



## STATEMENT OF CLAIM

The Claimants by their solicitor say:

### 1. NGĀ KAIKERĒMI – THE CLAIMANTS

- 1.1 The claimants, Dr. Timoti Karetu, Tina Olsen-Ratana and Dame Iritana Te Rangi Tawhiwhirangi, bring this claim on behalf of the Te Kōhanga Reo National Trust Board (“**the Trust Board**”). The Trust Board’s registered office is 67 Hankey Street, Mount Cook, Wellington.
- 1.2 Dr. Karetu and Ms. Olsen-Ratana are Co-Chairpersons of the Trust Board. Dame Iritana Tawhiwhirangi is a Trustee of the Trust Board. The claimants are authorised by the Trust Board to bring this claim on behalf of the Trust Board.
- 1.3 The Trust Board was established in 1982 and incorporated under the Charitable Trusts Act 1957 on 4 January 1984 (at that stage named “Te Kōhanga Reo Trust”, No. 233184). The Trust Board is an umbrella organisation for Kōhanga Reo and acts as guardian of Te Kōhanga Reo kaupapa. Currently the Trust Board represents 471 Kōhanga Reo throughout New Zealand.
- 1.4 The Trust Board was established as a vehicle to protect, develop and enhance te reo Māori according to tikanga and a unique kaupapa based in Māori culture. The Trust Board’s objects are:
  - (a) To promote, support and encourage the use and retention of te reo;
  - (b) To promote, support and encourage:
    - (i) The kaupapa of Te Kōhanga Reo and, in particular, the goal of total immersion in te reo Māori within the bosom of the whānau;

- (ii) The establishment and maintenance within New Zealand of Te Kōhanga Reo; and
- (iii) The provision of financial, advisory and administrative assistance and support for the whānau of Te Kōhanga Reo;
- (c) To liaise with the Crown and government departments and other relevant bodies for the purposes of promoting the kaupapa of Te Kōhanga Reo and its administration;
- (d) To accept subscriptions, donations, subsidies, grants, endorsements, gifts, legacies, loans and bequests either in money or in kind or partly in money and partly in kind for all or any of the purposes of the Trust and to accept any trust the purpose of which is to benefit the general purposes of Te Kōhanga Reo; and
- (e) To carry on any other charitable object within New Zealand which may seem to the Board capable of being conveniently carried on in connection with the above purposes or calculated directly or indirectly to advance the purposes of the Board.

## 2 BACKGROUND

2.1 Te Kōhanga Reo movement is a whānau development initiative from Hui Kaumatua in 1978 and 1979 and Hui Whakatauirā in 1980 and 1981. These hui were co-ordinated by the Department of Māori Affairs (**“the Department”**) under the government’s Tū Tangata (**“stand tall”**) policy, with the first Kōhanga Reo opened at Kokiri Pukeatua, Wainuiomata on 13 April 1982.

2.2 There are four main cornerstones to the kaupapa of Te Kōhanga Reo:

- (a) Total immersion in te reo Māori and tikanga Māori;
- (b) Management and decision-making by whānau;

- (c) Accountability to the Creator, the mokopuna, Te Kōhanga Reo movement, whānau, hapū, and iwi; and
  - (d) Commitment to the health and well-being of the mokopuna and whānau.
- 2.3 Between 1982 and 1989, the Trust Board worked with the Department, which was the lead Crown agency first designated to liaise with and promote the work of Kōhanga Reo.
- 2.4 Kōhanga Reo at that stage received seeding grants from the government through the Department and a discretionary approach was taken, leaving Kōhanga Reo to be whānau managed (although accountable for funds to the Department).
- 2.5 During this time there was a strong partnership between the Crown and the Trust Board through the Department of Māori Affairs:
- (a) Māori participation through decision making, responsibility and management of Kōhanga Reo;
  - (b) A rapid increase in the numbers of mokopuna and Kōhanga Reo from 800 mokopuna and 50 Kōhanga Reo in 1982 to 9,344 mokopuna and 584 Kōhanga Reo by 1989;
  - (c) Whānau were upskilled through whānau learning programmes (the Department negotiated training courses through the Department of Labour);
  - (d) The Department negotiated licensing of Kōhanga Reo with the Department of Social Welfare, when requested by the Kōhanga Reo whānau;

- (e) A Te Kōhanga Reo secretariat was established within the Department; and
  - (e) The Department assisted with finding buildings for new Kōhanga Reo.
- 2.6 On 1 July 1989 the Department was disestablished and its policy functions were taken on by the Ministry of Māori Affairs (Manatu Māori). A transitional agency, the Iwi Transition Agency was established on 1 October 1989, becoming the new operational arm of the former Department of Māori Affairs.
- 2.7 The Crown decided that Kōhanga Reo should be brought within the mainstream early childhood education framework and that operational responsibility for Kōhanga Reo should be transferred to the Ministry of Education.
- 2.8 There was no consultation with the Trust Board in relation to this move.
- 2.9 The move had significant implications for the Trust Board and Kōhanga Reo as:
  - (a) Kōhanga Reo were not conceived or intended to operate as an 'early childhood service' or to be included in the Education Act 1989 or associated regulations, yet were brought within that statutory and regulatory framework;
  - (b) Policies developed for the early childhood education sector did not take into account the kaupapa of Kōhanga Reo or include a Kōhanga Reo perspective. Although the Trust Board sought to have its voice heard by participating in various working groups, the way in which these groups operated and the lack of prior notice prevented the Trust Board from having substantive input, and where it did have such input, its advice was essentially ignored;

- (c) Kōhanga Reo had not effectively been involved in the policy development for the reform of early childhood services. For example, the Trust Board was not initially included in the working party groups for “Before Five” (1988), the framework which set out administrative policies and processes for change in the early childhood sector. When the Trust Board objected, it was given 12 hours notice to have input into eight working groups;
- (d) Kōhanga Reo were forced to come within the licensing and funding regime for early childhood services. The need to comply with regulatory requirements for early childhood education conflicted with the kaupapa of Kōhanga Reo;
- (e) Kōhanga Reo lost child care subsidy funding if whānau did not meet the criteria of being in training or in employment (the subsidy was reduced from 30 hours to 9 hours) resulting in Kōhanga Reo having to meet the shortfall; and
- (f) Kōhanga Reo kaiako were required to have early childhood qualifications in order to get the same funding as other early childhood education providers. Tohu Whakapakari was recognised for Te Kōhanga Reo only, but was not recognised as equivalent to a teacher education qualification.

2.10 From 1990 to 2000, the Trust Board’s relationship with the Crown was mainly through the Ministry of Education, although during the initial transitional period the Trust Board also worked within the framework of the Iwi Transitional Agency and Manatu Māori.

2.11 In response to a demand by Kōhanga Reo whānau that the Trust Board protect the kaupapa of Kōhanga Reo, in November 2000 the Trust Board met with the Minister of Education to propose a direct relationship between the Trust Board and the Crown (as requested by Kōhanga Reo whānau). As a result, a working group was then set up comprising three members of the Trust Board, three

members from the Crown and an independent Chair. Te Puni Kōkiri and the Ministry of Education were to work together with the Trust Board.

- 2.12 Arising out of that working group was the Gallen Report in 2001, which recommended that the Trust Board's relationship with the Crown be enhanced through a tripartite agreement with the Ministry of Education and Te Puni Kōkiri to ensure the three organisations worked together to support the kaupapa of Kōhanga Reo. It also recommended, *inter alia*, that:
- (a) A process is agreed for additional funding from Te Puni Kōkiri and the Ministry of Education for ICT, Māori Language Training, Resource Development and Research in particular; and
  - (b) Any review of early childhood sector regulations reflect and support the unique kaupapa of Kōhanga Reo.
- 2.13 On 27 March 2003, the Trust Board's partnership with the Crown was formalised through a tripartite relationship agreement with the Ministry of Education and Te Puni Kōkiri, although the Trust Board still considered that the appropriate relationship was a direct one with the Crown.
- 2.14 For an initial period the tripartite relationship appeared successful and a three year work plan was established. However, the Crown did not maintain its level of engagement with the Trust Board, nor uphold the kaupapa of Kōhanga Reo. As opposed to the Chief Executives of each organisation meeting, second or third tier officials were sent instead, and meetings were delayed or cancelled.
- 2.15 Between 2003 and 2007 there were tripartite meetings between the Ministry of Education and Te Puni Kōkiri, but no substantial progress was made during this time to advance Kōhanga Reo, or redress the Trust Board's concerns. Rather they were forums for the Ministry to discuss administrative matters.
- 2.16 In 2008, the tripartite relationship was again re-established following discussions between the Minister of Māori Affairs and the Trust Board. In

September 2008, the Kōhanga Reo Funding, Quality and Sustainability Working Group (“**the Working Group**”) was established and the tripartite organisations worked together up until late 2010, when a draft report was produced on the outcomes of the Working Group. However, no action was taken to get that report to the Minister of Education or the Minister of Māori Affairs, despite requests from the Trust Board.

- 2.17 In October 2010, the Minister of Education established an independent advisory taskforce on early childhood education to review the effectiveness of ECE spending and to make recommendations on proposed improvements. The Final Report of the ECE Taskforce, “An Agenda for Amazing Children” (“**the ECE Taskforce Report**”) was released in June 2011. The ECE Taskforce Report contains adverse recommendations and comments about the Trust Board and Kōhanga Reo, including a recommendation that Kōhanga Reo be devolved from the Trust Board to iwi within five years, facilitated by the Ministry of Education and Te Puni Kōkiri. But the Trust Board was not consulted about those findings, nor were most Kōhanga Reo.
- 2.18 Consultation on the ECE Taskforce Report closes on 8 August 2011. The findings of the ECE Taskforce will affect Kōhanga Reo if adopted by the Crown. The Education Minister stated on 1 June 2011 that she welcomed the release of the Report and that the Taskforce had done “a very thorough job.” The Minister also stated that it was heartening that these serious issues had been identified by the Taskforce and that positive suggestions had been made to deal with areas of concern. The Minister went on to state that “any proposals for major changes to ECE will form part of the election campaign.”
- 2.19 Accordingly, the Claimants seek urgency for the Tribunal to consider this claim.
- 2.20 Between 1992 and 2011, Kōhanga Reo have only been funded as providers of early childhood education. The Crown has not during that time funded Kōhanga Reo on the basis of whānau development and consistent with the kaupapa of Kōhanga Reo.



### 3. TRIBUNAL'S JURISDICTION

3.1 The Tribunal has jurisdiction to consider this Claim pursuant to section 6(1) of the Treaty of Waitangi Act 1975, as:

- (a) This matter relates to:
  - (i) regulations or other statutory instruments made, issued or given (section 6(1)(b)); and/or
  - (ii) policy or practice (whether or not still in force) adopted by or proposed to be adopted by or on behalf of the Crown (section 6(1)(c)); and/or
  - (iii) acts and omissions by the Crown or proposed to be done or omitted by the Crown (section 6(1)(d));
- (b) Those regulations, statutory instruments, policies, practices, acts and omissions to which this Claim relates are inconsistent with and breach the principles of the Treaty of Waitangi; and
- (c) Those regulations, statutory instruments, policies, practices, acts and omissions have prejudicially affected the Trust Board, Kōhanga Reo and Māori.

3.2 This Claim does not relate to matters arising from or relating to an enactment in section 6(1)(a) or (b) or to a policy or practice adopted or an act done or omitted by or on behalf of the Crown, before 21 September 1992. However, matters raised prior to 21 September 1992 form an important context for the contemporary claims.

#### **4. BREACHES OF CROWN'S DUTIES**

##### **4.1 Breaches of Article 2 of the Treaty**

4.1.1 The claimants repeat the foregoing paragraphs and further say that the Crown had duties under **Article 2 of the Treaty** as follows:

- (a) A duty to protect or guarantee the right of the Trust Board and Kōhanga Reo to exercise tino rangatiratanga over taonga;
- (b) A duty to actively protect taonga including Kōhanga Reo and te reo Māori;
- (c) A duty to allow the Trust Board and Kōhanga Reo the right to develop taonga;
- (d) A duty to allow the Trust Board to exercise its role as Kaitiaki of Kōhanga Reo kaupapa which is itself a taonga.

4.1.2 The Crown has breached these duties by failing to:

- (a) Recognise or protect the kaupapa of Kōhanga Reo as an expression of tino rangatiratanga; and/or
- (b) Protect Kōhanga Reo as a taonga; and/or
- (c) Protect te reo Māori through the Kōhanga Reo model; and/or
- (d) Allow the Trust Board, Kōhanga Reo, and whānau to exercise kaitiakitanga over Kōhanga Reo and their mokopuna; and/or
- (e) Allow the Trust Board and Kōhanga Reo the right to develop Kōhanga Reo in accordance with their own kaupapa.

*Particulars of breaches of Article 2:*

4.1.3 Treating Kōhanga Reo solely as providers of early childhood education and forcing them to fit within the regulatory framework for early childhood education; and/or

- 4.1.4 Failing to allow and assist Kōhanga Reo to establish environments where the principal drivers of activity are te reo Māori, wairua Māori and whānau; and/or
- 4.1.5 Developing and implementing policies which fail to recognise the whānau development kaupapa of Kōhanga Reo, as well as te reo Māori and tikanga Māori immersion; and/or
- 4.1.6 Requiring Kōhanga Reo to only employ “qualified” people in line with the Ministry’s framework for early childhood education; and/or
- 4.1.7 Failing to recognise the qualification established by the Trust Board, Tohu Whakapakari, which was specifically developed to provide for the kaupapa of Kōhanga Reo; and/or
- 4.1.8 Adopting policies which are contrary to the way in which Kōhanga Reo and cultural practices have developed including:
- (a) Health and safety standards which require that Kōhanga Reo move into authorised buildings which are fenced off from marae, detaching whanau from their customary environment, and thus breaching the kaupapa of Kōhanga Reo;
  - (b) Requiring Kōhanga Reo to separate sleeping children according to regulatory requirements. In Kōhanga Reo it was acceptable for babies to sleep in the open room amongst whānau, as whānau noise was considered comforting for the baby; and/or
- 4.1.9 Failing to respect Kōhanga Reo as culturally distinct entities and provide adequate resources to fund Kōhanga Reo on their own merits; and/or
- 4.1.10 Basing funding instead on the number of “qualified teachers,” which failed to recognise the kaupapa of Kōhanga Reo, including Māori cultural practices such as whānau learning and kaumatua as the repositories of cultural knowledge and te reo Māori; and/or
- 4.1.11 Giving greater funding to organisations using the “qualified teachers” schedule approved by the New Zealand Teachers’ Council than those using the kaiako qualifications framework under Tohu Whakapakari; and/or

4.1.12 Not funding Kōhanga Reo if whānau did not meet the criteria of being in training or in employment, resulting in reduction of a subsidy for parents from 30 hours to 9 hours, and in Kōhanga Reo having to meet this shortfall; and/or

4.1.14 Providing less funding to Kōhanga Reo on the basis that they provide “Whānau-Led” services rather than “Teacher-Led” services:

- (a) Teacher-Led funding is calculated using the Staff Hour Count figures submitted over a four month entitlement period. There are different funding bands for Teacher-Led and these are determined by the number of registered teachers employed in the service. The more registered teachers, the higher the band and funding rate;
- (b) Whānau-Led funding for Kōhanga Reo is based on the old funding rates (Rate 1 and Rate 2 funding). These two funding rates are now called “standard” (Rate 1) and “quality” (Rate 2). There are no funding bands for Kōhanga Reo which recognise the number of kaiako with the Tohu Whakapakari qualification. Some Kōhanga Reo have more than 3 kaiako with the Tohu Whakapakari qualification but are only receiving funding which caters for one qualified kaiako;
- (c) Introducing a subsidy policy of “20 hours of free early childhood education for 3 to 4 year olds” which could only initially be accessed by Teacher-Led services. While this was subsequently changed in 2007 to apply to kaiako with the Tohu Whakapakari qualification, the policy still discriminated against the kaupapa of Kōhanga Reo. In particular, the policy did not benefit children from 0-3 years, which is the core group of children for Kōhanga Reo, which aims to develop te reo and Māori culture in children as early as possible; and/or

4.1.15 Terminating the Property Putea Scheme in 2001. The Property Putea Scheme was developed by the Trust Board to generate funds for establishment of Kōhanga Reo and developments around te ara hiko (computers), training, staffing, resources and whānau assistance where government funding was not

available. This caused a loss of approximately \$2.5 million per year for Kōhanga Reo; and/or

4.1.16 Failing to provide comparable funding to replace the Property Putea Scheme including failure to agree a process for additional funding from both Te Puni Kōkiri and the Ministry of Education for ICT, Māori language training, resource development and research (as set out in the Gallen Report 2001); and/or

4.1.17 Undermining the Trust Board's kaitiaki role by ignoring its request to be involved in both the Early Childhood Education Taskforce 2011 and the Review of the Māori Language Strategy and Sector 2011, and continuing to stress the devolution of Kōhanga Reo oversight to iwi, when that is a decision for Kōhanga Reo, whānau, the Trust Board and iwi, not the Crown; and/or

4.1.18 Failing to recognise parents' and whānau rights to learn alongside their children by moving from a focus on parents' and whānau roles in Kōhanga Reo to a focus on teacher qualifications.

## **4.2 Breaches of Article 1 of the Treaty**

4.2.1 The claimants repeat the foregoing paragraphs and further say that the Crown owed duties to the Trust Board and/or Kōhanga Reo under **Article 1 of the Treaty** as follows:

- (a) A duty to exercise kawanatanga in a manner that gives appropriate priority to te tino rangatiratanga over taonga;
- (b) A duty to act in accordance with the principle of partnership in its dealings with the Trust Board and/or Kōhanga Reo. This includes a duty to act reasonably, honourably, reciprocally and in the utmost good faith; and
- (c) A duty to make informed decisions in relation to Kōhanga Reo as matters affecting Māori.

4.2.2 The Crown breached these obligations under Article 1. The claimants repeat the particulars given above in relation to breaches of Article 2 and rely on those same particulars to establish breaches of Article 1, and on the further particulars below.

*Particulars of breaches of Article 1:*

- 4.2.3 Failure to support, guide, advocate and negotiate with the Crown and other departments, such as Education, Labour, Department of Social Welfare and Health, on behalf of the Trust Board, as the Crown had done prior to 1992 when the Trust Board worked together with the Department of Māori Affairs; and/or
- 4.2.4 Failure to provide an adequate substitute for the role that the Crown had played when the Department of Māori Affairs was working with the Trust Board and responsible for Kōhanga Reo. The tripartite relationship, and Te Puni Kōkiri's involvement in it, was not an adequate substitute; and/or
- 4.2.5 Failing to give effect to the tripartite relationship between the Trust Board, Ministry of Education and Te Puni Kōkiri by:
- (a) Not supporting the kaupapa of Kōhanga Reo; and/or
  - (b) Skipping tripartite meetings and not according them the priority they deserve, including by sending lower level officials; and/or
  - (c) Not discussing substantive matters; and/or
  - (d) Not respecting the autonomy and independence of Te Kōhanga Reo movement; and/or
  - (e) Not considering or taking action on points discussed at meetings including (without limitation) development of a funding model for Kōhanga Reo; and/or
  - (f) Adopting policies which disadvantage Kōhanga Reo and/or are contrary to the kaupapa of Kōhanga Reo; and/or

- (g) Not progressing the Kōhanga Reo Funding, Quality and Sustainability Working Group (consisting of the Trust Board, the Ministry of Education and Te Puni Kōkiri), which was established in September 2008; and/or
- (h) Not progressing the draft report produced in or around October 2010 arising out of the work of the Working Group to the Minister of Education and Māori Affairs; and/or
- (i) Failing to involve or consult the Trust Board on the ECE Taskforce Report 2011.

### **4.3 Breaches of Article 3 of the Treaty**

4.3.1 The claimants repeat the foregoing paragraphs and further say that the Crown has a duty under **Article 3 of the Treaty** to guarantee to Māori the same rights and duties as other New Zealand citizens. The Crown has duties under Article 3 to:

- (a) Treat the Trust Board and/or Kōhanga Reo fairly and not subject them to discrimination; and
- (b) Take special measures to ensure that Māori can attain equality with other citizens of New Zealand in matters such as health, employment and educational achievement.

4.3.2 The Crown has breached this duty by:

#### *Particulars of breaches of Article 3:*

- 4.3.3 Failing to fund and support Kōhanga Reo and its kaupapa as a means of allowing Māori to attain equality with other citizens; and/or
- 4.3.4 Failing to treat kaiako qualifications developed specifically for the kaupapa of Kōhanga Reo equally with early childhood qualifications; and/or
- 4.3.5 Failing or refusing to fund Kōhanga Reo equally with other early childhood services.

## **5. CONSEQUENCES OF BREACHES**

5.1 The above breaches by the Crown have had the following consequences:

- (a) No or inadequate recognition of the kaupapa of Kōhanga Reo;
- (b) Inadequate funding and resources for Kōhanga Reo;
- (c) Reduction of tamariki in Kōhanga Reo;
- (d) Reduction of Kōhanga Reo kaiako;
- (e) Reduced accessibility to Kōhanga Reo for whānau;
- (f) Further decline in the status of te reo Māori;
- (g) Inability of the Trust Board to meet its objects as kaitiaki;
- (h) Inability of Kōhanga Reo to continue to operate according to its kaupapa; and
- (i) A continued decline in Māori equality.

## **6. REMEDIES**

6.1 The claimants seek all or any of the following recommendations by way of relief:



- (a) Te Kōhanga Reo be given statutory recognition as an independent and stand alone initiative to protect, develop and enhance the kaupapa of Kōhanga Reo and te reo Māori consistent with tino rangatiratanga;
- (b) The development by the Crown of any initiatives for the promotion of te reo Māori to include and acknowledge the history, kaupapa and contribution of Kōhanga Reo;
- (c) Current inequities in the funding and professional recognition of Kōhanga Reo cease forthwith;
- (d) The Crown take steps to ensure that funding and quality frameworks for Kōhanga Reo are determined according to the kaupapa of Kōhanga Reo;
- (e) The Crown recognise the Trust Board as kaitiaki of Kōhanga Reo and the kaupapa of Kōhanga Reo, and establish a formal relationship with the Trust Board through Ministers;
- (f) Direct funding from the Crown to the Trust Board, or, if necessary, through a Māori organisation, preferably Te Puni Kōkiri. If there is to be an oversight body for Kōhanga Reo, it should be Te Puni Kokiri;
- (g) The Crown should empower the Trust Board to make recommendations to the Minister of Māori Affairs to undertake research that supports and benefits Kōhanga Reo and their kaupapa, and require the Minister to consider that research and any recommendations;
- (h) The Crown should ensure adequate funding is available to Kōhanga Reo, consistent with the Crown's obligations to protect taonga and allow Māori to exercise tino rangatiratanga; and

- (i) The Crown pay the full costs of the claimants for the presentation and preparation of this claim and costs and recovering compensation from the Crown.

## 7. FURTHER AMENDMENTS

- 7.1 The claimants seek leave to further amend this statement of claim if appropriate.

## 8. NOTIFICATIONS

- 8.1 The following persons should be advised of this claim:

- (a) Minister of Education; and
- (b) Minister of Māori Affairs.

Dated this 25th day of July 2011

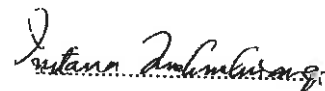
For Te Kōhanga Reo National Trust Board



Dr. Timoti Karetu  
Co-Chair



Ms. Tina Olsen-Ratana  
Co-Chair



Dame Iritana Tawhiwhirangi

Trustee

To:           The Registrar  
              Waitangi Tribunal  
              PO Box 5022  
              Wellington

And to:       Crown Law  
              PO Box 2858  
              Wellington

This statement of claim is filed by Mai Chen, solicitor for the above named claimant of the firm Chen Palmer New Zealand Public and Employment Law Specialists (phone (04) 499 8990) whose address for service is at the offices of Chen Palmer, Level 8, 138 The Terrace, Wellington, or may be:

- (a)     posted to Ms. Chen, Chen Palmer, PO Box 2160, Wellington;
- (b)     left for Ms. Chen at DX SP26503; or
- (b)     transmitted to Ms. Chen by facsimile to Chen Palmer, Fax No. (04) 499 8992.