Te Tai
Te Reo Māori Treaty Settlement Stories –
Te Reo Māori in Broadcasting

Prepared for Te Taura Whiri i te Reo Māori
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A Taonga Tuku Iho

The decline of the Māori language over the late 19th century and throughout the 20th century is rivalled only by land and fisheries in the loss to Māori. By the 1970s this decline reached a crisis point and Māori began fighting back for the taonga of their language.

She's still called the Kia Ora Lady even now, over forty years later. But at the time she earned the nickname, Naida Glavish was simply greeting people in the way most familiar to her - in her mother tongue that she had been raised in.

When making an out-of-district phone call, customers had to ring through to a tolls operator to connect them to the number. In the 1980s Naida was working on one of those switchboards.

Naida had moved to Auckland and landed a job at the Post Office, which was a government department at the time. But she never left her first language behind and greeted customers with a cheery, "Kia Ora, tolls here."

"I'd been in Auckland for a couple of years saying, 'Kia Ora, tolls here.' And then they changed supervisors. The new supervisor wanted to clean up the toll rooms. Cleaning up the toll rooms meant that you would stick strictly to Post Office salutations, which was, 'good morning, good afternoon or good evening'. I said none of that. I simply said, 'Kia Ora', no matter which part of the day I was working in. They tried to take me off the boards. They'd make me do off-board roles instead of me saying, 'Kia Ora tolls here.' That went on for some time."

Naida didn't give in to the pressure.

"I did say to my supervisor that it's a salutation that's indigenous to this country. Anyone has a right to use it if they feel they come from here. He said, 'what if all the other nationalities want to use theirs?' I said, 'this greeting is from this country, not any other country. 'Kia Ora' is from here."

Despite disagreeing on how one should greet customers, the supervisor was generous in other ways and let Naida go to tangi up North, despite that not being part of the contract. She thought that maybe she should not be so belligerent and make an accommodation.

"As I was driving over the harbour bridge thinking about backing off, this voice came into my ear and said to me, 'Nui ake tēnei take i a koe.' This is far greater than just you. I thought it was the wind blowing through the window so I wound the window up. Just as I reached the top of the harbour bridge the voice came back again 'Nui ake tēnei take i a koe.'
"I knew then it was the voice of my grandmother."

"I went straight into the supervisor's office and I said, 'I want to thank you for the time I had off to attend the tangi. I also want to say to you that I will respect whatever you have to do as my supervisor. I will respect that. But whatever I do, I will do it as a descendent of my grandmother.' I went back on the board, 'Kia Ora, tolls here.'"

Naida then mentioned it to academic Ranginui Walker, who was the chair of the Auckland District Māori Council which she was also a member of.

"I said, 'you know what Rangi, I'm being harassed at work just because I'm saying, Kia Ora, tolls here.' Immediately he saw that as institutional racism."

Word of what was happening went up to the Māori Council itself, which included Graham Latimer.

A few days later Naida hit the headlines with a story in the *Auckland Star*. The public support for Naida's stance was overwhelming and people would call tolls just to speak to "the Kia Ora Lady."

"The mail that came into the office was amazing, the support from the country. I had begun a battle but it was the country that won the war. It was New Zealand that won the war. It was the support that came in."

Naida's stance and the media and political attention it grabbed happened during a period when Māori were more visible to Pākehā after two generations of rapid Māori urbanisation. Battles for land rights and other issues gained more prominence in mainstream media and the place of Māori language in a new environment became a matter of intense debate.

But Naida's battle was part of a wider front. Prior to 1984 there had been a number of people from different walks of life who had fought back against the assumption that the Māori language would and should fade into history.

While Naida's simple act of principle gained the attention of media and Pākehā New Zealand, her stance had a deep whakapapa. There were a number of people who had been lobbying and acting at a political level for a number of years.

A gradual and steady erosion over the previous 100 years had accelerated into a collapse as Māori moved to cities in the post-war period.

Māori communities at the turn of the 20th century were predominantly Māori speaking but the schooling system had already undermined the use of te reo as the primary vehicle of communication. Generations of Māori that grew up being punished for speaking their language at school then became parents and didn't speak te reo to their children, for fear of disadvantaging them or exposing them to punishment. It was these children that grew up speaking only English and the intergenerational transfer of language was lost in many whanau.

This loss of language was exacerbated with the large-scale migration of Māori to urban centres, particularly in the 1950s and 60s. In Māori communities, even those where English had made inroads, te reo was still the predominant means of communications. But in cities and large towns English held sway and Māori who moved to these environments had little choice but to communicate in the language of Pākehā.

Compounding this was the exposure to mass-media that was exclusively in English.

It was during this period that the Māori language declined even more sharply. And many noticed and were highly concerned.

Dr Richard Benton of the New Zealand Council of Educational Research did a comprehensive survey of the Māori language in 100 communities during the mid to late 1970s, a study that was the first to systematically audit the state of the Māori language. The findings were grim and confirmed what many knew anecdotally.

"The fact that Māori has not fared well in urban areas should remind non-Māori New Zealanders of the part they have to play in the fate of this country's own language. Most Māori people now live in cities and larger towns. Many have brought with them a linguistic resource which can only be developed if the community as a whole, Māori and non-Māori alike, recognises its value. Māori-speakers no longer live isolated from the English-speaking world; because of their numbers, location, and influence, it is New Zealand's English-speaking majority which exert the strongest influence on the ultimate fate of the New Zealand language."[1]

"The communities in which the Māori language had remained strongest were mainly small traditionally Māori settlements in Northland, the Eastern Bay of Plenty and the East Coast. Conversely, large towns and cities do not seem to have encouraged people to continue speaking Māori to their children. Perhaps because of similar pressures from their English-speaking neighbours, people living almost anywhere in the southern half of the North Island seem to have had an up-hill struggle to keep the Māori language alive in their homes and community."[2]

One of those communities in the lower North Island was the tightly knit iwi of Ngāti Raukawa, Ngāti Toarangatira. However, they didn't wait around for the Crown to rescue their language.

Dr Whatarangi Winiata and other kaumātua had discussed the direction and development of the iwi. One thing that alarmed them was when they realised they had no fluent speakers of te reo under the age of 30. In 1975 they set out a strategy, Whakatupuranga Rua Mano, to set clear objectives for iwi development over a 25 year period.

At the heart of the strategy was the statement that "the language, as a deeply treasured taonga left by the Māori ancestors of New Zealand, is to be protected from further decline and our activities must guarantee survival."

It also made clear that people were the iwi's greatest resource: "The people are our wealth and their development and retention is more important than the development and retention of any other tangible resource."[3]

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[1] Wai 11, doc 15E, The Māori Language in a hundred communities, page 16.
[2] Wai 11, doc 15E, The Māori Language in a hundred communities, page 15.
[3] *Whakatupuranga Rua Mano, 1975-2000, He Tirohanga Whakamuri*, by Piripi Walker.

Dr Winiata and others set up full immersion wānanga that were the beginnings of a revival of the language among the Te Ati Awa, Ngāti Toarangtira, Ngāti Raukawa confederacy.

Between 1976 and 1979 they held nine young people's hui and full immersion hui in the school holidays.

A curriculum was also developed that became the basis for the establishment of Te Wānanga o Raukawa. This heavily influenced the setting up of Te Wānanga o Awanuiarangi and Te Wānanga o Aotearoa.

Ngāti Porou kuia Katerina Mataira and Ngoi Pewhairangi set up the language learning method Te Ataarangi that spread quickly throughout the country and is still used to this day. The Silent Way method was adapted to teach Māori and is credited with influencing the development of Kura Kaupapa Māori language schools.

It wasn't just those of an older generation who were active in highlighting and responding to the crisis that was facing the Māori language. First generation urban Māori who were beginning to go to university in increasing numbers became actively involved. Ngā Tamatoa at Auckland University and Te Reo Māori Society at Victoria University started a petition in 1972, calling for Māori to be taught in schools which gained over 30,000 signatures. As a result Māori was offered on the school curriculum and a Māori Language Day was instigated that eventually turned into Māori Language Week in 1975.

The education system, the location where the Māori language had been so damaged, became a battleground where Māori began to fight back.

The Kōhanga Reo movement was first started in Wainuiomata in 1982 and quickly spread to other areas. Leaders like Sir James Henare and Iritana Tawhiwhirangi and others were instrumental in establishing Kōhanga Reo, which became the basis for a new generation of Māori speakers.

In 1978 the Ruatoki Bilingual School was opened and by 1980 there were four bilingual schools around the country.

However bold and innovative these initiatives were, the Crown had done little to nothing to address the decline of Māori language. As with other issues, Māori concerns and calls for the treaty to be honoured could be, and were, ignored on a political whim.

The Waitangi Tribunal opened up a specific forum for grievances over treaty breaches to be heard and taken seriously. Initially however, its mandate was limited to hearing contemporary breaches of the treaty, excluding grievances that had been carried for generations. Historical breaches were not within its purview, although in several early claims there was background information included. These claims were about tangible taonga, specifically land and waterways.

A claim about Māori language would change that, connecting the past to the present and defining principles that still underpin the understanding of the treaty.

In 1984, the same year Naida had stood her ground, that claim was lodged with the Waitangi Tribunal. It asserted that it was the institutions of the state and their laws and policies that had to change if the language was to survive.

The claim was put forward by Huirangi Waikerepuru on behalf of Ngā Kaiwhakapūmau i te Reo Incorporated (the Wellington Māori Language Board). The claim was a major turning point in the revival of the language.

The Claim – Wai 11

In May 1985 there was a howling southerly when kaumātua from the four winds gathered in Wellington. There were a number that had been born in the late 19th century and even more born in the early 20th century. They had memories of the loss of the language over several generations but they were also some of the country's most respected exponents of the language.

They were there to support the treaty claim calling for the Māori language to be officially recognised and supported by the Crown and its agencies. It was also setting a precedent in claiming that an intangible element of a culture was a taonga, or treasured possession, that was guaranteed protection under the Treaty of Waitangi.

In this sense claim Wai 11 was unique in that previous claims had been about specific issues that were limited to a discreet territorial area.

The language claim was one that was relevant to Māori from Cape Reinga to the Bluff and there were representatives from a number of iwi and hapu who turned out in force to support it.

Piripi Walker was the secretary for the claim and remembers the strength of that support and the immense mana that the tribal leaders commanded.

"Ngāti Porou put them up at Kōkiri. We had about 40 staying there the night before. They got up and spoke, they laughed, they were all experienced, they knew what they were taking on," Walker said.[4]

Walker had worked as a journalist at Radio NZ and covered the Motunui hearing in Waitara where the new chairman of the Tribunal Eddie Durie had relegated the lawyers to the back of the room and excluded cross-examination of witnesses. In this he made the Tribunal forum more akin to a marae atea than a courtroom, although lawyers have gradually crept back into a dominant position in recent years.

Walker said the set-up gave kaumātua the freedom to speak frankly and eloquently about the place of the language in Māori culture and how its decline threatened Māori identity itself.

[4] Personal interview, audio.

“For the first four days, iwi after iwi would speak. In Māori terms that’s the mana. On those first three or four days it was unbelievable. They presented a very unified view.”

“John Rangihau got up and said, ‘if I have no language you can cut my throat. I have no pukapuka, I have no submission to put in front of the tribunal. I only have one pukapuka, the pukapuka is my language.’ This emphatic way of speaking went on for the first few days.”

But the claim was thoroughly prepared with well-reasoned arguments that had been fine-tuned over the course of around 100 hui.

“We wanted to make progress to find out what the rights were, whether Māori had rights under the treaty, language rights in the context of normal human rights. Those meetings rapidly became very interested in those sorts of things. By the time we put forward a proposal to take a claim to the Tribunal at an April hui in 1983, everyone was ready to do it. It was all on.”

Walker said the calibre of the leadership driving the claim was crucial.

“Huirangi had the brilliance, he had the humour, he made every gathering enjoyable for those who gravitated towards the kaupapa. Hirini Moko Mead did a lot of the groundwork in specifying exactly how a treaty claim, relying on the Treaty of Waitangi in relation to the language, would succeed. This is the worry, that it wouldn’t succeed – no-one had done an intangible taonga claim before.”

Although there was an excitement in the ranks about the possibilities of putting their claim in front of the Tribunal, there were those who had misgivings about whether it could be successful.

“Ngā Kaiwhakapūmau came in when people were willing to try the Tribunal track. It was a radical idea, the idea that the Treaty could activate a successful claim to the language and this was debated at a number of hui. Whatarangi (Winiata) was a doubter at those initial hui. He said at one of the first hui, ‘what if you fail? What if the claim doesn’t get across the line under Article 2?’ And Huirangi replied, kei te mārama tātou, (tātou katoa??) We understand clearly the nature of our claim and why it is justified, why we are taking it.’ That was a faith based response.”

The claim also had a deep whakapapa and these historical precedents put the kaupapa on a solid footing.

“If you look at the way the fires have been set and the areas of the claim that were set by Ngā Tamatoa and Te Reo Māori Society, those petitions took years of work on the right for Māori to be taught in schools – famous petition – and then the delegations that went to the Broadcasting Corporation, they were asking for a significant development in Māori television programming.”

"The broad strands of the fight were being fought by Ngā Tamatoa and Te Reo Māori Society. The rights to re-propagate, regenerate the language in the schools went back to the 1960s and 1950s and the 40s with Apiranga Ngata arguing that it should be taught in the university degrees. So they're old, old areas of struggle for the survival of the culture."

If Māori were geared up for the claim, the Crown was caught somewhat flat-footed.

"The Crown was deeply shocked by the language claim, by the way it was lodged, the fact that people had followed through and actually lodged it. When it was lodged, people from the Crown side came to us and asked us to withdraw it, Māori officials, who I won't name. So there were deals offered to withdraw the claim. They were messengers on behalf of the minister and the establishment generally," Walker said.

Walker said the tactics failed to sway what became an "unstoppable force which saw Māori, completely unsupported by the Crown or any of the political parties, take down the Crown's opposition in every area."[5]

The claim was breaking new ground by focusing on a taonga that was intangible. As the Tribunal report pointed out: "The claim is simple. But in its ramifications—politically, socially, financially and otherwise—it may well be the most difficult of all. The demand from Māoridom for official recognition is strident and determined as the wide range of speakers clearly showed, for every major tribe and district was represented. They "came from the four winds" and they spoke with one voice. The Board was just the spokesman for the claim. It was supported strongly from Māori quarters on every side."[6]

When claim Wai 11 was lodged in 1984 the Waitangi Tribunal could still only hear contemporary claims (the law was changed in 1985 to include historic claims back to 1840), so the historic factors that led to language loss fell somewhat outside the tribunal's gambit. This didn't stop the claimants referring to those factors in their submissions. But the limited terms of reference the Tribunal operated under at the time meant the claim had to focus its attention on several current laws of the day that claimants believed compromised the place of Māori language.

The erosion and loss of the language was laid at the door of the Crown's legal exclusion of Māori from usage in various official domains.

The central thrust of the claim challenged this exclusion in several areas of legislation. ". . . The Māori Affairs Act 1953 (s. 77A), the Broadcasting Act 1976, the Education Act 1964, the Health Act 1956 and the Hospitals Act 1957 and broadcasting and educational policies are inconsistent with the principles of the Treaty and as a result (the claimants) are prejudiced in that they and other Māori are not able to have the Māori language spoken, heard, taught, learnt, broadcast or other- wise used for all purposes and in particular in Parliament, the

[5] Walker interview, audio.
[6] Report of Waitangi Tribunal on The Te Reo Māori Claim, Wai 11, page 7.

Courts, Government Departments and local bodies and in all other spheres of New Zealand society including hospitals."[7]

But before the claimants turned to these specifics, they started out by establishing the principles on which the claim was made, principles which were to have ramifications for other claims that followed.

The claimants based their argument on the promises in the second and third articles of the Treaty of Waitangi which guaranteed Māori the full possession of their lands, their dwellings and their cultural treasures and equal rights and privileges to those granted to British subjects.

Hirini Moko Mead outlined how this applied to the Māori language by a meticulous exposition of the Treaty promises. In his view "o rātou taonga katoa" covered both tangible and intangible things and was best translated as "all their valued customs and possessions."

In his submission Sir Hirini went into detailed analysis of the language used in the Treaty, alongside comments from the Ngāpuhi rangatira Waka Nene during the debate at Waitangi in 1840, particularly regarding the phrase "o rātou taonga katoa."

"The interpretation of the phrase 'o rātou taonga katoa' to mean 'and all of their valued customs and possessions' must now be seen to include the Māori language as part of the whole and as one of the highly valued customs and possessions of the Māori people. The Treaty confirmed and guaranteed 'full chieftainship' over the Māori language. This is an important statement which must be kept in mind."[8]

He argued that valued customs and possessions had to include the language itself. It was inconceivable that those who signed the treaty would have thought otherwise.

"The Treaty does not say the Māori people had to give up their language and culture… Article 2 promised the Māori people that they could keep not only their language but all their valued customs, possessions and resources, and their land."

"The whole purpose of sacrificing kāwanatanga to the Queen was to maintain the tino rangatiratanga (hereditary chieftainship) over their land, their villages and homes and over all their valued customs and possessions."

There was also considerable attention given to what the obligations of the Crown were in relation to taonga like the language. What the Crown had promised was a guarantee of protection which, it was argued, was more than just leaving Māori to speak Māori.

A submission from the New Zealand section of International Commission of Jurists said that: "The word guarantee means more than merely leaving the Māori people unhindered in their enjoyment of their language and culture. It requires active steps to be taken to ensure

[7] Waitangi Tribunal Report, Wai 11, page 19.
[8] Wai 11, Doc 10, submission by Hirini Moko Mead on Articles 2 and 3.

that the Māori people have and retain the full exclusive and undisturbed possession of their language and culture."[9]

The first issue the claim focused on was the lack of official recognition of the Māori language by the Crown. The claim argued that this lack of formal recognition underpinned the Crown's failures in all other areas.

"Because of this lack of official recognition in legislation, the Māori language has no mana within all Government departments and public bodies."[10]

This was highlighted by a court case involving Dun Mihaka, who wanted to address the court in Māori. The court denied that he had a right to do so because Māori was not officially recognised in law. Although the Māori Affairs Act 1953 stated that "Māori language is officially recognised as the ancestral language of that portion of New Zealanders of Māori descent," the claim pointed out that this meant nothing in practice and was simply a statement of the obvious.

As law lecturer Joe Williams said in his submission, the law was "both meaningless and totally devoid of legal effect. In simple terms it says parliament hereby recognises that the Māori language is the ancestral tongue of the Māori people. The legislature might equally have said: We hereby recognise that today the sky is grey. The effect would have been the same. The provision does not create any enforceable rights, it simply records what is already a patently obvious fact, i.e. that the Māori language is the language of the Māori people."[11]

The claim went on to say that "because the language has never been given official recognition equal to English, the full possession of it throughout the constitutional and legal framework of Aotearoa has been denied to us."[12]

The claim said that this lack of recognition at a basic official level meant the state was not providing equality for Māori across a range of state services that impacted on the use and retention of their language.

Education

One of those services that was an overwhelming focus of the claimants' attention was the education system.

The submission from Ngā Kaiwhakapūmau zeroed in on the Education Act 1964, saying it "makes no provision for the establishment and operation of schools to teach through the

[9] Wai 11, Doc 35, submission by New Zealand Section of International Commission of Jurists (quoted in Wai 11 report).
[10] Wai 11, doc 2, synopsis of claim, Ngā Kaiwhakapūmau i te Reo Inc, page 6.
[11] Wai 11, doc 21, submission of Joe Williams, page 1.
[12] Wai 11, doc 2, synopsis of claim, Ngā Kaiwhakapūmau i te Reo Inc, page 6.

medium of the Māori language."

"We believe that our language is our greatest cultural treasure, and as such its transmission to future generations was a guarantee of Article 2 of the Treaty of Waitangi. For many decades the official policy of schools in New Zealand was to suppress the speaking and teaching of Māori language in all activities. This accounted for the demise of our language among many of our tribes."[13]

Submission after submission described the damage the education policies of successive governments had inflicted on the Māori language. Bruce Biggs outlined how the education system and its policies had systematically eroded the language of Māori children: "Although Governor Grey's Education Ordinance of 1847 recognised that Māori as a medium of instruction was appropriate, by requiring only that the mission schools should offer instruction in English in order to receive a government subsidy, there was opinion against this condoning of a bilingual policy. As early as 1853 the Auckland school inspectors considered it desirable that the English language should be made the vehicle of instruction exclusively in cases where it is fully understood, and, as far as can usefully be done, in all cases. In 1862 an Inspector of Schools could describe Māori as 'another obstacle in the way of civilisation. In 1867 the Education Act marked the overthrow of the bilingual system. The Government's views were against the Mission Schools' practice of using Māori as the language of instruction. The Act directed that instruction in the schools be carried out in English as far as practicable. The Native Schools Amendment Act of 1871 provided for the establishment of village schools (called Native, later Māori schools) and for instruction in English only. This marked the beginning of more than half a century of what can reasonably be called active suppression of Māori language. Although there are no official statements to this effect it is quite clear that the aim was to replace Māori by English not only in the schools but in all situations."[14]

Despite the 1871 legislation, Māori remained stubbornly dominant in Māori communities well into the 20th century. Biggs presented figures that showed that in 1913, 90 percent of Māori schoolchildren spoke Māori. However, the language went into steep decline post-WWII, the period when Māori were rapidly becoming urbanised. By 1953 the figure had declined to 26 percent and by 1975 it was less than five percent.

Sir James Henare was asked by the Tribunal about the lack of official policy in the 19th century explicitly outlawing te reo. He replied: "The facts are incontrovertible. If there was no such policy there was an extremely effective gentlemen's agreement."[15]

That gentlemen's agreement was inadvertently expressed by the Director of Education in 1931 who said: "The natural abandonment of the native tongue involves no loss on the Māori."[16]

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[13] Wai 11, doc 2, page 30, synopsis of claim from claimants.
[14] Wai 11, Doc 8, submission by Bruce Biggs, page 3.
[15] *Ka Ngaro Te Reo: Māori Language Under Siege in the Nineteenth Century*, By Paul Moon, Otago University Press, page 12.
[16] Wai 11, Final Report, page 41.

For many that made submissions or those they had spoken to, this unofficial policy was a felt experience. Dr Richard Benton carried out a survey of the language during the 1970s and spoke to thousands who had been brought up during the period in question. "6925 household heads were asked what the attitude of the teacher had been to their speaking Māori at school. The question was asked only in Māori, so those people who could not understand Māori were unable to answer it. The answers show a striking and alarming consistency from locality to locality and from region to region. In total, 40 percent said they had been punished personally for speaking Māori at school. This treatment was in most cases meted out with the best of intentions – many teachers sincerely believed that speaking Māori as school would just make it harder for the children to get an adequate command of English, and therefore a tolerant attitude towards the use of Māori in the classroom or even in the school grounds would do nothing to enhance whatever chances their pupils might have of scholastic success and occupational mobility. Many Māori parents also subscribed to this theory, although they may also have come to consider that the price of success was too high."

"The cumulative effect of these experiences was shattering. Most certainly, they produced an attitude of mind which greatly hastened the demise of Māori as an everyday language. These notes from one interview, selected at random, represent the situation of literally thousands of Māori people and their families: 'Informant blames herself for her children's lack of knowledge of Māori. Because she was severely punished at school for speaking Māori, she didn't want her children to go through the same. Now she regrets her action. Her children know next to nothing.'"[17]

Dr Benton's study was hugely influential in showing how perilous the state of the language was. It influenced Kara Puketapu and other to design and set up Kōhanga Reo.

Although there had been some effort on the part of the Department of Education, including making Māori a part of the curriculum, it was perceived by many who made submissions as inadequate.

A particularly telling submission was made by Pou Temara, a teacher who also worked in the Department of Education. He brought a fifth form student to the Tribunal hearing who was studying Māori and was doing well compared to others in her class. She was presented with a photograph that was used in the School Certificate oral examination for Māori. The student was asked various questions in Māori. The report observed that: "The student struggled with the questions and battled her way through but with difficulty and a good deal of help from Mr Temara."

"Then there was brought before us a small five-year-old boy from the Te Kōhanga Reo across the road from the marae on which we were holding our sitting. He was shown the same photograph and asked the same questions. At first he was extremely shy and huddled back into the skirts of his Kaiako as she held his hand to reassure him. His answers to the first question or two were monosyllabic and hesitant but as he moved through to the third, fourth and fifth questions he gained confidence and became more voluble. By the time he

[17] Wai 11, doc 31, submission by Dr Richard Benton, The Place of the Māori Language in the Education System.

had been through all the rest up to the fifteenth and last question there was a free ranging dialogue taking place between himself and his teacher."

"The contrast between the fifth former and the five-year-old could not have been more striking."[18]

From this contrast the Tribunal observed that:

"It is obvious that the knowledge gained by little children before they go to elementary school should not be lost to them. Like their elders they will suffer all the adverse effects of the monolingual society that surrounds them in ordinary social circumstances and in the media. Some steps ought to be taken to capitalise on the Te Kōhanga Reo movement even if those steps required are new or even unorthodox."

The success of the Kōhanga Reo movement was not a surprise to those who had advocated the teaching of Māori to young children for decades. The Māori Women's Welfare League had pushed for something similar in the 1950s, calling for the establishment of an experimental pre-school in Otara in 1974 and members were heavily involved in establishing Kōhanga Reo itself.

The League's submission pointed out that: "The League has been persistent in promoting the teaching of Māori language through the whole educational system, from the home, pre-school and Te Kōhanga Reo, primary, intermediate, secondary schools and all tertiary levels."[19]

The League had advocated for Māori to be taught in Kindergartens from its first meetings in the 1950s but were told by the Senior Inspector of Māori Schools that while the teaching of Māori was desirable, it was essential for every Māori child to know the English language because it was the medium through which Māori children would meet the outside world. But the League's position was that the Māori language is the vehicle for the whole Māori culture.

While there had been constant advocacy for this view, the education system and those that ran it were reluctant and at times resistant to meeting the expectations of Māori.

Mrs June Mead, a teacher, made a submission that said the main obstacle to the teaching of Māori in schools was still those running educational institutions.

"The organisation and structures of the school are mono-cultural. They are designed for, and run by middle-class Pākehā. One of the greatest difficulties a Māori teacher has to overcome is that of the attitudes of those in authority."[20]

That criticism was also levelled at the other area of major concern for the claimants – broadcasting.

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[18] Wai 11, Final Report, page 37.
[19] Wai 11, Doc 49, Submission by Māori Women's Welfare League, page 1.
[20] Wai 11, Final Report, page 30, quoting from submission by June Mead.

Broadcasting

The broadcasting industry at the time the claim was lodged was highly controlled by the state both in terms of ownership, funding and regulation. But even as the Tribunal held its hearing the government's role in various sectors, including broadcasting, was undergoing massive upheaval in political, economic and technological terms. This meant broadcasting was a moving target that the claimants and the Tribunal had to grapple with in a fast moving environment.

One of the targets of the claim was the flaws in the Broadcasting Act 1976. The Act required the Broadcasting Corporation to "ensure that programmes reflect and develop New Zealand's identity and culture" but it nowhere mentions Māori language and culture.[21]

The claimants asserted that "our language is now closer to death than would have been the case if there had been power-sharing between ourselves and Pākehā as Treaty partners, in the affairs of the Broadcasting Tribunal and the Broadcasting Corporation."[22]

The claim said that Radio NZ and TVNZ had not employed Māori speakers in proportion to the Māori population and this had resulted in negligible Māori content.

"In both radio and television our people receive less than half of one percent of airtime; in local radio stations we are not even mentioned, nor is our existence acknowledged, in the vast majority of air-time hours."

Broadcaster Derek Fox picked up on this theme in his oral submission.

"Māori people have been cheated by both radio and television in this country. Grossly cheated out of their fair share of the resources of the Broadcasting Corporation of New Zealand. You will be aware that the Broadcasting Corporation of New Zealand is a public broadcasting service. It is owned by all the people of Aotearoa. At the last census between 12 and 13 percent of those people, when asked of their ethnic origin, responded that they were Māori. As Dr Walker has alluded, some other people may not have felt confident to make that response. Radio has been around in this country for possibly 60 years. Television is currently celebrating 25 years of existence in Aotearoa…. The return, the dividend to those shareholders is less than half of 1 percent."[23]

He referred to the application by the New Zealand Māori Council to the Broadcasting Corporation for rights to a third television channel.

"The Broadcasting Corporation has proven itself incapable of discharging its responsibilities to the Māori people of this country who we already know are just over 12 percent of its shareholders. Therefore it should admit to that and turn over that portion of its revenue which should properly be spent on that minority for another organisation to run a television service, which reflects the hopes and aspirations of that minority, but gives the rest of New

[21] Wai 11, doc 2, page 9.
[22] Wai 11, doc 2, page 10.
[23] Wai 11, Derek Fox oral submission, page 2.

Zealand an opportunity to see the true flavour of programming that can be provided."[24]

A submission from Māori journalist Morehu McDonald described the indifference and sometimes outright hostility he had encountered from management in New Zealand broadcasting.

He stated that: "As a Māori producer working within Television New Zealand over the past six years I have had to live and work in a cultural vacuum towards things Māori. It was sad for me as a Māori to find the high degree of ignorance and sometimes blatant hostility towards things Māori at all levels in television including production, technical and management. This amounted to joking about Māori programme material, telling racist jokes to my face and 'sending up' and imitating Māori language and people."

He also pointed out that there was a legal obligation for state broadcasters to foster and support New Zealand's cultural identity.

"In talking about the New Zealand cultural identity it is surely impossible to avoid the inclusion of the tangata whenua of this land – we the Māori people. It is surely impossible to avoid the inclusion of Māori language, history and culture; which is what gives New Zealand its unique cultural identity from other countries throughout the world."

"It is a sad indictment on this country that Māori people should have to be more or less put on trial in order to convince this government, the tribunal and the wider community of the real worth in adopting Māori as the official language of New Zealand."[25]

Researcher Richard Benton made a specific submission on the importance of broadcasting in either sustaining or destroying the Māori language. He concluded that: "There are three agencies that are likely to decide the fate of the Māori language over the next decade; the home, the school, and the broadcasting system, particularly television."[26]

While the debate about broadcasting during the Tribunal's hearing was serious, there were also lighter moments. There was an exchange between chairman Eddie Durie and Derek Fox, who knew each other from their university days, that garnered a few laughs.

Durie: Sir Graham (Latimer) has a concern here that if you vastly improve television programmes for Māori you might cause their birth rate to decline.

Fox: Under my scheme of things the television stops at 11 o'clock. So there's still time.[27]

While the submissions on broadcasting fell on sympathetic ears, the Waitangi Tribunal deferred on making any specific recommendations as there was a Broadcasting Tribunal holding hearings on those issues.

There was also an argument that the Crown's role in broadcasting was an arm's length one

[24] Wai 11, Derek Fox oral submission, page 7.
[25] Wai 11, doc 55, submission by Morehu McDonald, page 8.
[26] Wai 11, doc 53, page 10, submission from Richard Benton.
[27] Wai 11, Derek Fox oral submissions, page 20.

because of the need for editorial independence.

But the Labour government's push for privatisation of various government assets and giving an increased role to the free market changed the landscape that the Waitangi Tribunal had been asked to review. This shift would generate another two claims that were amalgamated into one.

The Tribunal's findings

The Tribunal came back with a report that, while general in its conclusions and recommendations, was to lay the foundations for institutional support for te reo Māori.

On the central questions that the claimants raised, the Tribunal unequivocally agreed with the main points of the claim.

"When the question for decision is whether te reo Māori is a 'taonga' which the Crown is obliged to recognise we conclude that there can be only one answer. It is plain that the language is an essential part of the culture and must be regarded as 'a valued possession'. The claim itself illustrates that fact, and the wide representation from all corners of Māoridom in support of it underlines and emphasises the point." [28]

It also found that the promises made in the treaty made it incumbent on the Crown to actively, not passively, protect those taonga, including the language.

"The word guarantee imposes an obligation to take active steps within the power of the guarantor, if it appears that the Māori people do not have or are losing, the full, exclusive and undisturbed possession of the Taonga . . ."

"We question whether the principles and broad objectives of the Treaty can ever be achieved if there is not a recognised place for the language of one of the partners to the Treaty. In the Māori perspective the place of the language in the life of the nation is indicative of the place of the people."[29]

The Tribunal expressed a view that the rangatira who signed the treaty would not have given their assent if they had been told they couldn't use their first language in dealings with the Crown.

"Taking into account all the circumstances as they existed when the bargain was made we think that it is unlikely that many Māori signatures would have been obtained if it had been said by Captain Hobson that the Royal guarantee of protection would not include the right to use Māori in any public proceedings involving a Māori."[30]

The Tribunal was similarly emphatic in its conclusions about the part played by the

[28] Wai 11, Final Report, page 24.
[29] Wai 11, Final Report, page 25.
[30] Wai 11, Final Report, page 26.

education system in the erosion of the Māori language.

"Something has gone wrong. Māori children are not being adequately educated. We think that the system is at fault and has been at fault for many years. We suspect that somewhere at some influential level in the Department, there remains an attitude—it may be in planning or in education boards, or at the level of principals or head teachers, we cannot say—a vestige of the attitude expressed by a former Director of Education who wrote in the middle of the first half of this century: '. . . The natural abandonment of the native tongue involves no loss on the Māori . . .'"

"…We say that opinion is wrong and should be rejected."[31]

The Tribunal drew attention to Kōhanga Reo as an example of a successful initiative that had made a tangible difference to the vitality of the language. But it also showed up the passive role that the Ministry of Education was taking when it could have been taking a far greater leadership role.

"We have heard the criticism that Kōhanga Reo were established not because of the Department, but in spite of it, and it did appear that that criticism had some foundation. We were referred as well to Māori endeavours to establish alternative (Māori) schools and consider that the Department needs to look at the funding of such schools or to establish special schools in particular areas that can cater more appropriately for Māori children."[32]

The Tribunal also believed the Crown's role in supporting the Māori language in broadcasting had been too hands-off and needed to be addressed.

"If we were to conclude that the Māori language has been harmed by the predominance of English on radio and television, and if we were to conclude further that Article II of the Treaty promises that the Māori language was not only to be guaranteed but to be protected by the Crown by virtue of the provisions of the Treaty, then we could well conclude that the Minister has 'omitted to do' an act within the meaning of Sec 6 of the Treaty of Waitangi Act 1975."[33]

Recommendations

Before the Tribunal released its final report into claim Wai 11, the government introduced a bill to parliament on the Māori language. This pre-emptive move had implications for the claimants' dealings with the Crown, particularly around broadcasting.

The Tribunal made five recommendations, including "that legislation be introduced enabling any person who wishes to do so to use the Māori language in all Courts of law and in any dealings with Government Departments, local authorities and other public bodies"[34] and

[31] Wai 11, Final Report, page 37.
[32] Wai 11, Final Report, page 41.
[33] Wai 11, Final Report, page 44.
[34] Wai 11, Final Report, page 55.

"that a supervising body be established by statute to supervise and foster the use of the Māori language."[35]

These two recommendations were addressed in the Māori Language Bill that was passed in 1987 making Māori an official language and setting up the Māori Language Commission. However, although the Act allowed for Māori to be used in courts it did not extend this to other government bodies.

There was also a recommendation to the Minister of Education "that an enquiry be instituted forthwith into the way Māori children are educated including particular reference to the changes in current departmental policies which may be necessary to ensure that all children who wish to learn Māori should be able to do so from an early stage in the educational process in circumstances most beneficial to them and with financial support from the State."

Although an inquiry was never held, the Education Amendment Act 1989 gave recognition to Kura Kaupapa and Wānanga. A Kura Kaupapa at Hoani Waititi marae was the first kura of its kind and others soon followed.

However, a recommendation to the Minister of Broadcasting became a sticking point that led to further claims and legal action. The Tribunal recommended "in the formulation of broadcasting policy regard be had to this Finding that the Treaty of Waitangi obliges the Crown to recognise and protect the Māori language, and that the Broadcasting Act 1976 enables this to be done so far as broadcasting is concerned."[36]
While some aspects of the bill lined up with the Tribunal's recommendations, others weren't addressed. In the case of broadcasting, the Crown's actions continued to ignore Māori concerns about how media impacted on the Māori language.

Furthermore, the Labour government was in the process of selling off state assets and part of this process was the privatisation of broadcasting assets. Māori challenged these state asset sales, particularly where they involved land, fishing quota and other resources. The findings of the Waitangi Tribunal on the Māori language became the basis for challenging this process around broadcasting and eventually mobile phone spectrum.

Wai 26 & 150

The Crown's decision to go ahead with asset sales that Māori had interests in sparked a number of court cases, including over questions around broadcasting.

In 1986 the claimants in the Wai 11 claim asked the Tribunal to reopen the case, but the Tribunal advised that it had already delivered its findings. But it did recommend that it could hear a separate claim on the issue of broadcasting as this had been left to the Broadcasting Tribunal at the time.

[35] Wai 11, Final Report, page 55.
[36] Wai 11, Final Report, page 55.

The New Zealand Māori Council had been pursuing a bid for the third TV channel before the Broadcasting Tribunal at the time.

In June 1990 Sir Graham Latimer and Huirangi Waikerepuru lodged claim Wai 150 on behalf of the New Zealand Māori Council and Ngā Kaiwhakapūmau i te Reo. It sought an urgent hearing and recommendation that the policies inherent in the Radio Communications Act 1989 be halted until Māori interests in radio frequencies were negotiated. It claimed that sale of frequency management licences would breach the Treaty of Waitangi and would be prejudicial to Māori interests.

In the early stages of the hearings there was agreement to merge the Wai 26 and Wai 150 claims.

In mid-July 1990 the claimants filed a request for urgency on the basis that the Crown was planning to seek tenders for 20 year rights to AM and FM radio frequencies in August. The claimants and the chairperson of the Tribunal made formal requests for a delay but the Minister of Communications was not willing to delay the tendering process.

The claimants then filed a High Court challenge, seeking a judicial review of the Minister's decision, which was successful. The Crown appealed to the Court of Appeal which found that found that the Minister could not reasonably have decided to proceed with the tender without first awaiting the report of the Waitangi Tribunal. The Tribunal's hearing proceeded under the protection and urgency of that ruling.

The claim was heard over 10 days and reported back in November.

The Wai 11 claim had established that the Māori language was a taonga and the Crown had an obligation to protect it. But how that applied in broadcasting was a moot point. One of the central issues at stake was what rights Māori had to a resource that had not been discovered when the Treaty of Waitangi was signed.

Part of the claimants argument rested on the finding of the Muriwhenua fisheries claim which stated that Māori had a right to development by using new technology and methods.

But the argument to airwaves was more abstract. The Crown didn't believe Māori had any rights to radio spectrum that were different to other citizens.

"The Crown agreed that the Treaty required it to sustain and protect Māori language and culture and to provide a secure place for Māori language in broadcasting, but it could not accept that the spectrum is a taonga in terms of the Treaty, saying that Māori rights to the spectrum as such, were the same as for any other group in society. It asserted that apart from any allocation of radio spectrum frequencies which Māori might receive as a result of the Crown's duty to protect Māori language and culture, Māori must tender for rights to the spectrum with the rest of the population. The general right of Māori to enjoy the benefits of scientific and technological advances since the Treaty said the Crown, stems from the pledge in article 3 that they would have the same rights of citizenship as the people of

England, so in that sense, Māori stand in no different position with regard to the spectrum than any other group."[37]

Although the radio spectrum was not discovered in 1840, the Tribunal also considered the possibility that it didn't necessarily belong to the Crown either, at least not exclusively. Radio waves were discovered by Italian inventor Gugliemo Marconi in 1901 and were a resource that was part of the universe awaiting discovery. Therefore, the resource was subject to exploitation, usage and management under the terms of a country's constitutional arrangements. Those arrangements include the agreement reached in 1840 for Māori to have control over those resources they considered of value, including their language. Property rights to the spectrum were a matter where the Crown could not automatically assume preeminence.

"The electromagnetic spectrum has many of the attributes of a common property resource. It is freely accessible to all. That portion of the electromagnetic spectrum known as the radio spectrum is a limited natural resource and, at least for the present, a scarce resource. Over-use and over-crowding cause interference and lead to situations where the use of the radio spectrum can be severely impaired. Equitable and careful management of the spectrum is therefore crucial at domestic and international levels. Legal regimes based on conventions, rules and regulations have been put in place for the purpose, and institutional arrangements are functioning both domestically and internationally.
It is because of the importance of the radio spectrum that this claim has been brought in the way that it has."[38]

The Tribunal also relied on the argument that Māori had a right to development of resources and should not be expected to be stuck in 1840.

"Even though the spectrum was not evident at the time of the signing of the Treaty, in hindsight we know that it has been part of the universe since the time of creation.
In this way it is similar to the offshore fishery resource. In the Muriwhenua Report (1988) the Tribunal found that while the in-shore fishery was known to and owned by Māori at 1840 and remained in their exclusive use, the offshore resource was not so known and owned. Its use was therefore to be a matter for negotiation between Māori and the Crown."[39]
The report found that the spectrum's influence on the Māori language was such that the Crown had to take this into consideration when deciding on its allocation.

"It is not simply a case where Māori can argue prior ownership before the Treaty. Nor can the Crown argue that Māori have no rights to the spectrum other than a general public right, nor a right only in terms of the language. The use of the radio spectrum is so intimately tied up with the use of Māori language and culture, and the protection and

[37] Wai 26 & 150, Final Report, page 40.
[38] Wai 26 & 150, Final Report, page 39f.
[39] Wai 26 & 150, Final Report, page 41.

development of these things, that the Māori right to access must amount to more than this."[40]

The Tribunal's main recommendation was that the Crown should act in good faith and carry out genuine consultation.

"The Crown has an obligation to consult which places a basic obligation on each partner to act with the utmost good faith in their dealings with the other.
The sum of these obligations require that the Māori partner be allocated a fair and equitable access to radio frequencies. Equity in these terms does not mean a percentage, or an arithmetically calculated share. Rather it requires an allocation on the basis of need and purpose."[41]

The government was determined to go ahead with its plans while putting aside some frequencies for Māori. But these were considered inadequate by the claimants and they took the matter of broadcasting allocation to the High Court.

In late 1988 the Council and Ngā Kaiwhakapūmau i te Reo jointly took action under Section 9 of the State Owned Enterprises Act, against the legislation to turn Radio NZ and TVNZ into State Owned Enterprises. This case was known as the Broadcasting Assets Case. It concerned access to mainstream radio and television, and the right to stand-alone Māori radio and television. The largest of all of the cases, it took five years of hearings and Appeals. It was conducted for the plaintiffs by senior counsel the late Martin Dawson, and Sian Elias QC. The plaintiffs sought to prevent the commercialisation of the country's State Owned Broadcasting networks, based on a Section of the State Owned Enterprises Act (S 9), which prevented the Crown from acting contrary to the principles of the Treaty of Waitangi. The claimants argued that the Māori language as indeed the indigenous people and partners to the 1840 Treaty, had suffered over the previous decades, as increasingly commercial imperatives drove them, and their culture, off the nation's television and radio.

The case froze the transfer of title to the public broadcasting system's assets, thus preventing their transfer to new SOE's TVNZ and Radio NZ Ltd, pending the hearings. It took two and a half years, from late 1988 to early 1991, for the case to come to a hearing.

The Court judgement found that not much improvement was seen in either TV One and TV Two, or the private channel TV3. It ordered the Crown to come up with a protective scheme, which was duly brought back to the Court. The undertakings proposed were:

1) Provision of $13m over three years and establishment of a funding agency (Te Māngai Paho)
2) Mainstreaming programmes on existing television channels
3) Development of policies and plans for a stand alone channel and a time frame for work on this over two years

[40] Wai 26 & 150, Final Report, page 42f.
[41] Wai 26 & 150, Final Report, page 43.

4) Reservation of a network of UHF frequencies in many of the main centres of population to carry a possible Māori channel.

The High Court found that the Crown's proposals were adequate to fulfil its obligations regarding radio, but it still fell short on television. The government came up with a number of proposals, including the establishment of Te Māngai Paho, but the claimants still believed these were inadequate and took it to the Court of Appeal. Their appeal was dismissed so it was then taken to the Privy Council in 1993.

Although the Privy Council upheld the Court of Appeal's decision it left the door open for Māori claimants to bring the case back for a further consideration if they believed government's ongoing response was inadequate. The government was effectively on notice.

While the claimants didn't win some of these individual battles, some of the principles that the Tribunal and the courts laid down were the basis for gains in the broadcasting sector. They also sent a message to the Crown that Māori would not back down or be ignored.

The establishment of Te Māngai Paho in 1993 created a funding base for Māori language broadcasting. The allocation of radio spectrums to Māori set in train the proliferation of Māori radio stations, starting with Te Ūpoko o te Ika in Wellington. Since then more than 20 Māori radio stations have become established, with most having a distinct iwi identity.

Although Māori had missed out on the sale of TV3, there was an ongoing dream to have a dedicated Māori television service. A pilot service Aotearoa Television Network started in 1996 but its broadcasts were limited to Auckland. Funding difficulties caused it to close in 1997.

Māori TV was eventually launched in 2004 with full public funding and a public service mandate. Despite heavy criticism from politicians and mainstream media in its early years, the channel has established itself as an important part of the broadcasting landscape. Its focus on Māori language, history, and culture has provided the kind of platform that those who brought the Wai 11 claim had yearned for. In 2008 a second channel, Te Reo, was launched that broadcasts entirely in Māori.

Airwaves

While the technology and infrastructure behind broadcasting had been built over decades, mobile phone technology was a more recent development. Its implications for Māori language were untested.

In 1999 the 3G spectrum was being sold by the state, but as with broadcasting Māori interests were not seriously considered. A claim by Rangiaho Everton led to the Waitangi Tribunal finding that Māori did have a real and major interest in the spectrum (although Judge Savage dissented).

The Tribunal had again found that the Crown's lack of consultation was a key breach.

"Our majority finding concluded, in relation to the principle of partnership, that neither partner can have monopoly rights over a resource. It is not reasonable, or in good faith, for the Crown to arrogate to itself the whole resource, as it did the radio spectrum under the Radio communications Act 1989, and then alienate portions of that spectrum without ensuring, through consultation, that Māori received an equitable share of it."[42]

The Crown rejected the finding that Māori had an Article 2 interest in the radio spectrum. Instead it unilaterally decided to reserve a joint development right over a quarter of the spectrum from sale. This required Māori to enter into a commercial partnership for use of that spectrum. A trust, Te Huarahi Tika Trust, was set up with $5million from the Crown to represent Māori interests in negotiations. After initial difficulties joint venture partners were found and the 2degrees network was launched in 2009.

The government's position led to a similar confrontation when the spectrum that would carry the new 4G technology was put up for auction in 2013. As television shifted to digital it freed up spectrum for more advanced mobile phone technology. The government refused to recognise any claim that Māori had to this newly available spectrum. The major players, Vodafone, Spark and 2degrees, bought blocks of the spectrum. But when Māori challenged the auction process, the government offered Māori $30 for a technology fund. In doing so it effectively ignored the Waitangi Tribunal's previous findings that the spectrum was a taonga that Māori should have access to.

Te Mātāwai

The original Wai 11 claim over time created a number of organisations that were responsible for supporting the Māori language in different ways. However, 30 years on there were questions raised about how effective they were in increasing the use of te reo. Each organisation and body had its own mandate and particular objective. One question was about how well coordinated they were in achieving a common goal.

The Māori Language Act 2016 created Te Mātāwai, which is an umbrella organisation that sits above the main bodies responsible for nurturing Māori language – Te Māngai Paho, Māori TV, and Te Taura Whiri i te Reo Māori / Māori Language Commission.

The board of Te Mātāwai has representatives from large iwi regions as well as those with expertise in certain areas such as media. The intent is to give Māori more input into the development and direction of the organisations responsible for supporting the language.

Since the Wai 11 claim was filed, progress in revitalising the language has been uneven. The official recognition of the language has given Māori leverage to argue for this to be implemented in more practical ways, particularly in education.

[42] Wai 776, Final Report, page 18f.

At the last census Otaki, the town that didn't have any fluent speakers under the age of 30, now has just over 50 percent of its Māori population who can speak Māori. A generation of Māori who came through Kōhanga Reo and Kura Kaupapa are now adults and are excelling in all sectors of society. Those who teach in Kōhanga and Kura now have more training than when they were started.

Perhaps most significantly there is a wider debate among New Zealand society about the role of the language in the country's identity. A serious debate has started about whether Māori should be compulsory in schools, at least at primary school level. Some schools have decided to go ahead anyway. Kings College and Auckland Grammar as well as Wellington Girls' College have Māori as a compulsory subject at the junior levels.

Pākehā broadcasters have also made more effort to include Māori greetings and language in their presentation and pronunciation has improved in public forums.

Despite these promising signs, the Māori language is still struggling. The proportion of the Māori population that speaks its own language is static. Among some groups it is falling.

If it takes one generation to lose a language, it takes around three generations for that same language to re-establish itself. It is just over 30 years since the Wai 11 claim was lodged in 1984, barely more than one generation. The seeds that claim sowed have germinated and flourished but not yet matured. The taonga tuku iho of the Māori language is still fragile.

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