal served to children at the centre, showing the type of food provided, is kept, and available for inspection, for 12 months after it is served.</p>	<p><b>27(2)</b> In every child care centre meals and snacks shall be served at such times and in such variety, quantity, and quality as will meet the nutritional needs of the children.  (3) In every child care centre—  (e) A record of the meals served to children, showing the types of food provided, shall be kept and be available for inspection.</p>
<p><b>HS20</b> Food is prepared, served, and stored hygienically.</p>	<p><b>26(2)(e)</b> all food provided is clean when stored, prepared, and served;</p>	<p><b>27(3)(d)</b> All food provided shall be stored, prepared, and served under hygienic conditions</p>

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<p><b>HS21</b> An ample supply of water that is fit to drink is available to children at all times, and older children are able to access this water independently.</p>	<p><b>26(2)(a)</b> at all times an ample supply of potable drinking water is available to the children;</p>	<p><b>28(2)(a)</b> At all times an ample supply of potable drinking water is available to the children;</p>	<p><b>27(3)(a)</b> An ample supply of potable drinking water shall be available for the children at all times</p>
<p><b>HS22</b> Children are supervised while eating.</p>	<p><b>26(2)(c)</b> no child is unattended while eating;</p>	<p><b>28(2)(c)</b> No child is unattended while eating;</p>	<p><b>27(3) (c)</b> A child shall not be unattended while the child is having food</p>
<p><b>HS23</b> APPLIES ONLY TO SERVICES LICENSED FOR UNDER 2 YEAR OLDS: Infants under the age of 6 months and other children unable to drink independently are held semi-upright when being fed. Any infant milk food given to a child under the age of 12 months is of a type approved by the child's parent.</p>	<p><b>26(2)(b)</b> children under 6 months are held while being fed and are fed no infant formula, unless it is a formula of a type approved by a parent or guardian; and</p>	<p><b>28(2)(b)</b> Children under 6 months are held while being fed and are fed no infant formula unless it is a formula of a type approved by a parent or guardian; and</p>	<p><b>27(3)(b)</b> Children less than 6 months old shall, if practicable, be held while they are being fed:</p>
<i>Child health and wellbeing</i>			
<p><b>HS24</b> Rooms used by children are kept at a comfortable temperature no lower than 16°C (at 500mm above the floor) while children are attending.</p>	<p><b>22(2)</b> The heating in a room is adequate for the purposes of subclause (1) if the room is at or above a temperature of 16° Celsius measured between 0.5 m and 1 m above the floor.</p>	<p><b>24(2)</b> The heating in a room is adequate for the purposes of subclause (1) of this regulation if the room is at a temperature of 18 degrees Celsius measured between 0.5 m and 1m above the floor.</p>	<p><b>22(2)</b> Heating equipment which is capable of maintaining a temperature of 15°C measured between 0.5 m to 1 m above the floor shall be adequate for the purposes of this regulation.</p>

<p><b>H525</b> There is an adult present at all times for every 50 children attending (or part thereof) that:</p> <ul style="list-style-type: none"> <li>■ holds a current first aid qualification gained from a New Zealand Qualifications Authority accredited first aid training provider; or</li> <li>■ is a registered medical practitioner or nurse with a current practising certificate; or</li> <li>■ is a qualified ambulance officer or paramedic.</li> </ul> <p>If a child is injured, any required first aid is administered or supervised by an adult meeting these requirements.</p> <p><b>Documentation required:</b></p> <ol style="list-style-type: none"> <li>1. A record of all injuries that occur at the service that include:             <ul style="list-style-type: none"> <li>■ the child's name;</li> <li>■ the date, time, and description of the incident;</li> <li>■ actions taken and by whom;</li> <li>■ evidence of parental knowledge of the incident.</li> </ul> </li> <li>2. Copies of current first aid (or medical practising) certificates for adults counting towards this requirement.</li> </ol>	<p><b>25(3)</b> The licensee of a licensed centre must ensure that there is at the centre, at all times while children are attending, at least 1 staff member who holds a current first-aid certificate, or some other qualification recognised by the Secretary for the purpose.</p> <p><b>35. Records</b></p> <p>(e) particulars of every accident and illness occurring to the child while at the centre, and of any action taken;</p> <p>(h) the names of people who (by direction of a person who has the role of providing day-to-day care for the child or who has custody of the child) should be consulted if the child is ill or injured; and</p>	<p><b>27(3)</b> The licensee of a licensed centre shall ensure that there is at the centre at all times while children are attending at least 1 staff member who holds a current first-aid certificate, or some other qualification, recognised by the Secretary for the purpose.</p> <p><b>38. Records</b></p> <p>(e) Particulars of every accident and illness occurring to the child while at the centre, and of any action taken; and</p> <p>(h) The names of people who (by direction of a person who has custody of the child) should be consulted if the child is ill or injured; and</p>	<p><b>26(3)</b> Every child care centre shall have available on call a person trained in administering first aid.</p>
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Licensing Criteria for Kōhanga Reo affiliated with Te Kōhanga Reo National Trust 2008, 13 September 2008	The Education (Early Childhood Centres) Regulations 1998, SR1998/85	The Education (Early Childhood Centres) Regulations 1990, SR1990/261	The Child Care Centre Regulations 1985, SR1985/48
<p><b>H526</b> All practicable steps are taken to ensure that children do not come into contact with any person (adult or child) on the premises who is suffering from a disease or condition likely to be passed on to children and likely to have a detrimental effect on them.</p> <p>Specifically:</p> <ul style="list-style-type: none"> <li>■ the action specified in Appendix 2 is taken for any person (adult or child) suffering from particular infectious diseases; and</li> <li>■ children who become unwell while attending the service are kept at a safe distance from other children (to minimise the spread of infection) and returned to the care of a parent or other person authorised to collect the child without delay.</li> </ul>	<p><b>28(1)</b> The licensee of a licensed centre must take all reasonable steps to ensure that any child suffering from any infectious disease listed in Schedule 2 of the Health (Infectious and Notifiable Diseases) Regulations 1966 is excluded from the centre; and regulation 14 of those regulations, with necessary modifications, applies to every licensed centre as if it were a school.</p> <p><b>(2)</b> Any child who is suffering from any disease (other than a disease referred to in subclause (1)) or from any ailment, illness, or other condition affecting the child's health, may be excluded from attending any licensed centre at the discretion of a person responsible, for any period the person thinks appropriate.</p>	<p><b>30(1)</b> The licensee of a licensed centre shall take all reasonable steps to ensure that any child suffering from any infectious disease listed in the Second Schedule of the Health (Infectious and Notifiable Diseases) Regulations 1966 is excluded from the centre; and regulation 14 of those regulations, with necessary modifications, applies to every licensed centre as if it were a school.</p> <p><b>(2)</b> Any child who is suffering from any disease (other than a disease referred to in subclause (1) of this regulation) or from any ailment, illness, or other condition affecting the child's health, may be excluded from attending any licensed centre at the discretion of a person responsible, for any period the person thinks appropriate.</p>	<p><b>34(1)</b> Any child who is suffering from any infectious disease listed in the Second Schedule to the Health (Infectious and Notifiable Diseases) Regulations 1966 shall be excluded from attending any child care centre.</p> <p><b>(2)</b> Regulation 14 of the Health (Infectious and Notifiable Diseases) Regulations 1966, with the necessary modifications, shall apply in respect of every child care centre as if it were a school.</p> <p><b>(3)</b> Any child who is suffering from any disease (other than a disease referred to in subclause (1) of this regulation) or from any ailment or illness or other condition affecting the child's health may be excluded from attending any child care centre at the discretion of the supervisor for such period as the supervisor considers appropriate.</p> <p><b>(4)</b> Every child care centre shall have available an area and facilities suitable for the temporary isolation and care of at least 1 sick child. In any case of minor illness all practicable steps shall be taken to isolate the sick child from the others attending the centre and to ensure that</p>

the child is returned to the care of the child's parent or guardian without delay. (5) In the case of an accident to or serious illness of a child occurring at or noticed at a child care centre in circumstances which call for immediate medical aid, the person in charge of the child at the time shall without delay ensure that an reasonable steps are taken to secure the necessary medical aid and to notify the parent or guardian of the child.

<p><b>29. Staff health</b></p>	<p><b>31. Staff health</b></p>	<p><b>35. Staff health—(1)</b></p>
<p>(1) The licensee of a licensed centre must take all reasonable steps to ensure that every person working in any capacity in the centre is in good health and not suffering from any infectious disease listed in Schedule 2 of the Health (Infectious and Notifiable Diseases) Regulations 1966.</p> <p>(2) The licensee of a licensed centre must take all reasonable steps to ensure that the children do not come into contact with any member of the staff of the centre, or any other person on the premises, who is suffering from a disease or condition—</p> <p>(a) capable of being passed on to children; and</p> <p>(b) likely to have a detrimental effect on children if passed on to them.</p>	<p>(1) The licensee of a licensed centre shall take all reasonable steps to ensure that every person working in any capacity in the centre is in good health and not suffering from any infectious disease listed in the Second Schedule of the Health (Infectious and Notifiable Diseases) Regulations 1966.</p> <p>(2) If the licensee or any person responsible for a licensed centre has reason to believe that any member of the staff, or any person on the premises who may come into contact with the children, may be suffering from any disease or condition likely to have a detrimental effect on the children, the licensee or person responsible shall forthwith tell the Secretary.</p>	<p>Every person working in any capacity in a child care centre shall be in good physical condition and shall not be suffering from any infectious disease listed in the Second Schedule to the Health (Infectious and Notifiable Diseases) Regulations 1966.</p> <p>(2) If the Director-General has reason to believe that any member of the staff of a child care centre, or any person on the premises who comes into contact with the children, is suffering from any disease or condition which is likely to have a detrimental effect upon the children in the care of the centre, the Director-General may direct that the person be excluded from entering the premises or from coming into contact with the</p>



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<p><b>Hs27</b> All practicable steps are taken to get immediate medical assistance for a child who is badly hurt in an accident or becomes seriously ill, and to notify a parent or caregiver of what has happened.</p> <p><b>Documentation required:</b></p> <p>A record of serious illnesses that occur at the service (see Hs25 for the requirement to record injuries).</p>	<p>(3) If satisfied on reasonable grounds that the licensee of a licensed centre has failed to comply with subclause (2) in relation to the centre, the Secretary may immediately suspend the centre's licence under regulation 11(1).</p>	<p>(3) If the Secretary has reason to believe that any member of the staff of a centre, or any person on the premises who comes into contact with the children, is suffering from any disease or condition likely to have a detrimental effect on the children, the Secretary may direct that the person be excluded from entering the premises or from coming into contact with the children until the Secretary is satisfied that the person is free from the disease or condition.</p> <p>(4) If any person acts in contravention of a direction given by the Secretary under subclause (3) of this regulation, the Secretary may forthwith suspend the centre's licence under regulation 13 (1) of these regulations.</p>	<p>children until the Director-General is satisfied that the person is free from that disease or condition</p> <p>(3) If any person acts in contravention of a direction given by the Director-General under subclause (2) of this regulation, the Director-General may forthwith suspend the licence under which the centre operates under regulation 17 of these regulations</p>
<p><b>Hs27</b> All practicable steps are taken to get immediate medical assistance for a child who is badly hurt in an accident or becomes seriously ill, and to notify a parent or caregiver of what has happened.</p> <p><b>Documentation required:</b></p> <p>A record of serious illnesses that occur at the service (see Hs25 for the requirement to record injuries).</p>	<p><b>28(5)</b> In the case of an accident to or serious illness of a child occurring or noticed at a licensed centre in circumstances that seem to call for immediate medical aid, the person responsible must without delay ensure that all reasonable steps are taken to get medical aid and to notify an appropriate parent, guardian, or whanau member.</p>	<p><b>30(5)</b> In the case of an accident to, or serious illness of, a child occurring at, or noticed at, a licensed centre in circumstances that seem to call for immediate medical aid, the person responsible must without delay ensure that all reasonable steps are taken to get medical aid and to notify an appropriate parent, guardian, or whanau member.</p>	<p><b>36. Records</b>—In every child care centre records shall be kept which shall be available at all times for inspection by authorised persons having the right of entry to the centre under regulation 38 of these regulations, and which shall include—</p> <p>(e) Particulars of accidents or illnesses occurring to children while they are at the</p>

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<p>Records include:</p> <ul style="list-style-type: none"> <li>■ the child's name;</li> <li>■ the date, time and description of the incident;</li> <li>■ actions taken and by whom; and</li> <li>■ evidence of parental knowledge of the incident.</li> </ul>	<p><b>35(f)</b> details of any chronic illness from which the child suffers, and of any medication the child has to take; and (g) details of all medicine (whether prescription or non-prescription) given to the child while at the centre, the occasions on which it was administered, who administered it, and by whose authority; and</p> <p>(h) the names of people who (by direction of a person who has the role of providing day-to-day care for the child or who has custody of the child) should be consulted if the child is ill or injured; and</p>	<p>centre and of the action taken;</p> <p>(f) Details of any chronic illness from which any, child attending the centre is suffering and of any medication required to be administered to the child;</p> <p>(g) Details of prescription and non-prescription medicine administered to any child, of the occasions on which medicine was administered, and on whose authority and by whom the medicine was administered;</p>
<p><b>H528</b> Medicine (prescription and non-prescription) is not given to a child unless it is given:</p> <ul style="list-style-type: none"> <li>■ by a doctor or ambulance personnel in an emergency; or</li> <li>■ by the parent of the child; or</li> <li>■ with the written authority (appropriate to the category of medicine) of a parent.</li> </ul> <p>Medicines are stored safely and appropriately, and are disposed of, or sent home with a parent (if supplied in relation to a specific child) after the specified time.</p> <p><b>Documentation required:</b></p> <p>1. A record of the written authority from parents for the administration of medicine in accordance with the requirement for</p>	<p><b>36(f)</b> Every person responsible for a licensed centre shall take all reasonable steps to ensure that medicine is not given to a child unless—</p> <p>(a) It is given by a doctor or ambulance officer in an emergency; or</p> <p>(b) It is given with the written authority of an appropriate parent, guardian, or whanau member.</p> <p><b>26(p)</b> All cleaning agents, medicines, poisons, and other hazardous material at the centre are inaccessible to children</p> <p><b>38(g)</b> details of all medicine (whether prescription or non-prescription) given to the child while at the centre, the occasions on which it was administered, who administered it, and by whose authority;</p>	<p><b>34(g)</b> Medicine shall not be administered to a child attending a child care centre without the authority of a parent or guardian of the child.</p> <p><b>36(f)</b> Details of any chronic illness from which any, child attending the centre is suffering and of any medication required to be administered to the child:</p> <p>(g) Details of prescription and non-prescription medicine administered to any child, of the occasions on which medicine was administered, and on whose authority and by whom the medicine was administered;</p>

<p><b>Licensing Criteria for Kōhanga Reo affiliated with Te Kōhanga Reo National Trust 2008, 13 September 2008</b></p>	<p><b>The Education (Early Childhood Centres) Regulations 1998, sR1998/85</b></p>	<p><b>The Education (Early Childhood Centres) Regulations 1990, sR1990/261</b></p>	<p><b>The Child Care Centre Regulations 1985, sR1985/48</b></p>
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the category of medicine outlined in

Appendix 3.

2. A record of all medicine (prescription and non-prescription) given to children left in the care of the service. Records include:

- name of the child;
- name and amount of medicine given;
- date and time medicine was administered and by whom; and
- evidence of parental acknowledgement.

When the same dose of

Category (iii) medicine is administered on a regular basis, parental acknowledgement may be obtained weekly or every three months.

The recording of Category (i) medicines administered in relation to injuries in the record required by criterion H525 will meet this requirement for those medicines.

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<p><b>HS29</b> Adults who administer medicine to children (other than their own) are provided with information and/or training relevant to the task.</p> <p><b>Documentation required:</b>                  A record of training and/or information provided to adults who administer medicine to children (other than their own) while at the service.</p>	<p><b>4. Washing facilities</b> (schedule 2)                  The centre must have suitable facilities for washing sick or soiled children.</p>	<p><b>4. Washing facilities</b> (second schedule)                  The centre shall have suitable facilities for washing sick or soiled children.</p>	<p><b>4. Bathing Facilities</b> (second schedule)                  Facilities shall be available for bathing sick or soiled children.</p>
<p><i>Child protection</i></p>			
<p><b>HS31</b> A process for the prevention of child abuse is implemented, and a procedure for responding to suspected child abuse is followed when required.</p> <p><b>Documentation required:</b></p> <ol style="list-style-type: none"> <li>A process for the prevention of child abuse;</li> <li>A procedure for responding to suspected child abuse.</li> </ol>	<p><b>28(7)</b> The licensee of every centre must ensure that a policy is developed on the prevention of child abuse and on the handling of any evidence of child abuse.</p>	<p><b>30(7)</b> The licensee of every centre shall develop, with the approval of the Secretary, a policy on the handling of any evidence of child abuse that may come to the notice of staff.</p>	<p><b>HS32</b> All practicable steps are taken to protect children from exposure to inappropriate material (for example, of an explicitly sexual or violent nature).</p>

Licensing Criteria for Kōhanga Reo affiliated with Te Kōhanga Reo National Trust 2008, 13 September 2008	The Education (Early Childhood Centres) Regulations 1998, sR1998/85	The Education (Early Childhood Centres) Regulations 1990, sR1990/261	The Child Care Centre Regulations 1985, sR1985/48
<p>H533 No person on the premises uses, or is under the influence of, alcohol or any other substance that has a detrimental effect on their functioning or behaviour during the service's hours of operation.</p>	<p>29(4) The licensee of a licensed centre must ensure that no person smokes indoors at the centre in the areas used by the children or where food is prepared, or outdoors where children are playing.</p> <p>(5) The licensee of a licensed centre must ensure that during the hours the centre is operating no person at the centre uses, or is affected by, alcohol or any other substance that has a detrimental effect on the person's functioning or behaviour.</p>	<p>31(5) The licensee of a licensed centre shall ensure that no person smokes indoors at the centre in the areas used by the children or where food is prepared, or outdoors where children are playing.</p> <p>(6) The licensee of a licensed centre shall ensure that no person—</p> <p>(a) Uses alcohol or any other mind-altering substance at the centre; or</p> <p>(b) Is at the centre while affected by alcohol or any mind-altering substance— during the hours the centre is operating.</p>	<p>22(3) No person shall smoke indoors at a child care centre in those areas used by the children.</p>

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**SELECT RECORD OF INQUIRY**

**RECORD OF HEARINGS**

**The Tribunal**

The Tribunal constituted to hear the kōhanga reo claim comprised Deputy Chief Judge Caren Fox (presiding), Ronald Crosby, the Honourable Sir Douglas Lorimer Kidd KNZM, Kihi Ngatai QSM, and Tania Simpson.

**Counsel**

Counsel for the claimants were Mai Chen, Nicholai Anderson, and Tania Winslade; counsel for the Crown were Ben Keith and Dr Damen Ward.

**Hearings**

The claim was heard between 12 and 16 March, 19 and 23 March, and 23 and 27 April 2012 at Te Kōhanga Reo National Trust Board's offices in Wellington.

**SELECT RECORD OF PROCEEDINGS**

**1. Statements**

**1.1 Statements of claim**

**1.1.1** Dr Timoti Kāretu, Tina Olsen Ratana, and Dame Iritana Te Rangi Tāwhiwhirangi on behalf of Te Kōhanga Reo National Trust Board, statement of claim concerning Crown treatment of Kōhanga Reo, 25 July 2011

**1.1.1(a)** Dr Timoti Kāretu, Tina Olsen Ratana, and Dame Iritana Te Rangi Tāwhiwhirangi on behalf of Te Kōhanga Reo National Trust Board, amended statement of claim concerning Crown treatment of Kōhanga Reo, 22 September 2011

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**1.4 Statements of issues**

1.4.1 Statement of issues for the urgent inquiry, 25 November 2011

**2. Tribunal memoranda and directions**

2.1.1 Chief Judge Wilson Isaac, memorandum registering new statement of claim, 26 July 2011

2.2.1 Chief Judge Wilson Isaac, memorandum registering amended statement of claim, 20 October 2011

**2.5 Pre-hearing stage**

2.5.1 Chief Judge Wilson Isaac, memorandum seeking Crown response to application for urgency and delegating application to Deputy Chief Judge Fox, 26 July 2011

2.5.2 Deputy Chief Judge Caren Fox, memorandum inviting submissions on the appointment of a presiding officer, 28 July 2011

2.5.3 Deputy Chief Judge Caren Fox, memorandum convening hearing on 17 and 18 August 2011 to determine application for urgency, 9 August 2011

2.5.4 Deputy Chief Judge Caren Fox, memorandum confirming information sought in memorandum 2.5.3, 12 August 2011

2.5.5 Deputy Chief Judge Caren Fox, memorandum appointing Kihi Ngatai and Sir Douglas Kidd to assist in determination of application for urgency, 12 August 2011

2.5.6 Deputy Chief Judge Caren Fox, Sir Douglas Kidd, and Kihi Ngatai, memorandum, 19 August 2011

2.5.7 Deputy Chief Judge Caren Fox, Sir Douglas Kidd, and Kihi Ngatai, memorandum seeking further information, 23 August 2011

2.5.8 Deputy Chief Judge Caren Fox, Sir Douglas Kidd, and Kihi Ngatai, memorandum granting extension to filing dates, 26 August 2011

2.5.9 Deputy Chief Judge Caren Fox, Sir Douglas Kidd, and Kihi Ngatai, memorandum seeking clarification as to disclosure of documents and declining counsel's request for extension to filing date, 2 September 2011



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- 2.5.10** Deputy Chief Judge Caren Fox, Sir Douglas Kidd, and Kihi Ngatai, memorandum appointing mediators, setting dates for mediation and a teleconference, 12 September 2011
- 2.5.11** Deputy Chief Judge Caren Fox, Sir Douglas Kidd, and Kihi Ngatai, memorandum rescheduling teleconference, 15 September 2011
- 2.5.12** Deputy Chief Judge Caren Fox, Sir Douglas Kidd, and Kihi Ngatai, memorandum requesting further information, 19 October 2011
- 2.5.13** Deputy Chief Judge Caren Fox, Sir Douglas Kidd, and Kihi Ngatai, memorandum granting application for urgency, 25 October 2011
- 2.5.14** Deputy Chief Judge Caren Fox, Sir Douglas Kidd, and Kihi Ngatai, memorandum convening judicial conference to discuss inquiry process, 31 October 2011
- 2.5.15** Deputy Chief Judge Caren Fox, Sir Douglas Kidd, and Kihi Ngatai, memorandum granting extension to filing date, 2 November 2011
- 2.5.16** Chief Judge Wilson Isaac, memorandum appointing Deputy Chief Judge Fox presiding officer and Kihi Ngatai, Sir Douglas Kidd, Tania Simpson, and Ron Crosby members of panel, 3 November 2011
- 2.5.17** Deputy Chief Judge Caren Fox, memorandum inviting submissions on Tania Simpson remaining a panel member, 8 November 2011
- 2.5.18** Deputy Chief Judge Caren Fox, memorandum requesting further information concerning witnesses, 9 November 2011
- 2.5.19** Waitangi Tribunal, memorandum following 10 November 2011 judicial conference outlining inquiry timeline, 11 November 2011
- 2.5.20** Waitangi Tribunal, memorandum supplying preliminary list of documents from Wai 262 report, 18 November 2011
- 2.5.21** Waitangi Tribunal, memorandum supplying second preliminary list of documents not recorded on Wai 262 ROI, 22 November 2011
- 2.5.22** Waitangi Tribunal, memorandum releasing statement of issues, 25 November 2011

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**2.5.23** Waitangi Tribunal, memorandum confirming hearing dates and setting filing dates, 25 November 2011

**2.5.24** Waitangi Tribunal, memorandum relating to transfer of documents to Wai 2336 ROI and requests for further disclosure, 12 December 2011

**2.5.25** Waitangi Tribunal, memorandum granting leave to claimant counsel to file further evidence and declining request for reconsideration of decision in memorandum 2.5.24, 13 December 2011

**2.5.26** Waitangi Tribunal, memorandum declining transfer of documents from Wai 1298 ROI and extension to filing date, 19 December 2011

**2.5.27** Waitangi Tribunal, memorandum granting to leave to NZEI to participate in watching brief capacity and for Tina Olsen-Ratana's fifth brief of evidence to be added to ROI, 9 February 2012

**2.5.28** Waitangi Tribunal, memorandum convening judicial conference and supplying agenda, 15 February 2012

**2.5.29** Waitangi Tribunal, memorandum concerning evidence relating to New Zealand Teachers Council, Tertiary Education Commission, and filing of further Crown brief of evidence, 17 February 2012

**2.5.30** Waitangi Tribunal, memorandum concerning matters arising from 20 February 2012 judicial conference and setting filing dates, 21 February 2012

**2.5.31** Waitangi Tribunal, memorandum further clarifying instructions and filing dates, 28 February 2012

**2.5.32** Waitangi Tribunal, memorandum granting leave to file evidence in reply to brief of evidence of Professor Stephen May, 6 March 2012

**2.5.33** Waitangi Tribunal, memorandum setting filing dates, 9 March 2012

**2.6 Hearing stage**

**2.6.1** Waitangi Tribunal, memorandum concerning closing submissions and granting leave to file submissions on amendments to transcript of March hearing, 16 April 2012

**2.7 Post-hearing stage**

2.7.1 Waitangi Tribunal, memorandum concerning matters arising from closing submissions and setting filing dates, 2 May 2012

2.7.2 Waitangi Tribunal, memorandum, 23 May 2012

2.7.3 Waitangi Tribunal, memorandum setting filing date for the Crown to provide further information, 14 June 2012

2.7.4 Deputy Chief Judge Caren Fox, memorandum requesting further information from the Crown and claimants, 26 July 2012

2.7.5 Deputy Chief Judge Caren Fox, memorandum concerning documents to be added to Wai 2336 ROI, 3 August 2012

2.7.6 Deputy Chief Judge Caren Fox, memorandum concerning release of *Matua Rautia: The Kōhanga Reo Claims Report*, 4 October 2012

**3. Submissions and memoranda of parties**

**3.1 Pre-hearing stage**

3.1.1 Mai Chen, memorandum seeking urgent inquiry, 25 July 2011

3.1.2 Mai Chen, memorandum supporting application for urgency, 28 July 2011

3.1.3 Ben Keith and Dr Damen Ward, memorandum seeking extension of filing date to respond to application for urgency 29 July 2011

3.1.4 Mai Chen, memorandum responding to Crown's request for extension of filing date, 29 July 2011

3.1.5 Mai Chen, memorandum responding to memorandum 2.5.2, 1 August 2011

3.1.6 Ben Keith and Dr Damen Ward, memorandum responding to memorandum 2.5.2, 1 August 2011

3.1.7 Ben Keith and Dr Damen Ward, memorandum opposing application for urgency, 4 August 2011

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- 3.1.8** Mai Chen, memorandum seeking leave to file memorandum responding to memorandum 3.1.7, 5 August 2011
- 3.1.9** Ben Keith and Dr Damen Ward, memorandum concerning memorandum 3.1.8, 5 August 2011
- 3.1.10** Mai Chen, memorandum responding to memorandum 3.1.7, 9 August 2011
- 3.1.11** Ben Keith and Dr Damen Ward, memorandum responding to memorandum 2.5.3, 11 August 2011
- 3.1.12** Ben Keith and Dr Damen Ward, memorandum responding to memorandum 2.5.3, 11 August 2011
- 3.1.13** Mai Chen, memorandum responding to memorandum 3.1.11, 11 August 2011
- 3.1.14** Ben Keith and Dr Damen Ward, memorandum responding to memorandum 2.5.3, 12 August 2011
- 3.1.15** Ben Keith and Dr Damen Ward, memorandum concerning redactions in document A4, 12 August 2011
- 3.1.16** Mai Chen, memorandum requesting that Dr Kāretu be excused from attendance at day two of scheduled hearing, 15 August 2011
- 3.1.17** Ben Keith and Dr Damen Ward, memorandum recording objection and seeking directions as to the further evidence filed by the claimants, 16 August 2011
- 3.1.18** Mai Chen, submission supporting application for urgency, 17 August 2011
- 3.1.19** Ben Keith and Dr Damen Ward, submission opposing application for urgency, 18 August 2011
- 3.1.20** Mai Chen, memorandum concerning disclosure of documents, 18 August 2011
- 3.1.21** Mai Chen, memorandum of counsel for claimants, 19 August 2011

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- 3.1.22 Ben Keith and Dr Damen Ward, memorandum seeking extension to filing date, 25 August 2011
- 3.1.23 Mai Chen, memorandum responding to memorandum 3.1.22, 25 August 2011
- 3.1.24 Mai Chen, memorandum seeking extension to filing date, 26 August 2011
- 3.1.25 Ben Keith and Dr Damen Ward, submission opposing application for urgency and concerning mediation, 29 August 2011
- 3.1.26 Ben Keith and Dr Damen Ward, memorandum concerning disclosure, additional information, and ancillary matters, 29 August 2011
- 3.1.27 Mai Chen, memorandum concerning suggested mediators, 31 August 2011
- 3.1.28 Ben Keith and Dr Damen Ward, memorandum concerning suggested mediators, 31 August 2011
- 3.1.29 Mai Chen, memorandum responding to memorandum 3.1.26 and seeking extension to filing date, 1 September 2011
- 3.1.30 Ben Keith and Dr Damen Ward, memorandum responding to memorandum 3.1.29, 1 September 2011
- 3.1.31 Mai Chen, memorandum responding to memorandum 3.1.30, 1 September 2011
- 3.1.32 Mai Chen, memorandum responding to memorandum 3.1.28, 2 September 2011
- 3.1.33 Mai Chen, memorandum responding to memorandum 2.5.9, 2 September 2011
- 3.1.34 Ben Keith and Dr Damen Ward, memorandum responding to memorandum 3.1.33, 5 September 2011
- 3.1.35 Ben Keith and Dr Damen Ward, memorandum concerning mediator appointments, 8 September 2011
- 3.1.37 Mai Chen, memorandum concerning mediator appointments, 9 September 11

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- 3.1.38 Mai Chen, submission supporting application for urgency, and further information relating to mediation and other matters, 9 September 2011
- 3.1.39 Ben Keith and Dr Damen Ward, memorandum seeking terms of referral to mediation, 12 August 2011
- 3.1.40 Mai Chen, memorandum confirming availability for teleconference, 13 September 2011
- 3.1.41 Mai Chen, memorandum concerning mediation, 13 September 2011
- 3.1.42 Ben Keith and Dr Damen Ward, memorandum concerning mediation teleconference, 14 September 2011
- 3.1.43 Mai Chen, memorandum concerning 24 June and 20 July 2011 Official Information Act requests, 11 October 2011
- 3.1.44 Mai Chen, memorandum responding to 14 October 2011 media release concerning *ECE Taskforce Report*, 14 October 2011
- 3.1.45 Ben Keith and Dr Damen Ward, memorandum concerning consultation on ECE policy, 17 October 2011
- 3.1.46 Mai Chen, memorandum responding to memorandum 3.1.45, 18 October 2011
- 3.1.47 Ben Keith and Dr Damen Ward, memorandum responding to memorandum 2.5.12, 20 October 2011
- 3.1.48 Mai Chen, memorandum responding to memorandum 3.1.47, 21 October 2011
- 3.1.49 Mai Chen, memorandum responding to memorandum 2.5.14, 1 November 2011
- 3.1.50 Ben Keith and Dr Damen Ward, memorandum responding to memorandum 2.5.14, 2 November 2011
- 3.1.51 Ben Keith and Dr Damen Ward, memorandum responding to memorandum 2.5.13, 4 November 2011

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- 3.1.52** Mai Chen, memorandum responding to memorandum 2.5.14, 4 November 2011
- 3.1.53** Ben Keith and Dr Damen Ward, memorandum responding to memoranda 2.5.14 and 3.1.49, 8 November 2011
- 3.1.54** Ben Keith and Dr Damen Ward, memorandum responding to memorandum 2.5.18, 9 November 2011
- 3.1.55** Mai Chen, memorandum responding to memoranda 3.1.53 and 2.5.18, 9 November 2011
- 3.1.56** Mai Chen, memorandum responding to matters arising from judicial conference held on 10 November 2011, 14 November 2011
- 3.1.57** Ben Keith and Dr Damen Ward, memorandum responding to memorandum 2.5.17, 15 November 2011
- 3.1.58** Ben Keith and Dr Damen Ward, memorandum responding to memorandum 2.5.19, 17 November 2011
- 3.1.59** Mai Chen, memorandum responding to memorandum 3.1.57, 17 November 2011
- 3.1.60** Mai Chen, memorandum responding to memorandum 2.5.19, 18 November 2011
- 3.1.61** Ben Keith and Dr Damen Ward, memorandum responding to memorandum 2.5.19, 18 November 2011
- 3.1.62** Mai Chen, memorandum responding to memorandum 3.1.58, 21 November 2011
- 3.1.63** Mai Chen, memorandum concerning draft statement of issues, 22 November 2011
- 3.1.64** Ben Keith and Dr Damen Ward, memorandum responding to memorandum 2.5.19, 22 November 2011
- 3.1.65** Mai Chen, memorandum concerning draft statement of issues, 22 November 2011
- 3.1.66** Mai Chen, memorandum responding to memoranda 2.5.20 and 2.5.21, and seeking extension to filing date, 23 November 2011



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- 3.1.67** Ben Keith and Dr Damen Ward, memorandum responding to memoranda 2.5.20 and 2.5.21, and seeking extension to filing date, 23 November 2011
- 3.1.68** Mai Chen, memorandum concerning evidence and witness material for substantive hearing, 24 November 2011
- 3.1.69** Ben Keith and Dr Damen Ward, memorandum seeking amendment to memorandum 2.5.19, 25 November 2011
- 3.1.70** Mai Chen, memorandum responding to memorandum 3.1.69, 25 November 2011
- 3.1.71** Ben Keith and Dr Damen Ward, memorandum concerning draft statement of issues and identification of further Crown witnesses, 25 November 2011
- 3.1.72** Ben Keith and Dr Damen Ward, memorandum accompanying second part of the Crown's disclosure documents, 25 November 2011
- 3.1.73** Ben Keith and Dr Damen Ward, memorandum responding to memorandum 2.5.23 and filing remaining documents, 28 November 2011
- 3.1.74** Mai Chen, memorandum responding to memoranda 2.5.20 and 2.5.21, 29 November 2011
- 3.1.75** Ben Keith and Dr Damen Ward, memorandum responding to memoranda 2.5.20, 2.5.21, and 3.1.74, 29 November 2011
- 3.1.76** Mai Chen, memorandum requesting further disclosure of information relating to New Zealand Teachers Council and Tertiary Education Commission, 30 November 2011
- 3.1.77** Mai Chen, memorandum requesting further disclosure from the Crown, 1 December 2011
- 3.1.78** Ben Keith and Dr Damen Ward, memorandum concerning New Zealand Teachers Council, 2 December 2011
- 3.1.79** Ben Keith and Dr Damen Ward, memorandum concerning additional document disclosure (filed separately as documents A25-A25(g)), 8 December 2011

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- 3.1.80** Mai Chen, memorandum concerning Crown's disclosure of documents, 9 December 2011
- 3.1.81** Ben Keith and Dr Damen Ward, memorandum concerning further document disclosure, 9 December 2011
- 3.1.82** Mai Chen, memorandum responding to memorandum 2.5.24, 12 December 2011
- 3.1.83** Ben Keith and Dr Damen Ward, memorandum concerning transfer of documents from Wai 1298 ROI, 15 December 2011
- 3.1.84** Mai Chen, memorandum seeking extension of filing date, 16 December 2011
- 3.1.85** Mai Chen, memorandum concerning transfer of documents from Wai 1298 ROI, 16 December 2011
- 3.1.86** Mai Chen, memorandum concerning further Crown disclosure, 19 December 2011
- 3.1.87** Ben Keith and Dr Damen Ward, memorandum responding to memoranda 3.1.84, 3.1.85, and 3.1.86 and other matters, 19 December 2011
- 3.1.88** Mai Chen, memorandum responding to memorandum 2.5.26, 19 December 2011
- 3.1.89** Paul Goulter, memorandum seeking leave for NZEI to join proceedings as an interested party, 26 January 2012
- 3.1.90** Ben Keith and Dr Damen Ward, memorandum responding to memorandum 3.1.89, 2 February 2012
- 3.1.91** Mai Chen, memorandum responding to memoranda 3.1.89 and 3.1.90, 7 February 2012
- 3.1.92** Mai Chen, memorandum concerning fifth brief of evidence of Tina Olsen-Ratana, 8 February 2012
- 3.1.93** Ben Keith and Dr Damen Ward, memorandum responding to memorandum 3.1.92, 9 February 2012

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**3.1.94** Ben Keith and Dr Damen Ward, memorandum seeking extension to filing date and indicating the Crown's position concerning New Zealand Teachers Council and Tertiary Education Commission, 15 February 2012

**3.1.95** Mai Chen, memorandum responding to memorandum 3.1.94, 16 February 2012

**3.1.96** Ben Keith and Dr Damen Ward, memorandum responding to memorandum 2.5.28, 17 February 2012

**3.1.97** Mai Chen, memorandum responding to memorandum 2.5.28, 20 February 2012

**3.1.98** Ben Keith and Dr Damen Ward, memorandum concerning provision of academic reference material, 21 February 2012

**3.1.99** Mai Chen, memorandum responding to memorandum 2.5.30, 22 February 2012

**3.1.100** Mai Chen, memorandum seeking leave to file evidence in response to brief of evidence of Professor Stephen May (doc A71), 29 February 2012

**3.1.101** Ben Keith and Dr Damen Ward, memorandum responding to memorandum 2.5.31 and seeking extension to filing indexing to Crown documentation, 5 March 2012

**3.1.102** Ben Keith and Dr Damen Ward, memorandum seeking urgent directions in respect of claimants' late filing and related matters, 9 March 2012

**3.1.103** Mai Chen, memorandum responding to memorandum 3.1.102 and related matters, 9 March 2012

**3.1.104** Mai Chen, memorandum concerning timetabling and other matters, 9 March 2012

**3.2 *Hearing stage***

**3.2.1** Mai Chen, memorandum concerning Crown bundle of documents and seeking leave to respond to thesis of Jeanette King, 14 March 2012

**3.2.2** Mai Chen, memorandum concerning Crown documents, meetings of experts, timetabling and other matters, 15 March 2012

**(a)** Mai Chen, memorandum concerning Iwi Leaders Forum, 15 March 2012

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- 3.2.3 Mai Chen, memorandum concerning Prime Minister's priority to increase ECE participation, 16 March 2012
- 3.2.5 Ben Keith and Dr Damen Ward, memorandum concerning proposed timetabling for hearing week two, 16 March 2012
- 3.2.6 Mai Chen, memorandum concerning points of clarification and other matters, 21 March 2012
- 3.2.7 Mai Chen, memorandum concerning expert evidence, 21 March 2012
- 3.2.8 Ben Keith and Dr Damen Ward, memorandum concerning statements made by Dr Pita Sharples relating to kōhanga reo, 21 March 2012  
(a) Dr Pita Sharples, letter relating to statements made concerning kōhanga reo, 21 March 2012
- 3.2.9 Mai Chen, memorandum responding to media report of Dr Pita Sharples' statements concerning kōhanga reo, 22 March 2012
- 3.2.10 Mai Chen, memorandum responding to documents submitted by Dr Peter Lind, 22 March 2012
- 3.2.11 Mai Chen, memorandum concerning ECE Taskforce materials, 22 March 2012
- 3.2.12 Mai Chen, memorandum concerning *Bilingual Education in Aotearoa/New Zealand* (doc A73, pp 91–96), 23 March 2012
- 3.2.13 Paul Goulter, memorandum addressing matters raised during hearing on 15 March 2012, 21 March 2012
- 3.2.14 Mai Chen, memorandum responding to memorandum 3.2.13, 30 March 2012
- 3.2.15 Nicholai Anderson, memorandum concerning hearing transcript, 12 April 2012
- 3.2.16 Dr Damen Ward, memorandum concerning further documents and information arising from questions at hearing (filed separately as document D1), 12 April 2012

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**3.2.17** Dr Damen Ward, memorandum seeking leave to file documents referred to during March 2012 hearing (filed as documents D2 and D3), 18 April 2012

**3.2.18** Nicholai Anderson, memorandum seeking leave to file documents (filed as documents D10–D16), 20 April 2012

**3.3 *Opening, closing, and in reply***

**3.3.1** Mai Chen, opening submissions, 12 March 2012

(a) Graph showing kōhanga reo funding comparative with ECE sector and total ECE with total kōhanga reo mokopuna

**3.3.2** Ben Keith and Dr Damen Ward, opening submissions, 19 March 2012

(a) Chart of key Ministry of Education instruments and programmes

**3.3.3** Mai Chen, closing submissions, 23 April 2012

**3.3.5** Ben Keith and Dr Damen Ward, closing submissions, 26 April 2012

(a) Extracts from Treaty of Waitangi Act 1975

**3.3.6** Mai Chen, submission responding to Crown's closing submissions, 10 May 2012

**3.4 *Post-hearing stage***

**3.4.1** Ben Keith and Dr Damen Ward, memorandum seeking leave to file replacement version of closing submissions, 1 May 2012

**3.4.2** Mai Chen, memorandum seeking leave to file documents (filed as documents E1–E4), 10 May 2012

**3.4.3** Ben Keith and Dr Damen Ward, memorandum responding to memorandum 2.7.1 and seeking leave to file additional material, 11 May 2012

**3.4.4** Nicholai Anderson, memorandum responding to memorandum 3.4.3 and other matters, 15 May 2012

**3.4.5** Ben Keith and Dr Damen Ward, memorandum responding to memorandum 3.4.2 and other matters, 15 May 2012

**3.4.6** Mai Chen, memorandum responding to memoranda 3.4.3 and 3.4.5, 16 May 2012

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- 3.4.7 Mai Chen, memorandum responding to memorandum 2.5.34, 27 April 2012
- 3.4.8 Mai Chen, memorandum concerning photographs of various kōhanga reo properties (filed as document E7), 27 April 2012
- 3.4.9 Mai Chen, memorandum seeking leave to file document (filed as document E9), 28 May 2012
- 3.4.10 Ben Keith, memorandum responding to memorandum 2.7.3 (related document filed as document E10), 15 June 2012
- 3.4.11 Mai Chen, memorandum seeking leave to file documents (filed as documents E11 and E12), 13 July 2012
- 3.4.12 Ben Keith and Dr Damen Ward, memorandum responding to memorandum 2.7.4 and providing updated statistical data (filed as documents E13 and E14), 30 July 2012
- 3.4.13 Nicholai Anderson, memorandum responding to memorandum 2.7.4 and providing additional information (filed as document E15), 1 August 2012
- 3.4.14 Ben Keith, memorandum responding to memoranda 3.4.11 and 2.7.4 (related document filed as document E16), 1 August 2012
- 3.4.15 Mai Chen, memorandum responding to memorandum 3.4.14 (related document filed as document E17), 2 August 2012
- 3.4.16 Ben Keith and Dr Damen Ward, memorandum concerning further updated data (related document filed as document E70), 9 August 2012
- 3.4.17 Ben Keith and Dr Damen Ward, memorandum concerning further updated data (related document filed as document E71), 23 August 2012
- 3.4.18 Mai Chen, memorandum seeking indication as to release of final report, 3 September 2012
- 3.5 Other matters**
- 3.5.1 Royden Hindle and Kevin Prime, letter concerning mediation, 21 September 2011

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**4. Transcripts and translations**

**4.1 Transcripts**

4.1.1 Draft transcript of cross-examination of Karen Dalglish during day 2 of hearing application for urgency, not dated

4.1.2 Draft transcript of days 1 and 2 of hearing application for urgency, not dated

4.1.3 Draft transcript of first week of hearings, not dated

4.1.4 Draft transcript of second week of hearings, not dated

4.1.5 Draft transcript of closing submissions, not dated

**4.2 Translations**

4.2.1 Translation of evidence of Professor Wharehuia Milroy during day 2 of first week of hearings, not dated

4.2.2 Translation of evidence of Dr Timoti Kāretu during day 2 of first week of hearings, not dated

**5. Public notices**

**5.2 Hearings**

5.2.1 Sean Rangiwhetu, notice of 17 and 18 August 2011 hearing concerning application for urgency, 11 August 2011

5.2.2 Sean Rangiwhetu, notice of 12–16 March and 19–23 March 2012 hearings concerning kōhanga reo claim, 21 February 2012

5.2.3 Sean Rangiwhetu, notice of 23–27 April 2012 hearing of closing submissions, 16 April 2012

**SELECT RECORD OF DOCUMENTS**

**A series**

A1 Tina Olsen-Ratana, brief of evidence in support of application for urgency, 25 July 2011



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- (a) Tina Olsen-Ratana, comp, appendices 1–8 to brief of evidence, various dates
- A2** Dame Iritana Tāwhiwhirangi, brief of evidence in support of application for urgency, 25 July 2011
- (a) ‘Tripartite Relationship Agreement between Te Kōhanga Reo National Trust and the Ministers of Education and Māori Affairs’, 27 March 2003
- A3** Karen Dalglish, brief of evidence in opposition to application for urgency, 4 August 2011
- A4** ‘Crown Bundle of Documents’, supporting documents, 2 vols, 12 August 2011
- A5** Tina Olsen-Ratana, second brief of evidence in support of application for urgency, 16 August 2011
- A6** Dame Iritana Tāwhiwhirangi, second brief of evidence in support of application for urgency, 16 August 2011
- A7** Timoti Kāretu, brief of evidence in support of application for urgency, 16 August 2011
- A8** Titoki Black, brief of evidence in support of application for urgency, 16 Aug 2011
- A9** Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 1, ch 5
- A10** ‘Crown Bundle of Authorities’, supporting documents, 18 August 2011
- A11** Pita Sharples, ‘Kohanga Reo Position Understood’, media release, 25 July 2011
- A12** Anne Tolley, ‘Minister Welcomes Release of ECE Taskforce Report’, media release, 1 June 2011
- A13** ‘Crown Bundle of Authorities’, supporting documents, 29 August 2011
- A14–A19** ‘Second Crown Bundle’, supporting documents, 6 vols, various dates

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**A20** Tina Olsen-Ratana, third brief of evidence in support of application for urgency, 18 October 2011

**A21** ERO, comp, 'ERO Kōhanga Reo Review Reports, 1 January 2003 – 30 September 2011', various dates

**A22** 'Crown Disclosure of Documents as at 21 November 2011', assorted papers, various dates

**A23** 'Crown's Disclosure of Documents as at 10 January 2012', list of contents of documents A23(a)–(i), 10 January 2011

(a)–(j) 'Crown's Disclosure of Documents as at 10 January 2012', folders A–J, assorted papers, various dates

**A24** 'Crown's Disclosure of Documents as at 12 December 2011', list of contents of documents A24(a)–(i), 12 December 2011

(a)–(i) 'Crown's Disclosure of Documents as at 12 December 2011', folders A–I, assorted papers, various dates

**A25** 'Crown's Disclosure of Documents (Followup)', list of contents of documents A25(a)–(g), 8 December 2011

(a)–(g) 'Crown's Disclosure of Documents (Followup)', folders A–G, assorted papers, various dates

**A26** Tipene Chrisp, brief of evidence on behalf of Te Puni Kōkiri, 8 January 2007

(a)–(zzzz)(c) Supporting papers to document A26, various dates

**A27** Karen Sewell, brief of evidence on behalf of the Ministry of Education, 8 January 2007

**A28** Arawhetu Peretini, brief of evidence on behalf of the New Zealand Qualifications Authority, 8 January 2007

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- A33 Ministry of Education, *Ka Hikitia – Managing for Success: The Draft Māori Education Strategy 2008–2012* (Wellington: Ministry of Education, 2007)
- A34 Wharehuia Milroy, brief of evidence, 22 December 2011
- A36 Harata Gibson, brief of evidence, 18 January 2012
- A37 Matui Kingi, brief of evidence, 22 December 2011
- A38 Taina Ngarimu, brief of evidence, 22 December 2011
- A39 Jeremy Macleod, brief of evidence, 22 December 2011
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- A43 Angus Hartley brief of evidence, 22 December 2011
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- A52 Tina Olsen-Ratana, fifth brief of evidence, 3 February 2012

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- A53** Lynda Watson, brief of evidence, 15 February 2012
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- A57** Ani Rolleston, Makere Smith, Dr Graham Stoop, and Lynda Watson, comps, supporting papers to documents A53–A56, various dates
- A58** Apryll Parata, brief of evidence, 15 February 2012
- A59** Lesley Longstone, brief of evidence, 15 February 2012
- A60** Karl Le Quesne, brief of evidence, 15 February 2012
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- A63** Rawiri Brell, brief of evidence, 15 February 2012
- A64** Rawiri Brell, Karl Le Quesne, Lesley Longstone, Apryll Parata, Karen Sewell, and Richard Walley, comps, supporting papers to documents A58–A63, various dates
- A65** Julian King, brief of evidence, 15 February 2012
- A66** Anne Meade, brief of evidence, 15 February 2012
- A67** Peter Lind, brief of evidence, 15 February 2012
- A68** Geoff Short, brief of evidence, 15 February 2012
- A69** Rita Walker, brief of evidence, 15 February 2012
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- A71 Professor Stephen May, brief of evidence, 20 February 2012
- A72 'Executed Copies of Disclosed Ministerials', various dates
- A73 Supporting papers from State agencies to briefs of evidence on behalf of the Crown, various dates
- A74 Supporting papers from academic sources to briefs of evidence on behalf of the Crown, various dates
- A75 Andrew Hema, brief of evidence, 29 February 2012
- A76 Kathleen Irwin, brief of evidence, 29 February 2012
- A77 Rawinia Higgins, brief of evidence, 29 February 2012
- A78 Dame Iritana Tāwhiwhirangi, third brief of evidence, 29 February 2012
- A79 Tina Olsen-Ratana, fourth brief of evidence, 29 February 2012
- A80 Vaine Daniels, brief of evidence, 29 February 2012
- A81 Arapera Royal-Tangaere, second brief of evidence, 29 February 2012
- A82 'Crown's Index for ROI Documents', March 2012
- A83 Angus Hartley, second brief of evidence, 7 March 2012
- A84 Titoki Black, third brief of evidence, 7 March 2012
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- A89 Andrew Hema, second brief of evidence, 7 March 2012
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- A92 Mihi Tashkoff, brief of evidence, 7 March 2012
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- A109 Taina Ngarimu, summary of evidence, 7 March 2012
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- A126 Kathleen Irwin, summary of evidence, 9 March 2012



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**A128** Dame Iritana Tāwhiwhirangi, summary of evidence, 9 March 2012

**A129** Tania Ka'ai, second brief of evidence, 9 March 2012

**A130** Tania Ka'ai, summary of evidence, 9 March 2012

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**A134** Anne Meade, summary of evidence, 9 March 2012

**A135** Rita Walker, summary of evidence, 9 March 2012

**A136** 'Index of Claimant Evidence for Wai 2236', not dated

**A137** Rawinia Higgins, comp, supporting papers to brief of evidence, various dates

**A138** Kathleen Irwin, comp, supporting papers to brief of evidence, various dates

**B series**

**B1** 'Bundle of Authorities for Claimants', supporting documents, various dates

(a) *Ngai Tahu Maori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553, 562 (CA)

**B2** Te Kōhanga Reo National Trust, 'Wai Claim: Kohinga Waiata', Poutū te Rangi, 2012

**B3** 'Crown's Bundle of Documents', vol 1, supporting documents, various dates (note: missing pages are on ROI at D8)

**B4** 'Reviews of the Trust in the Last 10 Years', not dated

**B5** Spreadsheet showing waiting lists for the Trust, not dated

**B6** Richard Walley, second brief of evidence, 15 March 2012

**B7** Angus Hartley, third brief of evidence, 16 March 2012

**B8** Te Kōhanga Reo National Trust, 'Equity Funding Report', March 2012

**B9** Closing comments of the claimants, not dated

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**C1** 'Crown's Bundle of Authorities', supporting documents, various dates

**C2** Iwi Chairs Forum, Matauranga-a-Iwi presentation to Prime Minister at Iwi Chairs Forum, Waitangi, 5 February 2012

**C3** Three articles by Professor Stephen May on language rights

**C5** Documents released by the Ministry of Education under the Official Information Act concerning the establishment and work of the ECE Taskforce

**C6** Bundle of documents concerning the New Zealand Teachers Council

**C7** 'Time for Kōhanga Reo Trust to Move Over', *Waatea*, 19 March 2012

**C8** Dr Kathleen Irwin, Professor Tania Ka'ai, Associate Professor Rawinia Higgins, response from claimant expert witnesses concerning meeting with Professor Stephen May, 21 March 2012

**C9** Ministry of Education to Minister of Education, 'Education Report: Budget 2011 – Process Information and Assessment of Pressures', 5 November 2010

**C10** Te Puni Kōkiri, *Te Roto i te Whare Maori Language in the Home* (Wellington: Te Puni Kōkiri, 2008)

**C11** ERO, 'Quality in Early Childhood Services', ERO national report, August 2010

**C12** Month by month summary of regular and supplementary ERO reviews, July 2008–June 2009

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C13 Analysis of kōhanga reo ERO reports 2011 – references to te reo Māori

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D1 'Further Crown Bundle of Documents', assorted papers, various dates

D2 Karen Sewell (secretary for education) and Leith Comer (chief executive, Te Puni Kōkiri) to Takuta Timoti Kāretu and Tina Olsen-Ratana (co-chairpersons, Te Kōhanga Reo National Trust), 23 September 2011

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**D14** Early Childhood Advisory Committee, meeting minutes, 29 February 2012

**D15** Nicholas Russell to chief ombudsman, concerning Official Information Act complaints, 13 October 2011

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**D17** Dr Apirana Mahuika to Dame Iritana Tāwhiwhirangi, in support of kōhanga reo and stance of Te Kōhanga Reo National Trust Board against the Ministry of Education, 24 April 2012

**D18** Ministry of Education, 'Information Pack for 2010 Early Childhood Education Service Teacher Education Grant (ECESTEG)', not dated

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**E1** ERO, *Partnership with Whanau Maori in Early Childhood Services* (Wellington: ERO, 2012)

**E4** Te Manu Korihi, 'ERO Report Shows Early Childhood Centres Can Do Better', Radio New Zealand, 9 May 2012

**E5** Table showing ECE services in the Flat Bush catchment area as at 1 July 2011

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E6 Summary of demographic information and enrolment statistics for the Flat Bush catchment area and surrounding area as at 1 July 2011

E7 Te Kōhanga Reo National Trust, 'Kōhanga Reo Property Reports for Waitangi Tribunal', April 2012

E8 'Targeted Assistance for Participation Funding Opportunities Hui – Poneke/Wellington Central', minutes, 18 April 2012

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E13 Spreadsheets showing Māori and non-Māori prior participation in ECE, 2000–2012, not dated

E14 Spreadsheets showing prior ECE participation, 2000–2012, not dated

E15 Tables showing the numbers of mokopuna per kōhanga reo per district, not dated

E16 Provisional data on *Ka Hikitia* targets, not dated

E17 Rawiri Brell to Titoki Black, email, 25 May 2012

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**E45** Te Puni Kōkiri, *The National Māori Language Survey – Te Mahi Rangahau Reo Māori* (Wellington: Te Puni Kōkiri, 1998)

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E68 Te Puni Kōkiri, *Briefing to the Incoming Minister of Māori Affairs* (Wellington: Te Puni Kōkiri, 2011)

E69 Te Tāhuhu o te Mātauranga Ministry of Education, *Māori Education Strategy* (Wellington: Ministry of Education, 2005)

E70 Table showing number and type of licensed ECE services, 2001–2012

E71 Spreadsheets showing prior participation in ECE of children starting school by year, school decile, gender, and ethnic group, 2001–2012, not dated



GLOSSARY

ākonga	student
aroha	affection, compassion, love
hapū	clan, section of a tribe
hikoi	step, march
hui	meeting, gathering, assembly
<i>inter alia</i>	among other things
iwi	tribe, people
kai	food
kaiako	teacher, instructor
kaiāwhina	helper, assistant
kaimahi	worker, employee, staff
kaitiaki	guardian, protector; older usage referred to kaitiaki as a powerful protective force or being
kaitiakitanga	the obligation to nurture and care for the mauri of a taonga; ethic of guardianship, protection
kanohi ki te kanohi	in person, face to face
karakia	prayer, ritual chant, incantation
kaumātua	elder
kaupapa	topic, policy, programme, agenda
kāwanatanga	government, governorship, authority
koha	gift
kōhanga reo	Māori language preschool
kōrero	story, stories; discussion, speech, to speak
kuia	female elder
kura	school
kura kaupapa, kura kaupapa Māori, kura-a-iwi	schools where te reo Māori is the principal medium of instruction
mana	authority, prestige, reputation, spiritual power
manaaki	to support, take care of
manaakitanga	hospitality, kindness
manuhiri	visitor, guest
marae	enclosed space or courtyard in front of a whareniui, where formal welcomes and community discussions take place; also the area and buildings surrounding the marae
mātauranga	education, knowledge, wisdom, understanding, skill
mirimiri	to rub, soothe, massage
mokopuna	child, grandchild
Pākehā	New Zealander of European descent
pakeke	adult
pēpi	baby, infant

GLOSSARY

poipoi	to nurture, toss, swing, wave about
poutokomanawa	main support post in a meeting house
puna kōhungahunga, puna reo	parent-led Māori-language early childhood playgroups
pūtea	fund
rāhui	temporary ban, or ritual prohibition placed on an area, body of water, or resource
rangatiratanga	chieftainship, self-determination, the right to exercise authority; imbued with expectations of right behaviour, appropriate priorities, and ethical decision-making
rohe	traditional tribal area, territory
rūnanga	council, board, assembly
tamariki	children
taniwha	water spirit, monster
taonga	a treasured possession, including property, resources, and abstract concepts such as language, cultural knowledge, and relationships
tapu	sacred, sacredness, separateness, forbidden, off limits
te ao	the world
te reo, te reo Māori	the Māori language
tikanga	traditional rules for conducting life, custom, method, rule, law
tino rangatiratanga	the greatest or highest chieftainship; self-determination, autonomy; control, full authority to make decisions
tipuna, tupuna	ancestor
uri	descendant
waiata	song
wairua	spirit, soul
wānanga	tertiary institution; traditional school of higher learning
whakapapa	genealogy, ancestral connections, lineage
whakatūpatotanga	to warn, alert, caution
whānau	family, extended family
whanaungatanga	Ethic of connectedness by blood; relationships, kinship; the web of relationships that embraces living and dead, present and past, human beings and the natural environment
whānui	width, breadth
whare	house, building
wharekai	dining room, kitchen
whareniui	meeting house
wharepaku	toilet, lavatory

In addition to evidence put before this inquiry, the following principal sources were consulted: John C Moorfield, *Tē Aka: Māori–English, English–Māori Dictionary*, Auckland University of Technology – Te Ara Poutama, <http://www.maoridictionary.co.nz>, accessed 11 October 2012; Hori Ngata, *Ngata Dictionary*, Learning Media, <http://www.learningmedia.co.nz/ngata>, accessed 11 October 2012; and Herbert W Williams, *Dictionary of the Maori Language*, 7th ed (Wellington: Legislation Direct, 1971).