I TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

WAI 3300
WAI 1341/3077

I RARO O TE MANA O	te ture o te Tiriti o Waitangi 1975
I TE TAKE O	te ruku tātari ohotata, Tomokia ngā tatau o Matangireia (Wai 3300)
AA	
I TE TAKE O	tētahi kerēme nā Nora Rameka mā Te Rūnanga o Ngāti Rēhia mō te hapū o Ngāti Rēhia (Wai 1341/3077)

Opening Submissions on behalf of Ngāti Rēhia

I tēnei rā, i te 30 Āperira 2024

RECEIVED
Waitangi Tribunal
1 May 24
Ministry of Justice
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TĒNĀ, E TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

KŌRERO WHAKATAKI / INTRODUCTION

1. These Opening Submissions are filed on behalf of Wai 1341/3077, a claim by Nora Rameka which has been brought on behalf of Te Rūnanga o Ngāti Rēhia for and on behalf of the hapū of Ngāti Rēhia ("the Claimants").[1]

2. These submissions set out the case for Ngāti Rēhia in this inquiry into the Crown's actions and policies concerning a statutory review by the Crown of all enactments containing references to the 'principles of the Treaty of Waitangi' and a proposed Treaty Principles Bill (together referred to as "Treaty policies and actions").[2]

SUMMARY OF NGĀTI RĒHIA'S CLAIM

3. Ngāti Rēhia is clear in its opposition to the Crown's Treaty policies and actions in every respect as the Crown seek to limit and redefine the meaning of te Tiriti o Waitangi and its application in the modern-day context, and undermine rangatiratanga and the rights guaranteed to Māori and to Ngāti Rēhia therein. The divisive and perilous Treaty policies and actions undermine Ngāti Rēhia / Crown relationships by seeking to fundamentally alter the promises guaranteed under te Tiriti, and will undermine Ngāti Rēhia, its objectives and mahi it undertakes for the health and wellbeing of its people.

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[1] For clarification, Ngāti Rēhia have two claims in the Wai 3300 Constitutional Inquiry. An Amended Statement of Claim under Wai 3077 was filed on 22 December 2023 on behalf of Ngāti Rēhia raising allegations as to the Crown's proposed policies in respect of te reo Māori and the Treaty Principles Bill. On 25 January 2024, her Honour Judge Reeves referred the Treaty Principles Bill part of the Wai 3077 claim (and associated application for urgency) to the Wai 3300 Inquiry to be heard and determined by Chief Judge Fox and this Panel (Wai 3077, #2.5.3). A Statement of Claim under Wai 1341 was filed on 12 February 2024 on behalf of Ngāti Rēhia for participation in the broader Tomokia ngā tatau o Matangireia Inquiry which raised claims (inter alia) concerning the Crown's Review of Treaty Clauses. Following Memorandum-Directions of her Honour Judge Fox (Wai 3300, #2.5.18) directing parties to file amended/new pleadings in the broader inquiry, and for the sake of completeness and practicality in prosecuting Ngāti Rēhia's claim, an Amended Claim was filed on 15 April 2024 under Wai 1341 which amalgamated issues relevant to both the broader inquiry and this urgent inquiry into the one claim, under Wai 1341.

[2] Wai 3300, #2.5.18 at [1].

4. The Claimants recognise te Tiriti o Waitangi (Māori text) as having primacy in recognition of the 500 Māori chiefs who signed the Māori version (while only 39 signed the English version) and that being the version which most accurately reflects the intentions of Māori rangatira. The Claimants say that the Crown's attempts to utilise te reo Māori and the Māori texts so as to prosecute an attack on and undermine the commitments it made to Māori under te Tiriti is particularly deceitful and abhorrent.

5. The Claimants say that they cannot sit idly by while the Crown attempt to reinterpret and rewrite te Tiriti o Waitangi to pursue its agenda to undermine Māori rangatiratanga, mana motuhake and rights, in complete disregard of its obligations of partnership, good faith and active protection in respect of Māori.

6. Accordingly, the Claimants say that the actions and omissions of the Crown towards Ngāti Rēhia amount to a breach of te Tiriti o Waitangi and its principles.

BACKGROUND OF CROWN ACTIONS AND POLICIES CONCERNING TE TIRITI O WAITANGI / THE TREATY OF WAITANGI AND ITS PRINCIPLES

7. The Crown in its Coalition Agreements agreed to the following policies:

   (a) "conduct a comprehensive review of all legislation (except when it is related to, or substantive to, existing full and final Treaty settlements) that includes 'The Principles of the Treaty of Waitangi' and replace all such references with specific words relating to the relevance and application of the Treaty, or repeal the references" ("the Treaty Clause Review");[3] and

[3] Coalition Agreement between the National Party and the New Zealand First Party at 10.

(b) "introduce a Treaty Principles Bill based on existing ACT policy and support it to a Select Committee as soon as practicable ("the Treaty Principles Bill").[4]

8. These Crown policies and actions are now the subject of this urgent inquiry.

9. With respect to the Treaty Clause Review, the policy in the NZ First – National Agreement is preceded by the words "The Coalition Government will reverse measures taken in recent years which have eroded the principle of equal citizenship [...]."

10. With respect to the Treaty Principles Bill, ACT's Treaty Principles Policy is as follows, purportedly guided by te Tiriti o Waitangi (the Māori text):[5]

(a) Article 1: "kawanatanga katoa o o ratou whenua" - The New Zealand Government has the right to govern all New Zealanders;
(b) Article 2: "ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou whenua o ratou kainga me o ratou taonga katoa" - The New Zealand Government will honour all New Zealanders in the chieftainship of their land and all their property; and
(c) Article 3: "a ratou nga tikanga katoa rite tahi" - All New Zealanders are equal under the law with the same rights and duties.

11. Further policy rationale is found in ACT's "A path from co-governance to democracy" policy, as well as on their online campaign for the Treaty Principles Bill,[6] presenting flawed interpretations of te Tiriti/the Treaty and its principles, and assertions as to the application of te Tiriti and its principles in law and society today.

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[4] Coalition Agreement between the National Party and the ACT Party at 9.
[5] ACT policy document - A path from co-government to democracy, at page 3.
[6] ACT policy document - A path from co-government to democracy.

12. Despite clear Māori opposition and numerous active claims and applications before this Tribunal regarding the Crown's treaty policies, the Crown has continued to take active steps to develop and implement same. The Crown has set about achieving its political promises at haste, despite the significance of te Tiriti o Waitangi as the founding document of Aotearoa and the significant constitutional issues at hand, without engagement with Māori hapū and iwi. These steps have included the Crown's rigorous defending of the claims brought against it in this inquiry, seeking to withhold information which have up until this point, been ordinarily provided by the Crown and are clearly relevant to the issues for inquiry, as well as the actions at the ministerial level as referred to in the Memorandum-Directions of Her Honour Chief Judge, dated 26 April, at [17].[7]

13. Considered in its full context, the Crown's treaty policies raise questions of constitutional importance and in essence, propose to unilaterally rewrite the rights enshrined in the te Tiriti/the Treaty and fundamentally change understandings and interpretations of these constitutional documents. By proceeding with these policies in such a manner, Counsel submit that the risk of harm to Māori and Māori rights, even on the limited evidence and information before the Tribunal, is real. Accordingly, the Claimants are gravely concerned about the absence of a treaty analysis on the impact of the Crown's Treaty policies and actions on Māori generally. The Claimants say that the absence of such an analysis should not be taken to mean that the policies do not have an impact on Māori at all. In these circumstances, the Claimants say that the Tribunal ought to defer to the evidence before it on the issue of prejudice suffered and likely to be suffered by the Claimants and Māori generally.

[7] Wai 3300, #2.5.027 – Confidential: Ngā Pūnga o te Whakataunga a te Rōpū Whakamana I te Tiriti o Waitangi, 26 Paengawhāwhā 2024, at [17]. These matters are not listed due to current confidentiality directions placed over this material.

14. The Crown has had no engagement with the Claimants in respect of its Treaty Policies and, instead, unilaterally determined and committed to these policies and the process by which they would be introduced and implemented, without regard to its obligations to Māori under te Tiriti. The Claimants do not merely see these Crown actions and policies as breaches of te Tiriti o Waitangi and its principles, they also consider them to be an outright attack on Māori ways of being and thinking, on tikanga Māori, on their rangatiratanga, on their mana motuhake, and on their rights as tangata whenua of Aotearoa.

15. The Claimants say that it is unacceptable for the Crown to unilaterally redefine, alter, or breach the terms of te Tiriti/Treaty. This is unconstitutional, the Claimants say, and must be met with strong opposition.

16. The Claimants say that a full appreciation of their claim, whilst not directly relevant to this inquiry, also requires consideration of the raft of recent fundamental policy changes that pose significant risk to the constitutional history and arrangements of Aotearoa in that they seek to assert Crown dominance over Māori hapū and iwi, and subsume Māori culture, identity and ways of being and thinking within mainstream philosophy and ideals, including, for example, the disestablishment of Te Aka Whai Ora, the repeal of s 7AA of the Oranga Tamariki Act and the Fast Track Consenting Bill.

TE TIRITI O WAITANGI ME ŌNA MĀTĀPONO

17. As a hapū based in the Bay of Islands, Northland, the Claimants consider treaty jurisprudence from the Wai 1040 Stage One Report, *He Whakaputanga me te Tiriti*, and the Stage Two Report, *Te Tino Rangatiratanga me te Kāwanatanga*, to be most relevant to the issues before this inquiry.

18. The Waitangi Tribunal in its Stage One Report of the Wai 1040 Te Paparahi o Te Raki (Northland) Inquiry, *He Whakaputanga me te Tiriti – The Declaration and the Treaty* is the critical starting point of assessing the appropriate standard of measure for Crown conduct in this context.

19. The Claimants contend that the Crown pledged to safeguard the rights of Māori people, their authority and the use of their land. Thus, their rangatiratanga was never ceded. The Claimants interpretation of te Tiriti accords with that Tribunal's finding that:[8]

> "in February 1840 the Rangatira who signed te Tiriti did not cede their sovereignty. That is, they did not cede their authority to make and enforce law over their people or their territories."

20. Critically, the Claimants endorse the Tribunals findings with respect to the nature of the agreement between the Crown and Māori, which set out that;

(a) Rangatira agreed to share power and authority with Britain. They agreed to the Governor having authority to control British subjects in New Zealand, and thereby keep the peace and protect Māori interests;

(b) The rangatira consented to the treaty on the basis that they and the Governor were to be equals, though they were to have different roles and different spheres of influence. The detail of how this relationship would work in practice, especially where the Māori and European populations intermingled, remained to be negotiated over time on a case-by-case basis;

(c) The rangatira agreed to enter land transactions with the Crown, and the Crown promised to investigate pre-treaty land

[8] Waitangi Tribunal, *He Whakaputanga me te Tiriti – The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry* (Wai 1040, 2014) at xxii.

transactions and to return any land that had not been properly acquired from Māori; and

(d) The rangatira appear to have agreed that the Crown would protect them from foreign threats and represent them in international affairs, where that was necessary.

21. The Tribunal in its Stage Two Report of the Wai 1040 Te Paparahi o Te Raki (Northland) Inquiry, *Tino Rangatiratanga me te Kaawanatanga,* articulated a number of principles which the Claimants say are also of relevance to their claim:[9]

(a) Te mātāpono o te tino rangatiratanga / the principle of rangatiratanga: Article 2 of te Tiriti guaranteed tino rangatiratanga to Māori. Māori rangatiratanga was to be recognised and respected, and rangatira were to continue to exercise their rights and responsibilities to their hapū in accordance with their tikanga.

(b) Te mātāpono o te kāwanatanga / the principle of kaawanatanga: Māori were to have their authority in their sphere of influence equal to that of the Crown in its sphere, and where questions of relative authority arose, they were to be negotiated through discussion and agreement between the parties. The duty of the Crown was (and is) to foster tino rangatiratanga (Māori autonomy), not to undermine it, and to ensure that its laws and policies were just, fair, and equitable and would adequately give effect to treaty rights and guarantees, notably those affecting hapū autonomy and tikanga and hapū retention and management of their lands and resources. The Crown also has a further duty to ensure that its treaty duties are not abrogated.

(c) Te mātāpono o te houruatanga / the principle of partnership: the principle of partnership is a right derived directly from the treaty

[9] Waitangi Tribunal, *Tino Rangatiratanga me te Kaawanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry, Part I, Volume 1* (Wai 1040, 22 December 2022) at 69 – 71.

and means, as treaty partners, Māori and the Crown are to move forward together and beside each other. They are to negotiate and manage their respective spheres of authority, as well as shared spheres when the two intermingle. The Tribunal said that the Crown cannot unilaterally decide what Māori interests are or what the sphere of tino rangatiratanga encompassed, that is for Māori to negotiate with the Crown. Instead, in the spirit of partnership, the Crown has a duty to engage with Māori (rather than merely consult) on how it should recognise rangatiratanga and, where agreed, give effect to it in New Zealand law. Likewise, the Crown is obliged to include Māori in decision-making around the operation of law in Māori communities, or in cases where Māori are impacted. Where Crown consultation has left Māori feeling disempowered and trapped in processes that offer a shadow of participation rather than substance, it has not met the test of partnership.

(d) Te mātāpono o te whakaaronui tētahi ki tētahi / the principle of mutual recognition and respect: The Crown has a duty to recognise and respect mana, tikanga, kawa, maatauranga, kaitiakitanga, and te reo Māori. At the heart of Māori values and the Māori way of life was and is tikanga [which is unique to each iwi and is dynamic]. The Crown must recognise and respect tikanga Māori values and Māori systems of law. The Crown's recognition and respect of hapū communities and their authority over their lands and waters, and taonga, should be evident in the importance it places on the treaty guarantee of tino rangatiratanga.

(e) Te mātāpono o te matapopore moroki / the principle of active protection: The duty of active protection is a duty which requires the Crown to help restore balance to the relationship with Māori that became unbalanced as the Crown assumed an authority far beyond the bounds understood by te Tiriti. Further, the Crown

duty of active protection "calls for active effort from the Crown jointly to realise the potential of the treaty as a living, evolving agreement."

(f) Te mātāpono o te whai hua kotahi me te matatika mana whakahaere / the principle of mutual benefit and the right to development: The Crown was required to provide positive assistance where required (i.e. where Māori faced unfair barriers to development) and make specific efforts to help Māori become 'equal in the field' with settlers.

(g) Te mātāpono o te mana taurite / the principle of equity: Article 3 of the Treaty guaranteed Māori equitable treatment, and citizenship rights and privileges, and the Crown undertook to provide both. The duty of equity requires the Crown to actively address inequities experienced by Māori. This obligation is heightened if inequities are especially stark. Accordingly, satisfying the principle of equity requires treatment that is fair, as opposed to equal or the same.

(h) Te mātāpono o te whakatika / the principle of redress: Where the Crown has breached the treaty agreement through its legislation, policy, actions, or omissions, Māori are afforded the right to redress from the Crown, including financial or other compensation.

22. The Claimants submit that the following duties are also relevant:

(a) The duty to act honourably;
(b) The duty to act reasonably;
(c) The duty to act in good faith; and
(d) The duty to be informed.

23. The Claimants say that the Crown's Treaty policies and actions are particularly egregious in the face of the Tribunal's recommendations in its report, *Tino Rangatiratanga me te Kāwanatanga*, that:

(a) "The Crown acknowledge the treaty agreement which it entered with Te Raki rangatira in 1840, as explained in our stage 1 report"; [10] and

(b) "The Crown enter discussions with Te Raki Māori to determine appropriate constitutional processes, and institutions at national, iwi, and hapū levels to recognise, respect, and give effect to their Tiriti / Treaty rights."[11]

24. In the more contemporary context of Crown policy development and implementation arising out of political promises, Counsel highlight comments made in the recent *Wai 3350 Oranga Tamariki (Section 7AA) Urgent Inquiry [Interim] Report* that are considered relevant to this inquiry, including:

(a) " […] once Ministers are sworn in and the government is formed, the executive so constituted are responsible for meeting the Crown's obligations to Māori under the Treaty of Waitangi. It is a Treaty of Waitangi, not a proclamation of Waitangi, and the Crown does not have a unilateral right to redefine or breach its terms. The obligation is to honour the Treaty and act in good faith towards the Treaty partner."[12]

(b) There are established Treaty-based relationships in place. If the Crown wishes to make a fundamental change of this nature it should start by having direct good faith dialogue with the parties to these agreements. To simply tell those parties what is going to happen, and invite them to make submissions to a select committee, is to dishonour the very basis of the agreement itself"[13]

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[10] Waitangi Tribunal, *Tino Rangatiratanga me te Kaawanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry, Part I, Volume 1* (Wai 1040, 22 December 2022) at xxix.

[11] At xxx.

[12] Waitangi Tribunal, *The Oranga Tamariki (Section 7AA) Urgent Inquiry Report* (Wai 3350, 19 April 2024) at page 13.

[13] At page 15.

(c) "Māori do have particular rights guaranteed to them under the Treaty and honouring them has nothing to do with separatism and everything to do with accepting the fact that Māori actually have the right to live here, as Māori."[14]

25. On the above bases, the Claimants say that the Crown has breached te Tiriti and its principles, and the prejudice suffered and likely to be suffered to the Claimants is significant and irreversible.

KŌRERO TAUNAKI A NGĀ KAIKERĒME

26. The Claimants file with these Opening Submissions the Brief of Evidence of Kipa Munro, Chairperson of Te Rūnanga o Ngāti Rēhia, which supports the Wai 1341/3077 claim and focuses on:

(a) The purpose of Te Rūnanga o Ngāti Rēhia to advocate for the hapū political, leadership, marine, coastal, and land-related concerns;

(b) The objective of Te Rūnanga o Ngāti Rēhia to empower all descendants of Ngāti Rēhia, ensuring their resilience in addressing environmental, community, and cultural issues for future generations. Collaborating with residents and individuals within Ngāti Rēhia's tribal boundaries, the Rūnanga emphasises partnership, not only among themselves but also with other tribes, to navigate a collective path forward;

(c) Te Rūnanga o Ngāti Rēhia being grounded in tikanga Māori and te reo Māori, and guided by He Whakaputanga and te Tiriti o Waitangi in its operations and management;

(d) Outlining the plethora of mahi undertaken by Ngāti Rēhia whānui to achieve its objectives of health and wellbeing for Ngāti Rēhia uri, and to strengthen relationships and connections with

[14] At page 16.

whānaunga hapū, iwi, whānau, members and stakeholders of their community and Crown agencies and departments; and

(e) The role of te Tiriti o Waitangi and its principles in the relationships Ngāti Rēhia have with and within its communities, founded on mutual recognition and respect, an understanding of Ngāti Rēhia as ahi kā and tangata whenua, and developed understandings of te Tiriti o Waitangi and its application to the functions of their community.

27. Mr Munro's evidence stresses that these relationships, the mahi carried out by Ngāti Rēhia and the hard-earned benefits and outcomes of same are now at serious risk by the implementation of the Crown's treaty policies and associated actions.

NGĀ WHAKAHĀWEATANGA / PREJUDICE

28. Counsel submit that the Claimants will suffer significant prejudice as a result of the Crown's Treaty policies and actions. The Claimants say that, the Crown in acting without authority in its administration of this land and the people of Aotearoa, on an incorrect belief that the Crown are the superior powers on this land/Māori ceded their sovereignty, is a clear undermining of the Claimants rangatiratanga and the rights guaranteed to them under te Tiriti o Waitangi.

29. The Claimants further say that they will suffer or will likely suffer prejudice in the following ways as a result of the Crown's Treaty policies and actions:

(a) Fundamentally rewrites and alters te Tiriti and the guarantees enshrined within, and its application in today's context, contrary to the actual promises and guarantees made by the Crown and rangatira Māori in 1840;

(b) Threatens the Claimants' role and influence in decision-making, and the ability to exercise their rights and obligations as ahi kā and tangata whenua, and guaranteed right to rangatiratanga;

(c) Erodes trust and confidence by Māori in the Crown, by threatening the progress made to date with respect to Māori / Crown relationships and the hard-earned benefits and outcomes achieved as a result of those relationships;

(d) Causing damage to the Claimant / Crown relationship, and the Claimants' relationship with community members and stakeholders;

(e) The undermining and denigration of the rights and status of Māori as tāngata whenua and as a te Tiriti partner, and the denial of justice to the Claimants on a significant issue (made confidential as a result of Crown actions) which seeks to affect the Claimants' rights; and

(f) Potential negative outcomes to the health, wellbeing and safety to the Claimants, their whenua, moana and taonga.

RONGOĀ / RELIEF

30. The Claimants seek the immediate stop to the Treaty Bills policy development and implementation and the review of existing Treaty principles legislative references. The Claimants say that this is necessary to minimise any further prejudice to the Claimants and Māori generally, to ensure no further breaches of te Tiriti and its principles occur, and to attempt to repair existing te Tiriti relationships.

31. What must occur from this point are good faith discussions and engagement with the Claimants and Māori generally, with an understanding that no proposed change to the nature and scope of te Tiriti o Waitangi or the te Tiriti relationship can be made without agreement by both parties, Māori and the Crown. The place and status

of Māori, as equal partners, in these discussions, must be recognised and respected.

32. The Claimants seek the Tribunal's strong intervention in making the findings and recommendations as sought by the Claimants.

I TĒNEI RĀ, i Tāmaki Makaurau, i te 30 o Āperira 2024

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Ihipera Peters / Aroha Herewini / Amber Evans

Rōia mō ngā Kaikerēme