OFFICIAL



**IN THE WAITANGI TRIBUNAL**

**Wai 3300 Wai 3316**
**Wai 3317 Wai 3318**
**Wai 3320 Wai 3321**
**Wai 3343**

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

**AND**

**IN THE MATTER OF** Tomokia ngā tatau o Matangireia - the Constitutional Kaupapa Inquiry (Wai 3300)

**BY** Jane Mihingarangi Ruka, on behalf of the Grandmother Council of the Waitaha Nation, including the three hapū of Ngāti Kurawaka, Ngāti Rakaiwaka, and Ngāti Pakauwaka

**AND** Continued…

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# JOINT OPENING SUBMISSIONS

**Dated: 30 April 2024**

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RECEIVED
Waitangi Tribunal
***1 May 24***
Ministry of Justice
WELLINGTON

**BY** Apihaka Tamati Mack, on behalf of herself, and Ngātiawa Tōputōnga Tai Kapiti

**AND**

**BY** Louisa Te Matekino Collier, Rihari Richard Takuira Dargaville, and Joseph Kingi, on behalf of themselves, and Ngāpuhi-nui-tonu

**AND**

**BY** Moerangi Potiki, on behalf of Te Rūnanga o Ngāti Whakaue Incorporated, for and on behalf of Ngāti Whakaue ki Maketu Hapū

**AND**

**BY** Sailor Morgan and Frances Goulton, on behalf of themselves, the Ngāti Ruamahue hapū, and Ngāti Kahu ki Whangaroa

**AND**

**BY** Daniel Watson and Tūwharerangi Ruka, on behalf of the Grandfather Council of the Waitaha Nation, including the three hapū of Ngāti Kurawaka, Ngāti Rakaiwaka, and Ngāti Pakauwaka

**MAY IT PLEASE THE TRIBUNAL:**

# I. Introduction

**1.** These joint opening submissions are:

**a.** filed on behalf of:

**i.** Jane Mihingarangi Ruka, on behalf of the Waitaha Executive Grandmother Council, which includes the three hapu of Ngāti Kurawaka, Ngāti Rakaiwaka, and Ngāti Pakauwaka (Wai 3316);

**ii.** Daniel Watson and Tūwharerangi Ruka, on behalf of themselves, and the Waitaha Executive Grandfather Council, which includes the three hapu of Ngāti Kurawaka, Ngāti Rakaiwaka, and Ngāti Pakauwaka (Wai 3343);

**iii.** Apihaka Tamati Mack, on behalf of herself, and Ngātiawa Tōputōnga Tai Kapiti (Wai 3321);

**iv.** Louisa Te Matekino Collier, Rihari Richard Takuira Dargaville, and Joseph Kingi, on behalf of themselves, and Ngāpuhi-nui-tonu (Wai 3320);

**v.** Moerangi Potiki, on behalf of Te Rūnanga o Ngāti Whakaue Incorporated, for and on behalf of Ngāti Whakaue ki Maketu Hapū (Wai 3318); and

**vi.** Sailor Morgan and Frances Goulton, on behalf of themselves, the Ngāti Ruamahue hapū, and Ngāti Kahu ki Whangaroa ("Wai 3317) (the parties at sub-paragraph 1.a.i to 1.a.vi all together called "the Claimants").

# II. Statement of Issues

**2.** The Statement of Issues for this Urgent Inquiry is as follows:

**Treaty Principles Bill**

1. Is the Crown's policy, and the process it has undertaken, in relation to the Treaty Principles Bill consistent with te Tiriti o Waitangi and its principles?

   (a) What Treaty principles apply to the Crown's laws, policies, practices, actions and omissions in relation to the proposed Treaty Principles Bill?

(b) In the context of the proposed Treaty Principles Bill, what are the Crown's duties and obligations to Māori arising from those Treaty principles?
(c) What is required by the Crown to give effect to these Treaty principles in this context, including, in relation to engagement with Māori, and the process of developing the proposed Treaty Principles Bill?
(d) To what extent, if at all, are the Crown's laws, policies, actions and omissions in relation to the Treaty Principles Bill inconsistent with te Tiriti o Waitangi and its principles, and the Crown's legislative obligations relating to te Tiriti and its principles?

2. To what extent are Māori suffering or likely to suffer prejudice as a result of the Crown's policy and process in relation to the Treaty Principles Bill?

3. What findings and/or recommendations should the Tribunal make about any prejudice suffered, or likely to be suffered, by Māori as a result of Crown conduct in relation to the Treaty Principles Bill?

**Treaty Clause Review**

4. Is the Crown's policy, and the process it has undertaken, to "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 allsuch references with specific words relating to the relevance and application of the Treaty, or repeal the references", consistent with te Tiriti o Waitangi and its principles?

(a) What Treaty principles apply to the Crown's policy to conduct a review of the Treaty clauses?
(b) In the context of the Crown's policy to conduct a review of Treaty clauses, what are the Crown's duties and obligations to Māori arising from those Treaty principles, including in relation to the Treaty principles of tino rangatiratanga and partnership?
(c) What is required by the Crown to give effect to these Treaty principles in this context, including in relation to engagement with Māori, and the process of conducting a review of Treaty clauses?
(d) To what extent, if at all, are the Crown's actions and omissions in relation to its policy to review Treaty clauses, and the process it has undertaken, inconsistent with te Tiriti o Waitangi and its principles?

5. To what extent are Māori suffering, or likely to suffer prejudice, as a result of the Crown's policy and process to review Treaty clauses?

6. What, if any, findings and/or recommendations should the Tribunal make in relation to any prejudice suffered, or likely to be suffered, by Māori as a result of the Crown's review of Treaty clauses

## III. The Claimants' Case

**3.** The essence of the Claimants' case is that the drafting and introduction of the Treaty Principles Bill ("TP Bill"), and the Treaty Clauses Review ("the Review"), breach te Tiriti/Treaty and its principles ("the Principles") of Partnership, Tino Rangatiratanga, Active Protection, and Good Faith by:

**a.** attempting to supplant the interpretative judicial role of the Tribunal and the Courts in relation to te Tiriti/the Treaty, the document which sets out the constitutional basis, and is the source of authority, for the Parliament of New Zealand;

**b.** running afoul of a fundamental tenant of this country's legal system, namely the rule of law, and instead of allowing the Tribunal and Courts to evolve and apply the Principles on a case-by-case basis, itself attempting to legislate into existence a set of Treaty principles which do not in any way whatsoever reflect what te Tiriti/the Treaty actually says; and

**c.** failing to engage with Māori and obtain their widespread approval in relation to any related to te Tiriti/the Treaty

## IV. Evidence to be Presented

**4.** The Claimants rely upon expert evidence from two witnesses, Professor Andrew Geddis, and Tikanga expert, Mr Hōne Pereki Sadler.

***Professor Andrew Geddis***

**5.** Professor Geddis teaches at the Faculty of Law at the University of Otago. He has been a faculty member at that institution since 2000. He is the author of a considerable number of texts, book chapters, and peer reviewed journal articles on a wide range of matters relating to the law and practice of Aotearoa New Zealand's constitutional arrangements. He previously has been appointed to advisory positions on the Legislation Advisory Committee, an external panel of the Legislation Design

and Advisory Committee, and the Independent Electoral Review. He also has provided advice on request to the Privileges Committee of the House of Representatives.

**6.** Professor Geddis' evidence addresses whether the doctrine of Parliamentary Sovereignty permits a legislative definition of the principles of the Treaty of Waitangi in a manner that is inconsistent with the Treaty's text and understood meaning at the time of its signing.

***Hōne Pereki Sadler***

**7.** Mr Sadler is a well-respected Ngāpuhi Kaumatua and Tikanga expert. He previously served as Chairman of Tūhoronuku (the Ngāpuhi redress body representing Ngāpuhi's interest in its Tiriti redress negotiations with the Crown) from 2015 to 2019. He was employed as a Senior Lecturer at the University of Auckland from 2003 to 2020 where he taught Te Reo Māori, oral literature and Mātauranga Māori. Over the years, he has provided several detailed accounts of the origins, history, and culture of Ngāpuhi, and is regarded as an expert on their tikanga. His Hakapapa is to Ngāti Moerewa, Ngāti Rangi, and Ngāi Tāwake-ki-te-waokū of Tautoro and Matarāua.

**8.** Mr Sadler provides evidence of the problems with Associate Minister Seymour's interpretation of te Tiriti/the Treaty which is being used as the foundation for the TP Bill.

## V. Relief

**9.** The Claimants seek the following relief:

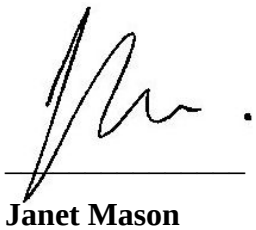
- **a.** a finding that the Crown's pursuance of the TP Bill, and the Review breach te Tiriti/Treaty and its Principles because the development and application of the Principles is something that ought to be left to the Courts and the Tribunal;
- **b.** a recommendation that the Crown cease all work on the TP Bill;
- **c.** a recommendation that the Crown engage with the Claimants and relevant Māori organisations, in the Treaty Clauses Review, and should it wish to

enact amendments to any of the existing Treaty Clauses, then the widespread approval of Māori and the Claimants is required;

**d.** all costs incurred as a result of bringing this Claim; and

**e.** such other remedies as are warranted.

**Dated 30 April 2024**



**Janet Mason**
**Counsel Acting**