I MUA I TE ROOPU WHAKAMANA I TE TIRITI O WAITANGI

WAI 3300
WAI TBC

I RARO I 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)
Ā	
I TE TAKE O	tētahi kerēme nā Umuhuri Matehaere, Kataraina Putiputi Rihara Nuku Keepa rātou ko Nepia Hona Ranapia, mā rātou anō me a rātou tūranga hei tarahitī o Te Haupapa Kohatu Trust hei whai painga mō ngā karanga hapū o Ngāi Te Hapū o te moutere o Motiti

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Ngā Tāpaetanga Whakataki mō Te Haupapa Kohatu Trust
I tēnei rā, i te 30 o Āperira 2024

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Waitangi Tribunal
1 May 24
Ministry of Justice
WELLINGTON

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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 Umuhuri Matehaere, Kataraina Putiputi Rihara Nuku Keepa and Nepia Hona Ranapia for themselves and as Trustees of Te Haupapa Kohatu Trust for the benefit of ngā karanga hapū o Ngāi Te Hapū on Motiti Island, Te Haupapa Kohatu ("the Trustees" / "the Claimants").[1]

2. The focus of this inquiry is on 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.[2]

3. Te Haupapa Kohatu Trust Trustees participate in this urgent inquiry as an interested party, in support of the claimant groups whose applications before this Tribunal have been granted urgency.

4. As set out in these submissions and the evidence of Umuhuri Matehaere, the hapū of Motiti have for generations (both before and since the signing of Te Tiriti in 1840) actively safeguarded their whenua and rohe moana, and will continue to do so, notwithstanding the actions of any government of the day. Nonetheless, it is incumbent on the Crown to recognise the inalienable rights of hapū as tāngata whenua in Aotearoa, and the foundational role that Te Tiriti o Waitangi plays in the nation's constitutional fabric. This, in counsels submission, speaks to the heart of the Crown-Māori relationship that continues today.

Summary of Submissions

5. The Trustees say that the Crown's actions in developing a Treaty

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1 A new statement of claim was filed in the Wai 3300 Inquiry on 18 April 2024 – at the time of writing these submissions it had not been registered and the Claimants await a formal Wai number for their claim.

2 Wai 3300, #2.5.18, *Decision on applications for urgency* dated 10 April 2024, at [11].

Principles Bill and undertaking a review of existing Treaty clauses in legislation breaches Te Tiriti in at least the following ways:

(a) unilaterally redefining the Treaty principles in its development of a Bill without consultation with its Māori te Tiriti partner;

(b) proposing to permit the Crown and non-Māori greater rights under te Tiriti by redefining the principles as if the rights and guarantees under te Tiriti were intended to apply to all people living in New Zealand at any given time;

(c) subjecting te Tiriti and Treaty rights to a process the Crown (specifically, the Executive branch of government) dictates and dominates;

(d) breaching its duties of good faith, partnership and participation by not wanting to engage with Māori until any proposed Bill is released for public consultation and reaches the Select Committee stage;

(e) breaching its duties of good faith, partnership and participation by wanting to withhold documents that are pertinent to the subject matter of this inquiry from the public record.

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

6. On 24 November 2023, 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

(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]

7. 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 [...]."

8. 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.

9. 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.

10. The Trustees are concerned about the Crown's approach to developing

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

a legislative programme for the introduction of a Treaty Principles Bill and statutory review of Treaty references on its own, unilaterally, without consultation or meaningful engagement with Māori.

11. It is submitted that the Crown is overstepping its kāwanatanga sphere whilst actively undermining the tino rangatiratanga sphere. Continuing this trajectory will have dire consequences for the Crown-Māori relationship which is already tense.

TE TIRITI O WAITANGI ME ŌNA MĀTĀPONO

12. The Trustees position is that the text of te Tiriti itself is self-explanatory in outlining the expectations of the relationship between the Crown and hapū since the time it was signed in 1840, to the present day.

13. The Trustees endorse the submissions of Ngāti Rēhia at [17]-[25] on the application of treaty jurisprudence from the Waitangi Tribunal's Stage One Report of the Wai 1040 Te Paparahi o Te Raki (Northland) Inquiry, *He Whakaputanga me te Tiriti – The Declaration and the Treaty*[7], the Stage Two Report, *Te Tino Rangatiratanga me te Kāwanatanga*,[8] and the recent *Wai 3350 Oranga Tamariki (Section 7AA) Urgent Inquiry [Interim] Report*.[9] The Trustees agree that the first two reports in particular provide a critical starting point to assess the appropriate standard of measure for Crown conduct in this context.

14. To the extent that Treaty principles have been incorporated into legislation, it is submitted that the relevant Treaty principles that apply to this inquiry include, but are not limited to:

    (a) Tino Rangatiratanga;

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7 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).

8 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).

9 Waitangi Tribunal, *The Oranga Tamariki (Section 7AA) Urgent Inquiry Report* (Wai 3350, 19 April 2024).

(b) Kāwanatanga;

(c) Partnership;

(d) Mutual recognition and respect;

(e) Active Protection;

(f) Mutual benefit and the right to development;

(g) Equity; and

(h) Redress.

15. The Crown also has obligations under te Tiriti to act honourably, reasonably, in good faith and to make informed decisions.

16. It is submitted that current and pending Crown practice, policy and actions of undertaking a statutory review of Treaty references and developing a Treaty Principles Bill to introduce to Parliament by November 2024 completely disregards these well-established Treaty principles and as a result, breaches te Tiriti. Counsel will further expand on the relevant principles that apply to this inquiry in closing submissions.

NGĀ KŌRERO TAUNAKI

17. In the time available, one brief of evidence by Mr Umuhuri Matehaere has been filed on behalf of Te Haupapa Kohatu Trust in support of the claimants in this inquiry.

18. Mr Matehaere's evidence gives a case study example of Motiti Island and speaks to his experience of how various environmental challenges faced by Motiti hapū, resulting from poor environmental regulation by the regional council and the Crown, have led them to actively take steps to exercise their kaitiakitanga within the confines of statutory frameworks to protect their rohe moana and whenua taurikura. This has largely

been through the processes available under the Resource Management Act, the Conservation Act, the Marine and Coastal Area (Takutai Moana) Act, and the Treaty of Waitangi Act – all of which expressly incorporate the 'principles of the Treaty of Waitangi'.

19. Aptly, Mr Matehaere expresses his fear for the future of his mokopuna if this government continues down the path it is on.[10] It is submitted that this is the real-life impact on future generations that this government's conduct will have at a grass roots level.

NGĀ WHAKAHĀWEA / PREJUDICE

Te Haupapa Kohatu Trust

20. The Claimants trace their whakapapa to Motiti, with roots grounded in the historical origins tied to their eponymous tupuna, Te Hapū. Te Hapū's offspring occupied and established themselves on Motiti, forming the foundation from which the hapū of Ngai Te Hapū emerged.

21. With Ngāi Te Hapū tūpuna occupying the whenua and rohe moana of Motiti since before the signing of Te Tiriti, the Claimants have consistently retained their mana motuhake over their land and maritime territory. Contrary to relinquishing their rights, Ngāi Te Hapū has steadfastly advocated for their reo taketake, their tino rangatiratanga and mana motuhake concerning the island of Motiti and its rohe moana.

22. The Trustees of Te Haupapa Kohatu Trust have as part of the Trust's whāinga / purpose the protection and recognition of customary rights and interests of Motiti Island and its surrounding rohe moana (te Paepaeroa o te Moutere o Motiti). Customary rights include the pre-existing rights of hapū which were re-affirmed under Te Tiriti, including te reo Māori as a taonga to Māori.

[10] Kōrero Taunaki a Umuhuri Matehaere, 30 Āperira 2024 at [72].

Significant Prejudice that will affect Motiti hapū

23. As demonstrated in the evidence of Umuhuri Matehaere, the Claimants have consistently advocated for the rangatiratanga and mana motuhake of Ngāi Te Hapū, including their reo Māori me ōna tikanga, especially in the resource management, conservation, and takutai moana spaces.[11]

24. Advocacy in these areas by various hapū members extensively consider the principles of Te Tiriti. This consideration arises from explicit references in the current legislative regime to "the principles of the Treaty of Waitangi" and the fact that a Te Tiriti context is foundational to our nation.

25. The Claimants therefore are well-versed in utilising Te Tiriti as a tool to assert and defend their rights, rangatiratanga, and mana motuhake that exist today and existed prior to colonisation.

26. The proposed re-definition of the principles of te Tiriti/the Treaty directly threatens the effectiveness of the Claimants' work in the aforementioned areas. It is apparent that the descendants of Te Hapū will suffer significant prejudicial effects from the coalition government's proposed actions and policies to develop and introduce a Treaty Principles Bill and potentially amend or repeal legislative references to 'the Treaty and its principles'.

27. Furthermore, Te Tiriti jurisprudence developed over the past five decades supports the fact of pre-existing Māori rights and hapū rangatiratanga as part of the guarantees in the Te Tiriti. Without those current understandings and interpretations of what has become known as 'the Treaty principles', the basis for claims in the Courts advanced by the Claimants would not exist, and there would be no foundation for similar future claims and proceedings to hold the government and its

[11] Ibid, at [48]-[69].

agencies to account.

28. The Proposed Treaty Principles Bill aims to reshape the well-established body of Treaty jurisprudence, upon which the claimants have relied in various litigation settings to uphold their rights, including rangatiratanga, and mana motuhake – rights protected by Te Tiriti. These actions by the Crown violate te Tiriti and risk damaging the Crown-Māori relationship.

29. As expressed by Mr Matehaere, *"What the government is developing behind closed doors is unconstitutional, unlawful and based on racist attitudes towards Māori. It needs to stop now!"*[12]

RONGOĀ / RELIEF

30. The Trustees support the relief sought by the Claimants in this Inquiry and seek a recommendation from this Tribunal that the Crown immediately ceases its legislative programme towards introducing a Treaty Principles Bill and unilaterally reviewing statutory references to Treaty clauses. Instead, the Crown must conduct meaningful engagement with Māori about what, and why, it proposes to review a foundational constitutional document of Aotearoa.

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

[12] At [76].