

APPENDIX I

STATEMENT OF CLAIM

IN THE WAITANGI TRIBUNAL

WAI 789

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF MOHI MOSES HUIRAMA OSBORNE
and TE AROHA EMMA ADAMS

AMENDED STATEMENT OF CLAIM

The Claimants

1. This claim is lodged by MOHI MOSES HUIRAMA OSBORNE and TE AROHA EMMA ADAMS on behalf of themselves and their children who were enrolled at Mokai Primary School as at 3 October 1999 ('the claimants')

Background facts

2. Mokai Primary School is situated at Mokai, in the vicinity of Atiamuri in the Taupo district.
3. Mokai Primary School was a mainstream school that taught bilingually.
4. At the time of closure all pupils of the school were of Maori descent.
5. The land upon which Mokai Primary School is situated was gifted by certain tupuna in 1901 including inter alia Hitiri Te Paerata.
6. A school has been operating at Mokai since 1907.
7. Between October 1991–July 1998 there were a number of reviews and reports by the Educational Review Office ('ERO').

8. On 7 November 1995 the Ministry of Education ('MOE') wrote to the Board of Trustees ('BOT') outlining that the MOE were considering closure of the school.
9. Between 7 November 1995 and 7 July [1998] meetings took place between the BOT and MOE, further ERO reports were made and correspondence was exchanged between the MOE and BOT.
10. On 27 July 1998 the then Minister of Education ('the Minister') wrote advising the Chairperson of the BOT that the school should close. The Minister invited any submissions within 28 days as to why the school should remain open.
11. The then Chairperson of the BOT responded on 24 August 1998.
12. The Minister responded in writing on 11 December 1998 seeking clarification of certain matters.
13. A hui was held at Mokai Primary School on 2 March 1999 wherein further submissions were made to the MOE as to why the school should remain open.
14. On 24 June 1999 the Minister wrote to the Chairperson of the BOT indicating the school would close, effective as at 3 October 1999.
15. A *Gazette* notice was published to that effect on 1 July 1999.
16. A claim was filed before the Waitangi Tribunal on 29 July 1999.
17. The school was closed on 3 October 1999 pursuant to Section 154 of the Education Act 1989.
18. On 4 October 1999 an amendment to the statement of claim was filed with the Waitangi Tribunal.

First Cause of Action – Education Act 1989

19. Mokai Primary School was a mainstream primary school established under the Education Act 1989.
20. Closure of the school was carried out pursuant to Section 154 of the Education Act.
21. The Education Act 1989 contains no reference to the Treaty of Waitangi or Treaty principles, therefore the Treaty of Waitangi or Treaty principles are not directly enforceable.
22. This is a case in which the claimants assert that the following Articles of the Treaty and Treaty principles are breached:
 - (a) Article 2 – closure prevents access to te reo and matauranga Maori.

- (b) Breach of principles of the Treaty in particular:
 - (i) Failure to actively protect Maori interests.
 - (ii) Failure to adequately consult.

23. In the absence of a reference in the Education Act 1989 to the Treaty or Treaty principles, the Treaty and its principles are not directly enforceable.

24. The claimants allege that this is an omission on the part of the Crown inconsistent with the principles of the Treaty.

Second Cause of Action – Article 2 breach

25. Article 2 of the Treaty guaranteed to Maori te tino rangatiratanga over inter alia their taonga katoa.

26. Te reo and matauranga Maori are taonga.

27. Closure of Mokai Primary School has resulted in the following:

- (a) The children will no longer be taught te reo at Mokai Primary School.
- (b) The children will no longer be taught matauranga Maori at Mokai Primary School.
- (c) The children will have to be educated out of Mokai.
- (d) A loss of Mokai identity – Mokaitanga.

Third Cause of Action – Treaty Principles

28. Two of the recognised Treaty principles are:

- (a) The duty upon the Crown to actively protect Maori interests.
- (b) The duty upon the Crown to carry out adequate consultation with Maori.

29. That during the process of closure since initial notification on 7 November 1995, the MOE failed to:

- (a) Adequately consult with the BOT.
- (b) Adequately consult with affected parents.
- (c) Adequately consult with the Mokai community.
- (d) Ensure that adequate support was given to the Board of Trustees.
- (e) Ensure that adequate resources and support were made available to the pupils.
- (f) Failed to investigate alternative options for schooling at Mokai.

30. That in doing so the MOE failed to actively promote and protect taonga, they being te reo Maori and matauranga Maori.

Prejudicially affected

31. The claimants say that they have been, are and are likely to be prejudicially affected by the ordinances, acts, regulations, proclamations, notices and other statutory instruments and the policies, practices, acts or omissions of the Crown as set out in the statement of claim.

32. The claimants further state that the acts, regulations, orders, policies, practices and actions taken, omitted or adopted by or on behalf of the Crown referred to are and remain inconsistent with the terms and principles of the Treaty of Waitangi.

Recommendations sought

33. That the Education Act 1989 be amended to include a provision as follows:

‘Treaty of Waitangi—Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the Treaty of Waitangi and the principles of the Treaty of Waitangi.’

34. A finding that the closure of Mokai Primary School has resulted in a breach of Article 2 of the Treaty in that it denies children of the following:

- (a) The ability to be taught te reo at Mokai School.
- (b) The ability to access matauranga Maori at Mokai School.

35. A finding that the closure of Mokai School will result in a loss of Mokai identity – Mokaitanga

36. A finding that in closing the school, there has been a failure on the part of the Crown (through the MOE) to actively promote and protect taonga, they being te reo Maori and matauranga Maori.

37. That during the process of closure the Crown (through the MOE) failed to adequately consult with the BOT, the parents of children at Mokai Primary School and the wider Mokai community concerning the closure of Mokai Primary School.

38. A recommendation that the land upon which the Mokai Primary School is located and building and all assets seized by the MOE be made available to the Mokai community as the base for an educational institution.

39. A recommendation that the MOE, in consultation with the Mokai community investigate all alternatives for the establishment of primary schooling at Mokai including but not limited to:

- (i) Satellite schooling.
- (ii) Home schooling.
- (iii) Kura kaupapa.

40. If the Waitangi Tribunal do not make a recommendation as per paragraphs 38 and 39, recommendations as follows:

- (a) That the land upon which the Mokai Primary School is situated be returned to the successors in title of the original donors.
- (b) That all assets seized by the MOE pursuant to the closure process including school buildings be transferred to the successors in title of the original donors of the land.