

IN THE WAITANGI TRIBUNAL

**WAI 2575
WAI 2143**

**IN THE MATTER
AND** of the Treaty of Waitangi Act 1975

**IN THE MATTER
AND** of the Health Inquiry (Wai 2575)

IN THE MATTER of a claim by Steven Wilson and Karen Pointon on behalf
of Tāngata Turi (Māori Deaf) (Wai 2143)

AMENDED STATEMENT OF CLAIM

Dated: 17 December 2019

RECEIVED

Waitangi Tribunal

17 Dec 2019

Ministry of Justice
WELLINGTON

**BENNION
LAW**

Barristers and Solicitors
PO Box 25433
Panama Street
Wellington

Tel: 64-4-4735755

Fax: 64-4-4735751

Counsel: Tom Bennion / Emma Whiley
tom@bennion.co.nz / emma@bennion.co.nz

INTRODUCTION

1. The Wai 2143 claimants Steven Wilson and Karen Pointon bring this amendment to their claim for and on behalf of Tāngata Turi o Aotearoa (Māori Deaf).
2. The original claim was filed by the claimants on 25 August 2008.¹

THE CLAIM

3. The Claimants say that their claim falls within the matters referred to in section 6 (1) of the Treaty of Waitangi Act 1975 namely:
 - a. They are Tāngata Turi; and
 - b. Tāngata Turi have been and continue to be or are likely to be prejudicially affected by the various Acts and Crown policies, practices, acts and omissions adopted by, or on behalf of the Crown or its agents.
4. The claimants say that Tāngata Turi have been, are, or are likely to be prejudicially affected by the acts or omissions of the Crown, as further set out below.
5. These acts or omissions were and continue to be in breach of Te Tiriti o Waitangi and its principles of partnership, reciprocity, autonomy, active protection, equity, development and options.

TĀNGATA TURI

6. Tāngata Turi identify as both Māori and Deaf. Deaf identities include those who are hard of hearing.
7. Māori did not have a concept of disability prior to colonization. Through colonization Tāngata Turi have been stigmatized as having a disability.²

¹ Wai 2143, 1.1.1.

² Dr Hickey, H (2019) 'Whānau hauā: the experiences of accessing health and disability services for Māori with disabilities' AUT and HRC p5.

FIRST CAUSE OF ACTION: INSTITUTIONALISATION

8. The first residential school for Deaf children opened in 1880 (now the Van Asch Deaf Education Centre in Christchurch).³
9. Between 1880 and the 1960s, nearly all children with a significant hearing loss attended one of three Deaf schools nationwide (Kelston, van Asch and St Dominic's) as boarders or day pupils.
10. Under s21 of the School Attendance Act 1901 and s159 of the Education Act 1904 and subsequent amendments, Deaf children, including numerous tāmariki Māori, were removed from their homes and institutionalized in state care.
11. Oralist methods were adopted in New Zealand in 1880 and persisted within Deaf education until the late 1970s. Oralist methods sought to educate and assimilate Deaf children via concentrated training in speech and lip-reading.⁴ In accordance with this ideology, sign language was officially banned as a method of teaching in New Zealand until 1979.⁵ Deaf children, including tāmariki Māori, were punished in schools for using sign language.⁶
12. Residential schools for Deaf children followed a Eurocentric model⁷ of the assimilation of Deaf children, including the colonization of numerous tāmariki Māori, into 'productive' English speaking and lip-reading citizens.⁸
13. Oralist methods were rejected by a great majority of the Deaf community but were nonetheless imposed by the Crown as sign language was seen as inferior to spoken and written English.⁹
14. The imposition of oralisation within state education had negative consequences for the development of New Zealand Sign Language (NZSL) and Deaf culture, including Tāngata Turi culture, for many years.¹⁰

³ Wai 2575, #B22 p94.

⁴ Smiler, K (2014) 'Ka Puāwai Ngā Kōhungahunga Turi' Victoria University of Wellington p15.

⁵ McKee, R (2011) 'People of the Eye: Stories from the Deaf World' BWB p21. Merepaea Dunn, K 'He Māori, He Turi, He Turi, He Māori: Advancing the aspirations of Māori Deaf with their indigenous connections' The University of Waikato p36.

⁶ Merepaea Dunn, K 'He Māori, He Turi, He Turi, He Māori: Advancing the aspirations of Māori Deaf with their indigenous connections' The University of Waikato p38 ref McKee & McKee 2000.

⁷ Developed from the Milan Treaty and resolutions of 1880 ref Merepaea Dunn, K 'He Māori, He Turi, He Turi, He Māori: Advancing the aspirations of Māori Deaf with their indigenous connections' The University of Waikato p32.

⁸ Wai 2575, #B22 p94.

⁹ Merepaea Dunn, K 'He Māori, He Turi, He Turi, He Māori: Advancing the aspirations of Māori Deaf with their indigenous connections' The University of Waikato p33.

¹⁰ Ministry of Education 'NZSL In the NZ Curriculum' (2006) p8.

15. Signed English was then introduced into the education system post 1979.¹¹ Signed English was seen as morally superior to other forms of sign language, developed by Deaf communities themselves, as signed English followed the grammar and structures of the English language.¹²
16. NZSL, which originated from Deaf communities, did not make its way into the education system until 1993, when it was introduced as a language of instruction at both Kelston and van Asch Deaf Education Centres.¹³

SECOND CAUSE OF ACTION: LACK OF ACCESS TO INTERPRETERS

17. There remains a serious lack of NZSL interpreters who have fluency in te reo Māori and who are able to provide cultural support to Tāngata Turi.
18. This creates a huge barrier for Tāngata Turi in connecting with their identity and with Te Ao Māori.¹⁴
19. There are approximately just 110 registered interpreters nationwide and just two registered trilingual interpreters.
20. When accessing interpreters, Tāngata Turi often do not have a choice about who is provided. This can create further barriers in communication and limit the development of whanaungatanga between interpreters, Tāngata Turi, whānau, hapū and iwi.
21. Access to NZSL interpreters continues to be underfunded especially in relation to multi day events such as wānanga, tangihanga, poukai, whānau and whenua hui and Te Matatini.¹⁵
22. Many Tāngata Turi do not read or write and so rely heavily on interpreters to provide access to Te Ao Māori, education, health, housing and other services as well as access to justice.

¹¹ McKee, R (2011) 'People of the Eye: Stories from the Deaf World' BWB p21.

¹² McKee, R (2011) 'People of the Eye: Stories from the Deaf World' BWB p23.

¹³ Ministry of Education 'NZSL In the NZ Curriculum' (2006) p9 ref Dugdale, 2002 and McKee, R (2011) 'People of the Eye: Stories from the Deaf World' BWB p23.

¹⁴ Wai 2575, #B23 p59.

¹⁵ <https://teaomaori.news/turi-maori-plead-interpreter-funding-budget-2019>

THIRD CAUSE OF ACTION: LACK OF NZSL EDUCATION

23. Tāngata whenua and Tāngata Turi are together developing signs for Māori concepts (Te Reo Turi). The Crown has failed to provide resourcing to assist this development.
24. Access to NZSL education, including Te Reo Turi, for all New Zealanders is critical to reduce barriers in communication that Tāngata Turi face.
25. Like te reo Māori, even though NZSL is an official language, it does not form part of the compulsory NZ Curriculum.
26. NZSL education remains underfunded and there is limited support for sign language development within the home and the classroom.¹⁶
27. There are no available courses for te reo Māori speakers to learn NZSL and to develop together with Tāngata Turi, signs for Māori concepts.
28. The stigmatization of both sign language and te reo Māori means that NZSL, including Te Reo Turi, has never been readily accepted nor adequately resourced within Aotearoa.¹⁷
29. Although Tāngata Turi are overrepresented in deafness statistics, Māori perspectives in deaf educational policies remains lacking.¹⁸

FOURTH CAUSE OF ACTION: TĀNGATA TURI AND ACCESS TO SERVICES

30. The Dugdale reports *'The Deaf Māori'* and *'The Māori Hearing Impaired'* of 1982 both identified a number of specific issues faced by Tāngata Turi including issues in relation to court cases, mental health, education, employment and housing needs.¹⁹
31. The 1982 report made three specific recommendations:²⁰
 - a. "That the Department of Health, Education and Social Welfare should recognise that there is a specific group of hearing-impaired and Deaf Māori,

¹⁶ Smiler, K (2014) 'Ka Puāwai Ngā Kōhungahunga Turi' Victoria University of Wellington p19.

¹⁷ Smiler, K (2014) 'Ka Puāwai Ngā Kōhungahunga Turi' Victoria University of Wellington p16.

¹⁸ Smiler, K (2014) 'Ka Puāwai Ngā Kōhungahunga Turi' Victoria University of Wellington p20.

¹⁹ Dugdale, P (2001) 'Talking Hands, Listening Eyes: The history of The Deaf Association of New Zealand' p209.

²⁰ Dugdale, P (2001) 'Talking Hands, Listening Eyes: The history of The Deaf Association of New Zealand' p209.

and make that group the object of research and attention, in co-operation with Māori Affairs and NZAD [NZ Association of the Deaf],

- b. That Māori Affairs and the four Māori MPs should study the report *Deafness and the Invisible Handicap* and consider how to follow up its recommendations in order to help Deaf Māori,
- c. That Māori Affairs should recognise the work of the NZAD Field officers and help being given to Deaf Māori, and consider how to support the NZAD Field Office service.”

- 32. These recommendations were ignored by the Crown.²¹
- 33. In 1995, Te Puni Kōkiri commissioned further hui and research which resulted in the AKO report *Tautoko Tangata Turi*. This report made a number of further recommendations including:
 - a. “Negotiation under the Treaty of Waitangi to develop a partnership between Māori Deaf and the wider Deaf Community,
 - b. Services for Māori Deaf to be located on Marae where possible, assisted by agencies such as the Māori Women’s Welfare League,
 - c. Development of Mārae-based programmes on Māori culture and life skills for Māori Deaf,
 - d. Te Puni Kōkiri to be responsible for monitoring these developments to ensure that appropriate action is taken to improve the quality of and access to services, and that specific programmes for Māori Deaf are set in place, and to look into funding.”²²
- 34. Again these recommendations were largely ignored or under resourced by the Crown.
- 35. NZSL did not become accepted and used within the Government sector, including social services and the justice system, until the 1990s. Instead lip-reading and oralisation was relied on. This created significant barriers for Tāngata Turi when engaging with the Government sector including access to health, mental health, housing other social services and within the justice sector.

²¹ Dugdale, P (2001) ‘Talking Hands, Listening Eyes: The history of The Deaf Association of New Zealand’ p209.

²² Dugdale, P (2001) ‘Talking Hands, Listening Eyes: The history of The Deaf Association of New Zealand’ p218.

36. A number of Deaf support services remain inaccessible to Tāngata Turi and Tāngata Turi have less access to Deaf support services than other New Zealanders.²³ For example:
- e. Systematic and structural barriers, including institutional racism, remain in respect of Ngāti Turi and the provision of Deaf support services.²⁴
 - f. There remains a severe lack of data and research in respect of Tāngata Turi. Consequently, Deaf support services are set up as “one size fits all” services, and are not appropriately tailored to the needs of Tāngata Turi.²⁵
 - g. While there is some momentum within Crown agencies towards to provision of services for Māori and separately for those with lived experience of disability, Tāngata Turi as a part of both groups remain invisible.²⁶
 - h. Māori goals and aspirations are not well supported in early interventions (diagnosis and access to Deaf support services).²⁷ Māori and te reo Māori speaking teachers of the Deaf and advisors for Deaf children are severely lacking.
 - i. Deaf support services remain concentrated in the major urban centres and access to these services are restricted by transportation needs.²⁸
 - j. There is no minimum level of service each DHB²⁹ and other Government departments is required to deliver thus Deaf support services are not consistent or equitably available across DHBs, Government departments and Aotearoa.³⁰
 - k. Significant upfront costs remain to accessing Deaf support services (including co-payment fees).³¹

²³ Deloitte Access Economics Pty Ltd. (2017) 'Listen Hear! New Zealand: Social and Economic Costs of Hearing Loss in NZ' p61.

²⁴ Wai 2575, #B22 p35 and p166.

²⁵ Wai 2575, #B22 p138 ref Ministry of Health, Briefing to the Incoming Minister of Health, 2017: The New Zealand Health and Disability System , p.27 and Deloitte Access Economics Pty Ltd. (2017) 'Listen Hear! New Zealand: Social and Economic Costs of Hearing Loss in NZ' pvi.

²⁶ Wai 2575, #B22.

²⁷ Smiler, K (2014) 'Ka Puāwai Ngā Kōhungahunga Turi' Victoria University of Wellington p240.

²⁸ Wai 2575, #B22 p31 ref Nikora et al., Disabled Maori and Disability Support Options: A report prepared for the Ministry of Health, ref p.14.

²⁹ Deloitte Access Economics Pty Ltd. (2017) 'Listen Hear! New Zealand: Social and Economic Costs of Hearing Loss in NZ' p61.

³⁰ Deloitte Access Economics Pty Ltd. (2017) 'Listen Hear! New Zealand: Social and Economic Costs of Hearing Loss in NZ' p61.

³¹ Deloitte Access Economics Pty Ltd. (2017) 'Listen Hear! New Zealand: Social and Economic Costs of Hearing Loss in NZ' p61.

- l. Policies and procedures to ensure that DHBs have effective access to interpreters are inconsistent across DHBs.³² Access to medical information also remains lacking.
- m. Subsidies for the provision of Deaf support services are inconsistent across different Government departments e.g. ACC, Veterans Affairs and the Ministry of Health.
- n. Deaf tāmariki and their whānau continue to be poorly served.³³
- o. Appropriate mental health services remain severely lacking.³⁴
- p. Deaf support services remain particularly hard to access in prison.³⁵

FIFTH CAUSE OF ACTION: TĀNGATA TURI RANGATIRATANGA

- 37. There remains a severe lack of partnership between Tāngata Turi and the Crown at every level of Crown agencies responsible for the provision of Deaf support services.

Ministry of Health

- 38. The Ministry of Health and DHBs are responsible for delivering the majority of Deaf support services.
- 39. The Ministry of Health has failed to involve Tāngata Turi in “formal consultation; information gathering, defining and identifying issues; deciding on solutions; and implementing health and disability sector policy.”³⁶
- 40. While the Māori disability advisory group, Te Ao Mārama, is responsible for monitoring the implementation of Whāia Te Ao Mārama and providing advice to the Ministry of Health, Te Ao Mārama remain an advisory only.³⁷
- 41. Te Ao Mārama lack resourcing to undertake consultation, information gathering and information dissemination within Tāngata Turi communities.

³² <https://deafaction.org.nz/medical-interpreting/>

³³ Smiler, K (2014) 'Ka Puāwai Ngā Kōhungahunga Turi' Victoria University of Wellington p28.

³⁴ McKee, R (2011) 'People of the Eye: Stories from the Deaf World' BWW p40.

³⁵ Deloitte Access Economics Pty Ltd. (2017) 'Listen Hear! New Zealand: Social and Economic Costs of Hearing Loss in NZ' p61.

³⁶ Wai 2575, #B22 p106.

³⁷ Wai 2575, #B22 p288.

42. Requirements or structures that ensure that Tāngata Turi are involved in decision making are non-existent.

DHBs

43. The implementation of tangible measures to meet Te Tiriti o Waitangi responsibilities is largely left to the discretion and good will of individual DHBs and NGOs.
44. Te Tiriti o Waitangi remains peripheral to the provision of Deaf support services.³⁸
45. The election of a significant majority of DHB members subjects the issue of prioritising Tāngata Turi health and well-being equities to significant political whims.
46. Very few Māori candidates are voted in as elected members. Currently, there are no Māori board members with lived experience of disability, let alone Tāngata Turi, on any DHB boards throughout Aotearoa.³⁹
47. DHBs do not have accountability mechanisms to ensure that services are responsive and effective for Tāngata Turi.⁴⁰
48. As set out above, Deaf support services are varied with varied upfront costs (including co-payment fees) across DHBs and there is no minimum level of service each DHB is required to deliver.⁴¹

Lack of Māori-owned and governed providers of DSS

49. There remains a lack of Māori-owned and Māori governed providers of Disability support services (just 3.4% in the year 2017/2018).⁴²

SIXTH CAUSE OF ACTION: NZSL ACT 2006 AND NZSL BOARD

50. The NZSL Act 2006 fails to uphold Te Tiriti o Waitangi responsibilities. For example, s9 states that “so far as reasonably practicable” ... “the Deaf community should be consulted on matters relating to NZSL (including, for

³⁸ Wai 2575, #B22 p168.

³⁹ Wai 2575, #B22 p303.

⁴⁰ Wai 2575, #B22 p312.

⁴¹ Deloitte Access Economics Pty Ltd. (2017) ‘Listen Hear! New Zealand: Social and Economic Costs of Hearing Loss in NZ’ p61.

⁴² Wai 2575, #B22 p158.

example, the promotion of the use of NZSL)” but there is no requirement that the Deaf community include Tāngata Turi.

51. The NZSL Act 2006 does not identify Tāngata Turi as a distinct group with specific needs in relation to the use, promotion and development of NZSL including Te Reo Turi.
52. The NZSL Act 2006 does not include any associated budget or tangible mechanisms for implementation.⁴³
53. The NZSL Act 2006 does not include any enforceable rights beyond access to NZSL interpreters in legal proceedings.⁴⁴
54. The NZSL Board established by the Crown in May 2014 to support projects that promote and maintain NZSL is lacking in Te Tiriti o Waitangi accountability mechanisms.

PREJUDICE

55. As a result, Tāngata Turi have been and continue to be prejudicially affected. For example:
 - a. As part of residential schools for Deaf children, tamariki Māori experienced acute cultural isolation in institutions that lacked any reflection of or connection to Te Ao Māori.⁴⁵
 - b. Tāngata Turi have experienced a significant loss of cultural identity through the colonizing processes of Deaf education including a loss of standing and the lost ability to carry out traditional functions such as karanga, whaikōrero, wero, kapa hapa and rangatiratanga within their whānau, hapū and iwi leading to experiences of disconnection and isolation.
 - c. Tāngata Turi educational, career and economic opportunities remain limited.
 - d. Tāngata Turi experience inequitable educational, career, economic and health outcomes.⁴⁶

⁴³ McKee, R (2010) 'Action Pending: Four Years on from the NZSL Act 2006' 42 VUWLR p277.

⁴⁴ McKee, R (2010) 'Action Pending: Four Years on from the NZSL Act 2006' 42 VUWLR p277.

⁴⁵ Smiler, K (2007) 'Perceptions of Maori Deaf Identity in New Zealand' Journal of Deaf Studies and Deaf Education 12:1 Winter 2007 p94.

- e. There are a disproportionality high amount of Tāngata Turi in prison.⁴⁷

RECOMMENDATIONS SOUGHT

56. The claimants seek recommendations that:
- a. The Crown provide Tāngata Turi an apology and compensation to address their historical and contemporary grievances. This compensation should include resourcing to develop Tāngata Turi connectivity and self-representation to work within their communities to provide Deaf support services and ways to access and engage with Te Ao Māori and include research, wānanga and the use and development of NZSL, including Te Reo Turi, within Te Ao Māori.
 - b. Negotiation under Te Tiriti o Waitangi be undertaken to develop a partnership between Tāngata Turi and the Crown that is reflected at every level of the provision of Deaf support services.
 - c. NZSL, including Te Reo Turi, be included as a compulsory part of the New Zealand high school curriculum.
 - d. Better access be provided to public services and information through additional funding for access to, and the training of, Māori and te reo Māori speaking NZSL interpreters. The training of Māori and te reo Māori speaking NZSL interpreters should include tertiary level immersion courses with financial support for Māori and te reo Māori speaking students to undertake these courses and the development of standards for trilingual interpreters.
 - e. Nationwide requirements be developed for DHBs to meet their Te Tirit o Waitangi responsibilities.
 - f. Nationwide requirements be developed for the delivery of Deaf support services including the removal of co-payment fees, access to NZSL interpreters, access to mental health services, and tagged funding for Māori-owned and Māori governed providers of Deaf support services.

⁴⁶ Smiler, K (2014) 'Ka Puāwai Ngā Kōhungahunga Turi' Victoria University of Wellington p28.

⁴⁷ Wai 2575, #B22 p258.

- g. Funding be provided for whānau who provide ongoing supporting for Tāngata Turi including tamariki Turi.
- h. The NZSL Act 2006 be amended.
- i. That action is taken to address the overrepresentation of Ngāti Turi within prison.
- j. That Deaf support services be fully accessible within prison.

LEAVE TO AMEND

- 57. Leave is sought to file further amendments to this claim as required as additional research and evidence becomes available.

Dated at Wellington this 17th day of December 2019



Tom Bennion / Emma Whiley
Counsel for the Wai 2134 claim

This statement of claim is filed by Tom Bennion and Emma Whiley, counsel for the Claimants, of the firm Bennion Law, Wellington. The address for service of the Claimants is level 1, 181 Cuba Street, Te Aro, Wellington 6011. Documents for the Claimants may be left at the address for service or may be emailed to tom@bennion.co.nz and emma@bennion.co.nz.